UKGI00042826

Post Office Limited
Postmaster Litigation Subcommittee Agenda

Date:	22 January 2020	Time:	16.00 – 17.00 hrs	Location:	Wakefield (Room 1.19)

Present:		Other Attendees:	
• Tim Parker (Chairman) • Ken McCall (Senior Independent Director)	• Tom Cooper (Non-Executive Director)	• Nick Read (Group Chief Executive Officer) • Ben Foat (General Counsel) • Andrew Parsons (Womble Bond Dickinson) • Alan Watts (Herbert Smith Freehills) • Kate Emanuel (Herbert Smith Freehills)	• Alisdair Cameron (Group Chief Financial Officer) • Veronica Branton (Company Secretary) • Rodric Williams (Head of Legal - Dispute Resolution & Brand) • Richard Watson (General Counsel – UKGI)

Agenda Item		Input needed/ Status	Lead	Timings
1.	**Welcome and Conflicts of Interest**	Noting	Chairman	16.00 – 16.05 hrs
2.	**Minutes and Matters Arising**	Approval	Chairman	
3.	**Group Litigation Order: Post-settlement Report** In particular: - Convicted Claimants; and - Historic Shortfall Claims Scheme.	Discussion	Ben Foat	16.05 – 16.55 hrs
4.	**Any Other Business**	Noting	Chairman	16.55 – 17.00 hrs
5.	**Date of Next Meeting:** 10.00 hrs, 18 February 2020.	Noting	Chairman	

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 **(TC)**

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**	
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. The next steps were to: • 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. A number of points were raised, including: - 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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	- 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 - 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 - What was the position in relation to Fujitsu following the Horizon Issues trial judgment? It was reported that we had taken initial legal advice and were waiting for the final legal opinion. [redacted] 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 about 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. 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 that and the questions that might be asked. The Chairman thanked all those involved in helping to secure a positive outcome. The sustained effort involved in reaching this point was much appreciated.	**Action: BF [*Post meeting note: DONE*]**
3.2	**Operational activity**	
	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 contracts[1] and the processes that would also need to be reviewed[2]. 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	

[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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	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 Litigation[3]. There was a risk that some Sub-postmasters would not sign the new contract. A number of points were raised, including: - 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**	
	Ben Foat provided an update on work flowing from receipt of the embargoed Horizon Issues judgment: [redacted]	
3.4	**Decisions**	
	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. 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. 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.	
4.	**Date of next meeting:** 22 January 2020.	

[redacted]

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POST OFFICE LIMITED
BOARD SUBCOMMITTEE REPORT

Title:	GLO: Post-settlement Report
Meeting Date:	22 January 2020
Author:	Rodric Williams, Head of Legal (Dispute Resolution)
Sponsor:	Ben Foat, General Counsel

Input Sought

General	
For noting	The Subcommittee is asked to NOTE the approach to managing the post-GLO settlement workstreams set out in the report prepared for the GE meeting on 15 January 2020 (accessible via the Reading Room).
Convicted Claimants	
For decision	The Subcommittee is asked to APPROVE taking a wide approach to post-conviction disclosure.
Future Claims Scheme	
For noting	The Subcommittee is asked to NOTE the proposed Scheme structure.
For decision	The Subcommittee is asked to APPROVE the engagement of Wandsworth Mediation Services as the scheme's chosen mediation provider.
For decision	The Subcommittee is also asked to APPROVE applicants to the scheme being required to make a nominal contribution towards the costs of mediation should a claim proceed that far through the scheme.
For decision	The Subcommittee is asked to DECIDE whether the Scheme should be launched on 3 February 2020 or be deferred to 2 March 2020.
Previous Governance Oversight:	GE (15 January 2020); GLO Steering Committee (16 January 2020)

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Executive Summary

Context:	A programme of five workstreams has been established to manage the actions and issues that need to be undertaken and addressed following the conclusion of the GLO. The workstreams cover: (i) convicted claimants' applications to the CCRC and Court of Appeal; (ii) operationalising the Common Issues Judgment; (iii) future claims arising following the Horizon Issues Judgment, including a mediation scheme as agreed in the GLO settlement; (iv) potential recourse against Fujitsu; and (v) complying with the obligations set out in the GLO Settlement Deed. The Subcommittee's input is sought at the 22 January 2020 meeting on matters relating to <u>Convicted Claimants</u> and <u>Future Claims</u>.

Questions asked & addressed

1. What are the decisions the Subcommittee is asked to make at its 22 January 2020 meeting for the post-GLO settlement workstreams?

2. What are the next steps in the workstreams?

Report

At its meeting on 15 January 2020, the Post Office GE considered the approach to take to managing (through a programme of five workstreams) the actions and issues to be undertaken and addressed following the conclusion of the GLO. The report prepared for the GE can be accessed via the Reading Room. This paper addresses the decisions the Subcommittee is asked to make in connection with two of those workstreams, concerning Convicted Claimants and the Future Claims Scheme.

Convicted Claimants Workstream

1. The Settlement Deed only resolved the civil GLO court proceedings. It does not affect existing criminal convictions, which are a matter for the CCRC and ultimately the criminal courts. It also leaves open the possibility of civil claims for malicious prosecution if any of the criminal convictions are overturned.

