

Postmaster Litigation Subcommittee Board



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MINUTES OF A MEETING OF THE POSTMASTER LITIGATION SUBCOMMITTEE OF POST OFFICE LIMITED HELD ON TUESDAY 10 DECEMBER 2019 AT 20 FINSBURY STREET, LONDON EC2Y 9AQ AT 11:00 AM

Present: Tim Parker Chairman **(TP)**
Ken McCall Senior Independent Director **(KM)** (by phone)

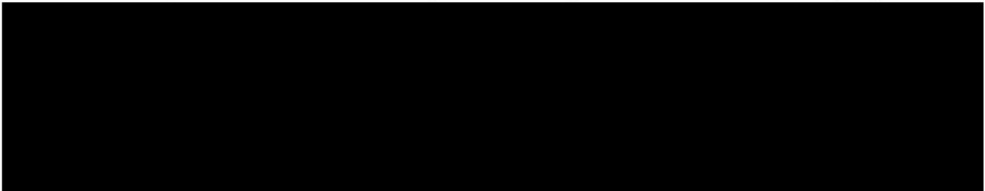
In attendance: Veronica Branton Company Secretary **(VB)**
Nick Read Group Chief Executive Officer **(NR)**
Alisdair Cameron Group Chief Financial Officer **(AC)**
Ben Foat General Counsel **(BF)**
Andrew Parsons Womble Bond Dickinson **(AP)**
Catherine Emanuel Herbert Smith Freehills **(CE)**
Rodric Williams Head of Legal – Dispute Resolution & Brand **(RW)**

Apologies: Tom Cooper Non-Executive Director

Agenda Item	Action
1. Welcome and Conflicts of Interest	
A quorum being present, the Chairman opened the meeting. 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 Postmaster Litigation Subcommittee APPROVED the minutes of the meeting held on 13 November 2019.	
3. Group Litigation Order	
<p>3.1 Ben Foat provided an update on the mediation. The previous evening the parties had agreed a financial settlement of £57.7m in principle. This was a global settlement and included the £5.5m in costs which the Managing Judge had already ordered Post Office Limited to pay. This sum was within the settlement range approved by the Postmaster Litigation Subcommittee and the Shareholder. We now needed to agree the settlement deed itself but were close to finalising.</p> <p>The next steps were to:</p> <ul style="list-style-type: none"> Continue to negotiate the settlement deed and then agree a joint statement Seek the written approval of the POL Chairman and Group CEO to the settlement Seek Shareholder consent to the settlement through Tom Cooper and Richard Watson at UKGI Agree the internal and external communications. <p>A number of points were raised, including:</p> <ul style="list-style-type: none"> What would the timing of the public announcement be? It was reported that this could be as early as late afternoon today and that we were trying to reach a consensus on the outstanding points with the other party Did the settlement include all the claimants? It was confirmed that it covered all the claimants for the civil case. What could not be covered was the potential claims for malicious prosecution in the event of any of the convicted claimants having their claims overturned. The convicted claimants could still take a claim through the Criminal Cases Review Commission (CCRC) 	



