

Postmaster Litigation Subcommittee Board



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MINUTES OF A MEETING OF THE POSTMASTER LITIGATION SUBCOMMITTEE OF POST OFFICE LIMITED HELD ON TUESDAY 22 OCTOBER 2019 AT 20 FINSBURY STREET, LONDON EC2Y 9AQ AT 11.30 HRS

Present:

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| Tim Parker | Chairman (TP) |
| Ken McCall | Senior Independent Director (KM) (Items 1. – 3.) |
| Tom Cooper | Non-Executive Director (TC) |

In attendance:

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| Nick Read | Group Chief Executive (NR) |
| Ben Foat | General Counsel (BF) |
| Veronica Branton | Company Secretary (VB) |
| Rodric Williams | Head of Legal – Dispute Resolution & Brand (RW) |
| Catherine Emanuel | Herbert Smith Freehills (CE) |
| Andrew Parsons | Womble Bond Dickinson (AP) |
| Alan Watts | Herbert Smith Freehills (AW) |
| Julie Thomas | Operations Director (JP) (Item 5.) |
| Amanda Jones | Network Director (AJ) (Item 5.) |
| Angela Van Den Bogerd | Business Improvement Director (AVdB) (Item 5.) |

Action

1. Welcome and Conflicts of Interest

The Directors declared that they had no conflicts of interest in the matters to be considered at the meeting in accordance with the requirements of section 177 of the Companies Act 2006 and the Company's Articles of Association.

2. Minutes and Matters Arising

The minutes of the Postmaster Litigation Subcommittee held on 17 September 2019 were **APPROVED** and **AUTHORISED** for signature by the Chairman.

3. Updates on Court Activity

Alan Watts provided an update on the litigation. We were still awaiting the Horizon Issues Trial judgment and were anticipating further news on when it would be issued this week. The permission application to appeal the Common Issues Trial judgment was taking place on 12 November 2019. Mr Justice Fancourt had recently ruled on the Sheffield United case and had disagreed with Mr Justice Fraser's views on relational contracts in the Common Issues Trial judgment; this could be helpful for our application on leave to appeal.

A pleading on the Further Issues trial was due from FREES on 25 October 2019. They had raised the issue of their funding and were seeking to bring a damages case for their costs. They had fixed their funding for the case at the outset but had exceeded their budget. If POL was successful in its application for leave to appeal this would extend the timeline for the trials and the associated costs. FREES wanted to argue that harassment claims should be part of the Further Issues Trial however, any harassment claim would have to be fact specific and considered case-by-case. Counsel's view and our view was that we should resist harassment claims being part of this trial. The Further Issues Trial should be limited in scope.

It was reported that we had undertaken a review of the non-disclosed Known Error Logs (KELS) and those that had been relied upon at trial. 94 had been identified as having significant changes. Counsel was reviewing all of these and of the 78 KELs reviewed so far 75% were felt

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not to have had a significant impact on what happened at trial. The other 25% were being reviewed in more depth.

We had offered the claimants access to all 14,000 non-disclosed KELs. The claimants' solicitors had argued that POL should pay for them to review the non-disclosed KELs. We were likely to resist this proposal but the Judge could take a different view. We had already provided the claimants' solicitors with red lined copies of the KELs which had been important at trial.

We wanted to be certain that Fujitsu had provided all versions of the KELs to us. We were considering whether there should be an audit to test how the KELs worked and the complexity of working with a live system from which the information had to be extracted. The approach to the audit and the scope of the audit was discussed and it was thought that we should seek the help of a third party for an audit. The scope of the audit should be limited to contain the timescales for completion.

4. Operational and GLO contingency planning

Julie Thomas introduced the paper.

A number of points were raised, including:

- how were we tracking progress with implementing operational changes? It would be helpful to understand this and see statistics in the Board pack. It was reported that we were trying to build a high level scorecard, including measures such as completion rates on disputes, weekly reconciliations, branch closures
- how were we changing our interactions with postmasters? Amanda Jones reported that there were good turnout rates from postmasters at engagement events. Feedback suggested that postmasters thought the relationship was improving. There was a clear expectation of improvements in remuneration. We would be running an advocacy survey in Q4
- did we allow postmasters to feed back on the call centre service? It was reported that we would be introducing a quick feedback survey at the end of calls next month. We were also considering whether to run a base lining survey with postmasters. It was noted that some of the changes we were making were about tone. We had reviewed all the documentation, letters etc. All calls into NBSC were recorded. A telephone number was included on the end of letters so that postmasters could call us. We had checking processes to monitor the quality of calls
- what plans were there to improve management information to postmasters? It was reported that we were progressing some "quick wins" with Horizon to change the way the screen looked and how reports were run. Tim Perkins was leading a piece of work on the end-to-end process for stock to help us understand what we should manage within the Horizon system. This was not a simple piece of work.

5. Any other business

5.1 Convicted Cases

Tom Cooper reported that he had met with Alan Watts and the team to go through the settlement numbers, including those for convicted cases. The treatment of these cases was discussed and it was felt that we needed to understand more about the status of the cases and analyse the figures. It was noted that Counsel's advice was that a monetary settlement should not be offered to convicted claimants at mediation because this risked undermining their convictions. Counsel would read through the 61 convicted claimants' cases after the Horizon

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Issues Trial judgment had been issued to see if this ought to affect our approach. A number of the convicted claimants had reported that they had been unable to resolve their problems with the Horizon system and had only been able to continue trading by entering a false account into the system to balance the books.

5.2 Herbert Smith Freehills - Fees

Ben Foat reported that under the engagement letter with HSF they had a 15% quality measure and if we were satisfied that this measure had been met we did not need to impose a reduction in their fees. BF had found HSF to be an excellent team, managing a complex litigation.

It was noted that HSF had been engaged at short notice to provide support to the Board. There had not been much time to negotiate the fee. HSF would have expected the fee to be reduced after October 2019. BF would discuss the position with Al Cameron but the Subcommittee thought that a modest reduction of perhaps 5% would be appropriate and did not indicate dissatisfaction with performance.

To do:
BF

6. Date of next meeting:

November date to be confirmed¹. [*Post-meeting note: the meeting has been scheduled for 16.00 – 17.00 hrs, 13 November 2019.*]

¹ The date originally scheduled now clashes with the Court of Appeal hearing for permission to appeal the Common Issues Judgment.