2. As part of the settlement Post Office agreed to take advice from a leading criminal law QC on how it should proceed with regard to the convicted claimants in the GLO. To this end, Post Office has instructed leading Criminal Queens Counsel Brian Altman QC (BAQC) and specialist criminal law solicitors, Peters & Peters (who were not involved in any past Post Office prosecutions). BAQC and Peters & Peters are also advising on Post Office's approach to the CCRC's investigation of the 34 cases that have been referred to it (31 of which involve GLO claimants).

3. BAQC has advised that the GLO (most specifically the Horizon judgment) does not, of itself, mean that any conviction is unsafe because Fraser J did not make any findings on any individual cases. However, Post Office as a prosecutor may have a legal duty to disclose material facts to convicted postmasters which have now come to light through the GLO (for example, relating to the risk of bugs and errors in Horizon, the reliability of the Branch Trading Statement, and/or Post Office and Fujitsu's ability to access remotely a branch's accounts). If such facts were material (i.e. there is a real possibility that a jury would have arrived at a different conclusion had defence counsel been able to use the undisclosed material at trial) that may give a convicted claimant grounds to appeal. The obligation to give disclosure depends on whether the facts now known were material to any individual case – there is no "one-size-fits-all" approach.

4. On 14 January 2020, Mr Justice Fraser referred certain Fujitsu witnesses to the Director of Public Prosecutions (DPP) so that he can consider whether they may have committed an offence (perjury or perverting the course of justice) during previous, non-GLO criminal and civil trials. Although the fact that the referral has been made is a matter of public record, Fraser J directed that the content of the reference itself be kept confidential, with Post Office requiring Fraser J's permission to share it more widely.

5. Post Office has arranged a meeting with the CCRC on 29 January 2020 to offer co-operation and discuss next steps.

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Duty of Disclosure

6. Post Office's post-conviction disclosure duty extends to all individuals prosecuted by Post Office (work on identifying these cases is ongoing but present estimates suggest there may be c.574 historic prosecutions). BAQC and Peters & Peters are scoping an exercise to ensure that the appropriate disclosures are made. They have advised that there are two broad options:

   a. a narrow approach in which standardised disclosure is provided to all defendants without a review of each case; or

   b. a wide approach in which each case is reviewed individually.

   A copy of BAQC and Peters & Peters advice is at **Appendix 1**. Their recommendation, is that Post Office adopt the wide approach, principally to demonstrate that Post Office is doing "the right thing", not just the minimum required.

7. That recommendation is subject to two further recommendations:

   a. Post Office ensure that its proposed approach is aligned with the CCRC's expectations. If the CCRC considers Post Office should do something different, then Post Office should take that into account; and

   b. a staged approach is adopted to the review by prioritising the 34 cases currently being considered by the CCRC and, following an analysis of the findings on those cases, adjusting the review as necessary so that it promotes Post Office's compliance with its disclosure duty.

   The Subcommittee is asked to **approve** taking a wide approach to complying with its legal duties of disclosure, subject to this being aligned with the CCRC's expectations and reassessed following the review of the 34 cases being considered by the CCRC.

8. In order to progress matters:

   - A dedicated data-site has been set up and populated with the files of those who were claimants in the GLO and/or who referred their cases to the CCRC. The review will prioritise the cases where we have already collated the relevant information, starting with the 34 cases currently being reviewed by the CCRC;
   - Substantial work is being carried out to collate Post Office's records from other past prosecutions;
   - The specialist criminal law team have begun reading into the material. It is anticipated that the Board may want some visibility on the detail of the individual cases and a separate briefing session can be arranged, covering specific individual cases with BAQC and Nick Vamos (Partner at Peters & Peters);
   - It is anticipated that the review of the initial 34 CCRC referrals will be complete within two to three weeks once the scope of the review (wide or narrow) has been finalised; and
   - In the meantime, Post Office will offer maximum co-operation to both the CCRC and the DPP.

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Historic Shortfall Claims Scheme

1. In the GLO Settlement Deed, Post Office agreed to establish a "Historic Shortfall Group" to deal with claims concerning shortfalls which arose between 2000 (when Horizon was rolled out across the network) and 13 December 2019 (when the settlement became effective). A scheme to manage historic claims has been structured as per the flowcharts at **Appendix 2**. We are currently working towards a "go-live" date for the scheme of 3 February 2020.

2. It is envisaged that once claims have been logged and triaged at Post Office, the claims will be assessed by a dedicated team from HSF Belfast who will:

    a. Manage the process from receipt of an eligible claim to the communication of the outcome to the applicant (with Post Office responsible for collating the relevant evidence and information);

    b. Assess the claims (with oversight from HSF London) by reference to agreed assessment criteria. Although possible guiding principles have already been identified, it is recommended that any criteria are finalised once the applications to the scheme are to hand (the GLO Settlement Deed provides for a 3-month window for the receipt of claims) so that the criteria can be developed in a way that responds more precisely to the claims received; and

    c. Facilitate decision-making by presenting recommendations and options to a decision-making panel comprising individuals from (a) operations (Tim Perkins); (b) legal (Alan Watts or Kate Emanuel) and finance (Stuart Nesbit). This will allow cases to be considered on their individual merits with proper operational input (i.e. not just legal).