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<p>- Did we know how much of the settlement would go to the funders and how much to the claimants? It was reported that we would make no allocation between claimants. We did not know how much of the settlement the funders would receive. We had justified the settlement under the appropriate heads of damages and had not included litigation costs within this</p> <p>- When was the most recent criminal prosecution brought by POL against a Sub-postmaster? It was reported that this was around 6 years' ago. We had instructed Brian Altman QC to assist us with the outcome of the Horizon Issues Trial judgment and how that should influence how we dealt with the convicted claimants' cases</p> <p>- What was the position in relation to Fujitsu following the Horizon Issues trial judgment?</p>	 <p>The parties' joint statement and wider communications were discussed. The joint statement would be circulated to the Subcommittee once the wording under discussion had been resolved. The draft statement acknowledged the good faith demonstrated by both parties through the mediation process and commended POL's willingness to make changes. Discussions were taking place with how the joint statement would work with the confidentiality clauses. The claimants were keen for there to be no restrictions on what they could say about POL but this would undermine the purpose of a joint statement and we needed to be clear about the purpose of that statement. The draft joint statement had been shared with BEIS and we would be making sure that BEIS, Cabinet Office and No 10 Downing Street had an agreed set of statements to use if responding to press and other enquiries. Nick Read would talk directly with Alex Chisholm.</p> <p>POL's response to criticisms of the cost associated with reaching a settlement was discussed. It was noted that the principal emphasis would be on having reached a new settlement which enabled us to re-set the relationship with Sub-postmasters and move forward positively with a new CEO leading these changes. It was noted that we might face a new Select Committee hearing in due course and it would be sensible to prepare for and the questions that might be asked.</p> <p>The Chairman thanked all those involved in helping to secure a positive outcome. The sustained effort involved in reaching this point was much appreciated.</p>	<p>Action: BF</p>
<p>3.2</p>	<p>Operational activity</p>	
	<p>Ben Foat reported that settlement would not bring to a close the operational activity required to respond to the judgments. The Common Issues judgment was now law and we had to implement its rulings. A meeting had taken place last week to discuss Sub-postmaster contracts¹ and the processes that would also need to be reviewed². We were considering how best to deal with contracts. We were likely to look at all 11,000 plus contracts and reissue these. If we used the unilateral right to vary the contract we would need to show that we had been reasonable in doing so. The decision on the approach was likely to be made in</p>	

¹ This included elements such as the basis of the contract, length, terms, suspension arrangements, recovery of losses.

² For example, the branch trading statement.

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	<p>January 2020, followed by a programme of implementation. A number of commercial decisions also had to be taken as the approach we took to contracts was not only linked to the Group Litigation³. There was a risk that some Sub-postmasters would not sign the new contract.</p> <p>A number of points were raised, including:</p> <ul style="list-style-type: none"> - Were there anything significant changes that needed to be made now? It was reported that the critical element was how we enforced the current contract, for example, we did not suspend Sub-postmasters without pay and we investigated the cause of a shortfall before taking action. It was noted that we would need to bring back the end-to-end view of the changes required and how this would be tested to provide sufficient assurance and independent perspective - That there would be additional costs associated with implementing the Common Issues judgment and the Horizon Issues judgment. We would need to flag our additional costs in our funding discussions with Government. 	
3.3	Horizon Issues trial judgment	
	<p>Ben Foat provided an update on work flowing from receipt of the embargoed Horizon Issues judgment:</p> <ul style="list-style-type: none"> - We were working through the process for convicted claimants and would follow the advice of an independent QC who specialised in criminal cases. If some claimants had their claims overturned this would provide scope for malicious prosecution claims to be brought against POL. The findings within the judgment on the legacy Horizon system created a risk but more than this would be required to overturn a case. We would follow the QC's advice in each case. The claimants supported this approach. - We would need to set up a process to deal with new claims brought in connection with the Horizon system in operation prior to 2018. Mediation and arbitration would be pursued rather court being the first step. We would need to discuss further whether or not we made a provision for these potential claims at this juncture. 	
3.4	Decisions	
	<p>The Postmaster Litigation Subcommittee RESOLVED to APPROVE that in the event of failing to settle the mediation Post Office Limited would agree to pay the claimants' costs of £3.4 m.</p> <p>The QC's advice was that we should not seek to appeal the Horizon Issues judgment. This had been a technical trial drawing on expert witness evidence. The Postmaster Litigation Subcommittee RESOLVED to APPROVE not to seek to appeal the Horizon Issues trial judgment.</p> <p>The Postmaster Litigation Subcommittee RESOLVED to APPROVE that Brian Altman QC be approached to act as Post Office Limited's QC in relation to the Criminal Case Review Commission cases.</p>	
4.	Date of next meeting: 22 January 2020	

³ For example, we needed to take into account Starling (workers' rights case).