3. The GLO Settlement Deed requires that by 30 January 2019, the GLO mediators (Charles Flint QC and Stephen Ruttle QC) must approve the terms of reference for the mediation stage of the dispute resolution process. The proposed letter seeking their approval is at **Appendix 3**. The Subcommittee is asked to make two decisions to finalise the letter:

    a. Mediation provider: it is recommended that Wandsworth Mediation Services ("WMS") is appointed as the scheme's chosen mediation provider. WMS is a charity established in 2004 by GLO mediator Stephen Ruttle QC, which provides conventional commercial mediations for a small fee, which fee is used to support charitable objectives within the community. Stephen's involvement with WMS is likely to give it credence to his GLO co-mediator Charles Flint QC (who along with Stephen is required by the Settlement Deed to approve the scheme's mediation services), and also to the GLO claimants.

    b. Applicant contribution to mediation costs: it is recommended that applicants not be required to make any contribution to the costs of the scheme but that, if the claim is not been resolved at the Assessment, Good Faith Meeting or Escalation Meeting stages and proceeds to mediation, a non-prohibitive contribution towards the costs of the mediation be payable. We recommend a contribution of £50 or 5% of the claim value (whichever is higher), with Post Office paying the remainder of the charge. This level of contribution is comparable other dispute resolution schemes, and has three advantages: (a) it would discourage unmeritorious, disproportionate or inflated claims; (b) it means the mediators would not be paid exclusively by one party; and (c) HSF's experience suggests that making a modest contribution means parties are genuinely invested in the process of finding a solution. The GLO claimant steering committee accepted during the mediation that it would be reasonable for applicants to the scheme to make some level of contribution towards costs.

The Subcommittee is asked to **approve** the appointment of WMS as the scheme's chosen mediation provider.

The Subcommittee is also asked to **approve** that applicants to the scheme be required to make a nominal contribution towards the cost of mediation should a claim proceed that far, recommended as £50 or 5% of the claim (whichever is higher).

4. As the GE report notes, the scheme requires further input before it can be announced to postmasters, including on such matters as to the type of applicant and complaint it will consider, how it should treat cases where the applicant may be at risk of imminent serious personal or financial harm, and how Post Office should exercise its legal rights (e.g. where an application raises conduct considered to be unacceptable in the Post Office network).

5. The Subcommittee is therefore asked to **decide** whether the scheme should go live on 3 February 2020. The advantages of proceeding on 3 February are that (a) it demonstrates that Post Office is dealing with historic issues expeditiously; and (b) the application window of 3 months would close in May and enable claims to be assessed promptly thereafter. Opening the scheme on 3 February does put pressure on Post Office to finalise a number of decisions (including those identified above) and to put in place the necessary resources for implementation of the initial phase. This is achievable but the Subcommittee may prefer to defer the go-live date by a month, say to 2 March 2020 to ensure that pressure of time does not lead to any missteps that create problems later down the line.

Next Steps

The next steps for each workstream include:

- Convicted Claimants: meeting with the CCRC; scope and progress post-conviction disclosure review and address to any applications made to the criminal Court of Appeal.
- Common Issues /Ops Modernisation: consider appropriate contract remediation reflecting the Common Issues judgment; establish a programme team for the wider commercial reform of the postmaster contracts
- Future Claims: finalise and operationalise the recommended scheme structure and plan for communication to the network for approval.
- Fujitsu Potential Claim: [redacted]
- Settlement Deed Compliance: continue to progress the required actions to conclusion, liaising with the claimants' solicitors as appropriate.

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Appendix 1

POSITION PAPER:
CRIMINAL CASE REVIEW
OPTIONS & RECOMMENDATIONS

Introduction

1. We have been asked to provide this position paper for the Board Meeting to be held in the week commencing 20 January 2020. It is designed to set out:

   (i) Post Office's duties as a prosecutor as regards disclosure post-conviction;
   (ii) The options that are open to Post Office to discharge those duties together with our recommendation as to which of the options Post Office should pursue; and
   (iii) The recommended stance Post Office should take with the Criminal Cases Review Commission ("**CCRC**") and other agencies.

Summary of Advice/Recommendations

2. There are two broad options open to Post Office to discharge its duty of post-conviction disclosure (that is, to disclose material to convicted defendants which might cast doubt on the safety of their convictions): a narrow approach in which standardised disclosure is provided to all defendants without a review of each case; and a wide approach in which each case is reviewed individually. There are legal, practical and reputational advantages and disadvantages to both. Our recommendation, however, is that Post Office should adopt the wide approach.

Post Office's Legal Duties

3. The Post Office's duty of post-conviction disclosure (the "**primary duty**") (based on Supreme Court authority) is:

   (i) To disclose to the defendant any material which has come to light and might cast doubt on the safety of the conviction; and
   (ii) Where there is a real prospect that further inquiry might reveal such material, making that inquiry.

4. It is important to note that the primary duty arises irrespective of the CCRC's involvement in any given case.

5. There is no one right answer to the question of how Post Office should discharge its primary duty. There is a range of interpretations, all of which would be considered rational and therefore legally defensible.

6. It is important to note that the outcome of any disclosure exercise is of paramount importance as compared with the process by which that outcome is achieved; there might be a range of valid methodologies for process.

7. There is no duty to disclose to the defendant anything s/he already knows. However, it is implicit that there is a duty to identify the material that might meet the test in paragraph 3 above so that the prosecution can be sure whether the defendant already knows it. Moreover, not all the defendants to whom Post Office owes the primary duty have seen the material from the civil litigation, so there is a clear need to consider disclosure in their cases. There is also the limited

duty of further inquiry at paragraph 3(ii) which, if engaged, might reveal material not already known even by the claimants. Therefore, it is impossible to avoid some review of the potentially disclosable material.

Options for Discharging Post Office's Legal Duties

8. We consider that there are two broad options open to Post Office.

<u>Option 1: The narrow approach</u>

9. The narrow approach to discharge the primary duty is the disclosure of everything, on a standardised basis, to all convicted defendants, without reviewing individual cases to make a determination whether Post Office in fact is required to make disclosure to that defendant.

10. <u>Advantages</u> to this approach are that it would be cost effective and less time consuming than reviewing each case (the wide approach).

11. <u>Disadvantages</u> of the narrow approach from a legal perspective include that:

    (i) The narrow approach is arguably an abdication of the prosecutor's responsibility to assess whether material "might cast doubt on the safety of the conviction", which must be case and fact specific;
    (ii) It sends out the wrong message by implying that Post Office believes that a 'one-size-fits-all' approach can be taken to all cases, which might produce a knock-on effect to the view the CCRC and/or the Court of Appeal Criminal Division **("CACD")** take to cases they are, respectively, investigating and/or determining; and
    (iii) It shifts the responsibility to the defence to sort through the disclosed material to see what actually does, rather than might, cast doubt on the safety of the conviction. This is especially problematic where the material is voluminous, complex and might require expert analysis to determine its impact in any given case.

12. <u>Disadvantages</u> of the narrow approach from a reputational perspective include that:

    (i) Disclosure to *all* those convicted would most likely be unnecessary, which may result in far more individuals questioning whether their conviction is impacted by the disclosure, when in fact the disclosure has no impact. A focused review of individual cases would be able to discount those to which any disclosure should not be made, minimising time/resources in dealing with those cases;
    (ii) The CCRC or, in turn, the CACD may criticise Post Office for not doing more to assist the defendants. The CACD may even say that Post Office's interpretation of its primary duty is overly narrow and, therefore, wrong;
    (iii) The defendants and the media may criticise Post Office for not doing more to assist the defendants; and
    (iv) Post Office wants to do, and be seen to be doing, the right thing, not the minimum necessary. For example, the way in which Post Office discharges its primary duty should not be (or not appear to be) less rigorous than the Cartwright King review following the Second Sight and Rose reports.

13. The narrow approach is also arguably unsuitable for witnesses whom the Mr Justice Fraser recently referred to the Director of Public Prosecutions ("**DPP**") and also in the case of possible remote access by Fujitsu to branch accounts, both of which may necessitate further, case-specific inquiry.

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Option 2: The wide approach

14. Conversely, a wide approach to the primary duty would be to review individual cases on a fact specific basis. The review would be designed to identify whether, and to what extent, further disclosure should be made at this stage on the basis that the material might arguably cast doubt on the safety of the conviction by reason of the matters outlined in paragraph 17 below.

15. A logical order to conduct such a review would be as follows:

    (i) The 34 CCRC referrals (consisting of 31 convicted claimants and 3 convicted non-claimants). These are the cases in respect of which Post Office has the most information and in respect of which there is likely to be the most risk, given these cases have been referred to the CCRC;
    (ii) The balance (i.e. 31) of the 62 convicted claimants who have not (at least as yet) referred their cases to the CCRC; and
    (iii) All those convicted who do not fall within (i) or (ii) above (who are comparatively disadvantaged as they have not had the discovery made in the civil claim).

16. Policies and processes would be devised and parameters set in order to reduce the number of cases to be reviewed, for example excluding any prosecution that resulted in an out of court disposal, such as a caution and restricting date parameters based on the bugs, errors or other defects identified in the Horizon Issues judgment.

17. The wider approach review would cover:

    (i) Whether there has been material non-disclosure of a bug, error or other defect at the time of the trial or proceedings under review;
    (ii) Whether some bug, error or other defect was materially capable of impacting, or did impact, on the branch account in question; and
    (iii) Whether the branch account in question was remotely accessed and was responsible for manufacturing the alleged default.

18. The advantages and disadvantages outlined above in relation to the narrow approach at paragraphs 10 to 13 are inversely applicable to the wide approach. Therefore, its only apparent disadvantages are time/cost considerations.

19. To minimise the potential disadvantages of the wide approach, a staged approach could be adopted by prioritising the 34 CCRC referrals, following which our findings could be analysed, policies and processes adjusted, if needed in light of those findings, and a decision taken by the Board as to how the next stage (e.g. reviewing the remaining convicted claimants who had not yet referred their cases to the CCRC) should be conducted. This will then ensure that Post Office, as a prosecutor, can control the process, and still ensure that it discharges its legal duties.

20. An initial sift rather than a full review might be considered for the non-CCRC referred cases after the first stage review has been completed. This could have the advantage of eliminating unaffected cases with relative speed and fewer resource issues.

Our Recommendation

21. It is for Post Office to decide how it interprets and discharges its primary duty, whether adopting a narrow or wide approach. A narrow approach carries legal and reputational risk, for example, that the CCRC or CACD would interpret the primary duty more widely than Post Office had done or Post Office would be criticised for doing only the minimum required of it.

22. Based on these factors, it is our view that a review of individual cases is necessary in order to properly discharge Post Office's primary duty as well as to advise the Board as to whether any

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convictions are arguably unsafe. Consequently, we recommend that the wide approach is adopted by Post Office, to be executed via a staged priority review, as outlined in paragraph 19.

Approach to CCRC

23. We will continue the policy of maximum cooperation with CCRC. The meeting between the CCRC and representatives of Post Office to be held on 29 January 2020 is intended to explain how Post Office interprets its legal duty and how it intends to discharge it.

24. We will endeavour to discover from the CCRC what its intentions are as regards the cases referred to it. The rationale, from our point of view, in meeting the CCRC is to ensure that we do not act inconsistently with its expectations and requirements; that Post Office does not engage in any misstep as far as its processes are concerned; and ultimately that the process Post Office intends to embark upon receives the approval of the CCRC (and the CACD, in due course, should any Post Office cases come before it).

Approach to the DPP

25. The Board will be aware that, on 14 January 2020, Mr Justice Fraser referred two Fujitsu witnesses to the DPP for consideration of the commission by them of offences during their evidence in two named historic cases, one criminal and one civil. If the DPP and/or the police were to take action on this referral, the likely offences to be investigated or considered would be perjury and perverting the course of justice.

26. Once we have obtained Mr Justice Fraser's permission to do so, we intend, as invited by the Judge in his cover letter to the parties, to consult with the DPP and take a similar approach to that which we are taking to the CCRC, namely maximum cooperation and support.

17 January 2020

BRIAN ALTMAN QC
EMMA KING
PETERS & PETERS SOLICITORS LLP

POST OFFICE

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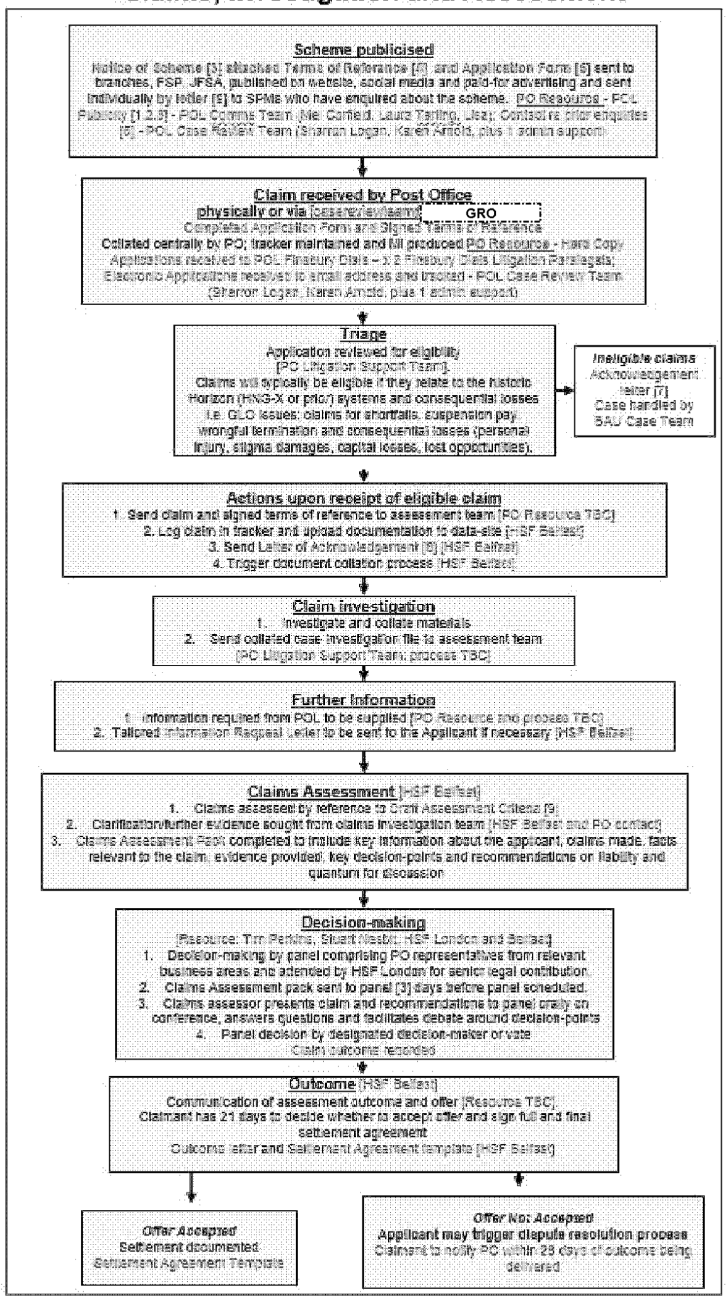
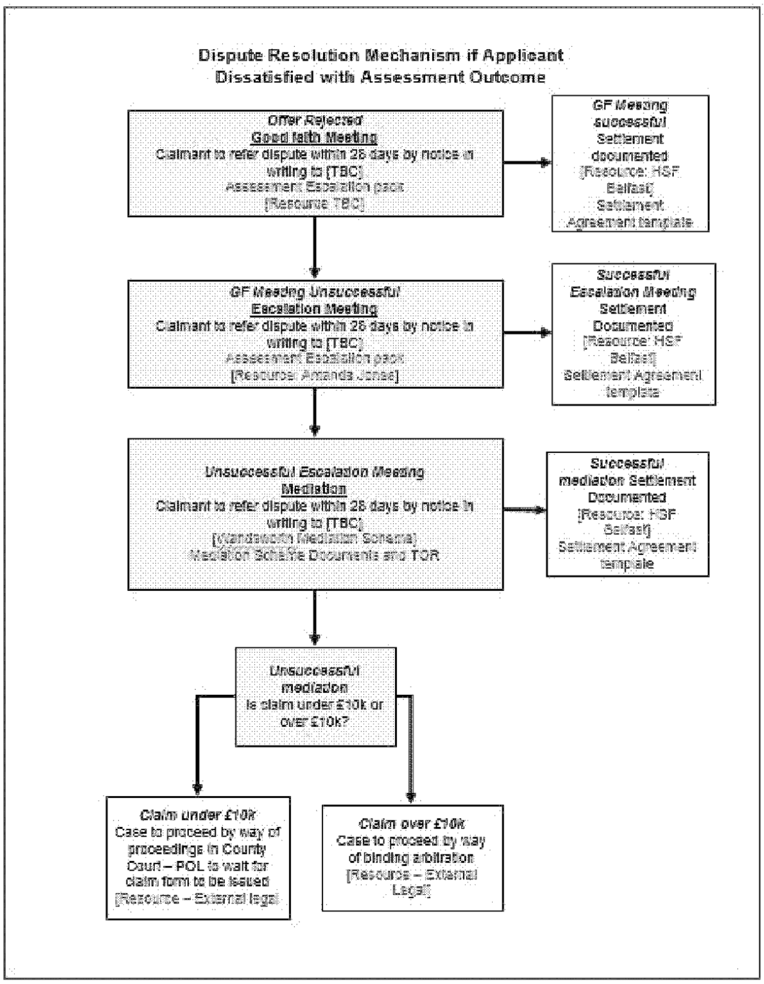
Appendix 2

Claims, Investigation and Assessment




Dispute Resolution Mechanism if Applicant Dissatisfied with Assessment Outcome
Offer Rejected
Good faith Meeting
Claimant to refer dispute within 28 days by notice in writing to [TBC]
Assessment Escalation pack
[Resource TBC]
GF Meeting successful
Settlement documented
[Resource: HSF Belfast]
Settlement Agreement template
GF Meeting Unsuccessful
Escalation Meeting
Claimant to refer dispute within 28 days by notice in writing to [TBC]
Assessment Escalation pack
[Resource: Amanda Jones]
Successful Escalation Meeting
Settlement Documented
[Resource: HSF Belfast]
Settlement Agreement template
Unsuccessful Escalation Meeting
Mediation
Claimant to refer dispute within 28 days by notice in writing to [TBC]
[Wandsworth Mediation Scheme]
Mediation Scheme Documents and TOR
Successful mediation Settlement Documented
[Resource: HSF Belfast]
Settlement Agreement template
Unsuccessful mediation
Is claim under £10k or over £10k?
Claim under £10k
Case to proceed by way of proceedings in County Court – POL to wait for claim form to be issued
[Resource – External legal
Claim over £10k
Case to proceed by way of binding arbitration
[Resource – External Legal]

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Appendix 3

Strictly private and confidential

Charles Flint QC
Blackstone Chambers
Blackstone House
London EC4Y 9BW

Stephen Ruttle QC
Brick Court Chambers
7-8 Essex Street
London WC2R 3LD

[insert date]

Dear Mr Flint and Mr Ruttle,

Alan Bates and Ors v Post Office Limited: Historic Shortfall Group Scheme

We refer to the confidential settlement deed dated 10 December 2019 that was agreed between the parties to Alan Bates and Ors v Post Office Limited HQ16X01238, HQ17X02637 and HQ17X04248 (the "Deed").

Pursuant to clause 9.4 of the Deed, Post Office is required to establish a group (the "Historic Shortfall Group") led by its General Counsel and/or a senior manager, to deal with any issues in respect of shortfalls which arose between 1 January 2000 and 13 December 2019 ("Historic Shortfalls"). The Historic Shortfall Group is to operate in accordance with the terms of reference set out in Schedule 6 of the Deed and, pursuant to clause 9.5 and Schedule 6 of the Deed, Post Office is required to establish a cost-effective and accessible mediation scheme to assist in resolving Historic Shortfall issues, in the event a particular dispute cannot be resolved between the parties themselves. The Deed requires that the terms of the scheme be approved by both of you.

Please find enclosed a document setting out further terms of reference for the Historic Shortfall Group (including the establishment of a mediation scheme). We should be grateful if you would review this and confirm whether you are content to approve it.

For completeness, we note that under paragraph 2 of the Tomlin Order made by Mr Justice Fraser on 16 December 2019, Post Office is required to provide the Claimants' solicitors with confirmation that clause 9.5 of the Deed has been satisfied by no later than 4pm on Friday 31 January 2020. Post Office in any event wishes to commence the work of the Historic Shortfall Group sooner rather than later. We therefore look forward to hearing from you as soon as reasonably practicable.

Please let us know if it would be helpful to discuss any aspect of the further terms of reference, or the matter more generally.

Yours sincerely,

[insert sender details]

MEDIATOR-FACING TERMS OF REFERENCE

1. Post Office will establish a 'Historic Shortfall Group Scheme' (the "**Scheme**") to address past issues regarding Post Office's point-of-sale accounting system, Horizon.

2. The purpose of the Scheme is to bring finality to current and former subpostmasters who, in good faith, believe they may have been affected by shortfalls caused by the historic Horizon (HNG-X or prior) systems ("**Historic Shortfalls**"). The Scheme will not deal with issues arising with Horizon [insert current version details].

3. Post Office will take reasonable steps to bring the Scheme to the attention of postmasters who may have been affected by Historic Shortfalls by, at least:

[notifying all Post Office network branches];

publishing the notification on Post Office's website and social media accounts; and

sharing the notification documentation with the Claimant Steering Committee in the GLO (including Alan Bates) and the National Federation of Subpostmasters.

4. Any person wishing to join the Scheme (the "**Applicant**") will be asked to notify Post Office of any Historic Shortfall(s) using a prescribed form which will be made available Applicants will be required to set out the basis for the application and provide certain evidence in support. There will be no fee to apply to join the Scheme.

5. All applications to join the Scheme must be received by Post Office by 5.00pm three months after Post Office first publicly communicates the existence of the Scheme. Otherwise, Applicants may not be eligible to join the Scheme.

6. Applications and other communications should be sent either:

to the Office of the General Counsel at Post Office, Finsbury Dials, 20 Finsbury Street, London EC2Y 9AQ by post or hand delivery; or

by email to casereviewteam GRO

7. Applicants to the Scheme will be required to agree and countersign Terms of Reference in substantially similar form to those set out at paragraphs [7] – [91] of this document. Post Office will provide each Applicant with a copy of the Terms of Reference. Applicants who do not return a signed copy of the Terms of Reference will not be eligible to participate in the Scheme.

8. Once an application has been made, either party may write to the other to request relevant information. The parties shall co-operate with one another in providing any information which the other party may reasonably request. Information obtained and provided in relation to each application should be proportionate to the circumstances of that application.

9. Every application made under the Scheme will be individually investigated and assessed. Following assessment of the claim, Post Office will write to the Applicant setting out the outcome of their application.

10. Post Office will deal with all Applicants in good faith and in light of the lessons learned from Mr Justice Fraser's two judgments in the Group Litigation. However:

entry into the Scheme does not guarantee that a relevant shortfall will be repaid or written off; and

by creating this Scheme, Post Office does not waive any of its own legal rights. In particular, if it appears from information provided in the course of the Scheme or Post Office's related investigations that any Applicant's conduct warrants further investigation or renders that Applicant unfit to hold the post of postmaster, Post Office shall not be precluded from taking such steps as may be open to it as a matter of law, including in appropriate cases, suspension or termination.

If the Applicant is dissatisfied with the outcome of its application and the Applicant wishes to take matters further, the Applicant must pursue the following dispute resolution procedure by giving 28 days' written notice of its intention to do so:

as soon as is practicable thereafter, at least one Post Office representative shall meet with the Applicant, either face-to-face or by telephone, and endeavour to resolve all outstanding issues in good faith and in a manner that takes into account the legitimate interests of Post Office and the Applicant (the "**HSG Good Faith Meeting**").

if the dispute is not resolved as a result of the HSG Good Faith Meeting, either party may within 28 days upon written notice escalate the dispute to a member of Post Office's senior management (the "**HSG Escalation Meeting**").

if the dispute is not resolved as a result of the HSG Escalation Meeting, either party may refer the matter to mediation under the auspices of Wandsworth Mediation Service ("WMS") within 28 days by writing to [PO] or [WMS]. Further information about WMS can be found [insert web address]. WMS will carry out the mediation in accordance with its standard terms which can be found [insert link address]. WMS is a charitable organisation run by Stephen Ruttle QC, the independent mediator who brokered the settlement between Post Office and the claimants in the group litigation led by Alan Bates [whose appointment has been agreed by the claimant steering committee in that litigation]. Profit made by WMS out of the fees paid for mediations is not for gain but is rather deployed charitably in the community. [Information about some of WMS' projects can be found [insert web address].

if a matter is referred to mediation, the Applicant will be required to make a contribution to the costs of the mediation in advance, that contribution being the greater of £50 or 5% of the total amount they are claiming (inclusive of interest), payable to WMS in advance. Post Office will meet the remainder of WMS's charges to cover a [4 hour] mediation. Thereafter any additional costs associated with the mediation process will be borne equally between the parties.

all mediations shall be carried out on a confidential and "without prejudice" basis, to ensure each party is able to engage in an open and meaningful fashion.

any settlements shall be full and final, and will remain confidential. The terms of each settlement will be recorded in writing and signed by both parties.

in relation to disputes which are not resolved at, or as a result of any mediation:

disputes for sums totalling not more than £10,000 shall be resolved by recourse to civil proceedings in the County Court pursuant to the Small Claims Track and shall be subject to the fee scale applicable thereto. The parties agree not to seek reallocation of the proceedings to the Fast Track or the Multi Track; and

disputes for sums totalling in excess of £10,000 shall be referred to and finally determined by arbitration under the Arbitration Act 1996. The appointing authority shall be either Charles Flint QC or Stephen Ruttle QC, the number of arbitrators shall be one, the seat of arbitration shall be London, England and the language of the arbitration shall be English.

APPLICANT-FACING TERMS OF REFERENCE

Post Office has established a 'Historic Shortfall Group Scheme' (the "**Scheme**") to address past issues regarding its point-of-sale accounting system, Horizon.

The terms of reference for the Scheme are set out below. When applying to join the Scheme, you will be required to confirm that you have read and understood these terms of reference, and that you agree to be bound by them. You will not be eligible to participate in the Scheme if you do not agree to be bound by the terms of reference.

1. The purpose of the Scheme is to bring finality to current and former postmasters who, in good faith, believe they may have been affected by shortfalls caused by the historic Horizon (HNG-X or prior) systems ("**Historic Shortfalls**"). The Scheme will not deal with issues arising with Horizon [insert current version details].

2. Any person wishing to join the Scheme (the "**Applicant**") will be asked to notify Post Office of any Historic Shortfall(s) using the application form enclosed with these terms of reference and also available at [insert web address] Applicants must set out the basis for the application and provide evidence in support.

3. All applications to join the Scheme must be received by Post Office by 5.00pm BST on the [insert date]. Any person seeking to join the Scheme outside of this period will not be eligible to join.

4. Applications should be sent either:

4.1 to the Office of the General Counsel at Post Office, Finsbury Dials, 20 Finsbury Street, London EC2Y 9AQ by post or hand delivery; or

4.2 by email to [casereviewteam GRO].

5. Once an application has been made, either party may write to the other to request relevant information. The parties shall co-operate with one another in providing any information which the other party may reasonably request. Information obtained and provided in relation to each application should be proportionate to the circumstances of that application.

6. Every eligible claim made under the Scheme will be individually investigated and assessed. Following assessment of the claim, Post Office will write to the Applicant setting out the outcome of the application.

7. Entry into the Scheme does not guarantee that a relevant shortfall will be repaid or written off.

8. In the event the Applicant is dissatisfied with the outcome of its Application, and wishes to pursue the Dispute Resolution Procedure associated with the Scheme (as set out below), the Applicant must within 28 days notify Post Office of that fact by writing to [insert contact details].

9. The Dispute Resolution Procedure shall be as follows:

9.1 as soon as is practicable, at least one Post Office representative shall meet with the Applicant [either face-to-face or by telephone] and endeavour to resolve all issues regarding any outstanding shortfalls in good faith and in a manner that takes into account the legitimate interests of Post Office and the Applicant (the "**HSG Good Faith Meeting**").

9.2 if the dispute is not resolved as a result of the HSG Good Faith Meeting, either party may within 28 days escalate the dispute to a member of Post Office's senior management (the "**HSG Escalation Meeting**") by writing to [insert contact details].

9.3 if the dispute is not resolved as a result of the HSG Escalation Meeting, either party may refer the matter to Wandsworth Mediation Service ("**WMS**") within 28 days by writing to [PO] or [WMS]. Further information about WMS can be found [insert web address]. WMS will carry out the mediation in accordance with its standard terms which can be found [insert link address]. WMS is a charitable organisation run by Stephen Ruttle QC, the independent mediator who brokered the settlement between Post Office and the claimants in the group litigation led by Alan Bates [whose appointment has been agreed by the claimant steering committee in that litigation]. Profit made by WMS out of the fees paid for mediations is not for gain but is rather deployed charitably in the community. [Information about some of WMS' projects can be found [insert web address].

9.4 [if a matter is referred to mediation, the Applicant will be required to make a contribution to the costs of the mediation in advance, that contribution being the greater of £50 or 5% of the total amount they are claiming (inclusive of interest), payable to WMS in advance. Post Office will meet the remainder of WMS's charges to cover a [4 hour] mediation. Thereafter any additional costs associated with the mediation process will be borne equally between the parties.]

9.5 all HSG Good Faith Meetings, HSG Escalation Meetings and mediations shall be carried out on a confidential and "without prejudice" basis, to ensure each party is able to engage in an open and meaningful fashion.

9.6 any settlements shall be full and final, and will remain confidential. The terms of each settlement will be recorded in writing and signed by both parties.

9.7 in relation to disputes which are not resolved at, or as a result of any mediation:

(A) disputes for sums totalling not more than £10,000 shall be resolved by recourse to civil proceedings in the County Court pursuant to the Small Claims Track and shall be subject to the fee scale applicable thereto. The parties agree not to seek reallocation of the proceedings to the Fast Track or the Multi Track; and

(B) disputes for sums totalling in excess of £10,000 shall be referred to and finally determined by arbitration under the Arbitration Act 1996. The appointing authority shall be either

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Charles Flint QC or Stephen Ruttle QC, the number of arbitrators shall be one, the seat of arbitration shall be London, England and the language of the arbitration shall be English.

10. By creating this Scheme, Post Office does not waive any of its own legal rights. The duty of good faith is reciprocal and, if it appears from the investigation of any application made that the Applicant has not acted consistently with his or her own duty in good faith, Post Office shall not be precluded from taking such steps as may be open to it as a matter of law, [including in appropriate cases, suspension or termination].