



Case Study 3

Ethics and Values Workshop

Document Control No.: [mail merge insert]

Please read the following facts, and then discuss the “Discussion Points” below, with your group.

At the end of the session, this document must be returned.

1. The Group Litigation against the Post Office was a claim brought by a number of subpostmasters (“SPMs”) following a 10-year campaign in which the SPMs had raised concerns in the media regarding issues relating to Horizon and the Post Office’s aggressive prosecution strategies.
2. The claimants’ case was that the Horizon system was unreliable, and this led to unexplained shortfalls and discrepancies in their branch accounts, for which they were wrongly held responsible. The Post Office denied this, asserting that the Horizon system was robust, and extremely unlikely to be the cause of the unexplained shortfalls and discrepancies.
3. During this time, the allegations that bugs and errors in Horizon may have led to some SPMs being wrongfully prosecuted and/or convicted were in the public domain. The Group Litigation gave SPMs the opportunity to pursue this allegation in open court.
4. The main court documents detailing the SPMs’ claims against the Post Office were shared by the Post Office with FSL L&C at the outset of the litigation.
5. Although FSL was not a party to the Group Litigation, FSL provided extensive assistance during the litigation to the Post Office, which sought to defend the Horizon system and its actions. In his final judgment, the judge, Mr. Justice Fraser commented:

“it is the accounting and functional accuracy of Horizon that is at the heart of the current disputes, which have run for a great many years. The claimants maintain that the Horizon system in operation threw up numerous discrepancies and shortfalls in their branch accounts, for which the Post Office unfairly held them responsible. The Post Office dispute this, and maintain that these occurrences are explicable by carelessness, fault or criminality on the part of the claimants.”

6. Four FSL employees testified on behalf of the Post Office in the trial dealing with technical questions of bugs and errors in Horizon.
7. FSL’s interactions with the Post Office for the purposes of the Group Litigation were led by a Fujitsu Project Manager who worked on the FSL Post Office Account. The Project Manager oversaw the sharing of documents and coordination with FSL witnesses. The Project Manager operated independently without the supervision of FSL L&C.
8. In an email in August 2018, an external solicitor for the Post Office noted to FSL L&C:

“I’m liaising with [Project Manager] in relation to witness evidence - I’ll copy you in going forward”.

This was not in fact adhered to and FSL L&C had limited involvement in the witness statements prepared by FSL witnesses to support the Post Office’s defence.

9. Most of the FSL employee witness statements were drafted by external solicitors for the Post Office. In many cases, the Post Office’s external legal team decided which witnesses would deal with which matters, without prior consultation with the witness. On one occasion, external solicitors for the Post

Privileged and Confidential

Office prepared a witness statement for a Fujitsu witness in a final form, before a witness had even been identified.

10. A member of FSL L&C said the only risk assessment done at the time was from a reputational perspective and they were not aware of any legal risk evaluation being conducted. FSL L&C employees “offered [FSL’s] help (chargeable) on interpreting the data”.

11. A senior FSL litigation lawyer (Lawyer A) stated to a colleague (Lawyer B):

“[a]t this stage I am happy that Legal don’t need to get involved if you want to be the conduit to PO Legal”.

Lawyer A concluded that there had “never been any suggestion that FSL might in any way be culpable and on that basis, that there was no need to notify insurers or add it to the Disputes reporting”.

12. There is evidence of concerns being raised internally within FSL about potential exposure for FSL from the Group Litigation. Lawyer B noted that they had “no prior experience of” litigation matters and queried whether FSL’s insurers should be notified. In summary, Lawyer B noted:

“it is incumbent upon me as a ‘GP’ to know when I should be referring matters to a specialist (whether it be [] or external counsel) to ensure that FSL were one step ahead of the game to ensure that Fujitsu is given the best possible legal service and its potential legal liability is more fully understood, and thereby managed given the serious nature of the charges against Post Office and implicitly Fujitsu, and the potential damage to FJ’s reputation”.

13. Lawyer B received no response and no follow up was sent. Lawyer B remained responsible for overseeing the matters leading up to the Group Litigation and was tasked with managing the Post Office’s independent reviews into Horizon’s audit processes.

14. Two members of L&C discussed at the time, regarding a key meeting with the Post Office:

[FSL L&C Member] “I am not sure to what extent we want to gear up for this and put effort in. I have never analysed whether if the [Post Office] is shown to have a system where there are issues these can be laid at our door. Should we ask [Lawyer B] or externals to look at that as a starter?”. Lawyer A responded “My initial feeling is to let [Lawyer B] go along and listen... If there is any suggestion that [the Post Office] is seeking to pass the buck then we gear up at that stage”.

15. When Mr. Justice Fraser issued his judgment in the Group Litigation in December 2019 the judgment found that bugs and errors in Horizon could – and in some cases did – cause accounting discrepancies in Post Office branch accounts. The judgment also contained highly critical statements about FSL and its employees who had given evidence on behalf of the Post Office in the Group Litigation. The Judge referred two of the FSL witnesses to the Director of Private Prosecutions on the basis that evidence they had given in SPM prosecutions was false. These individuals are now being investigated by the Metropolitan Police for perjury.

Discussion Points

1. To what extent is it L&C’s role to question and challenge assurances and information provided by colleagues elsewhere in the business?
2. Should L&C have challenged the reliability of the information used to prosecute SPMs? Does this change after the media coverage and start of the Group Litigation?
3. The provision of evidence to the Post Office for use in its prosecutions was part of the original customer contract and provided as a contractual service since the start of the contract, and many different L&C members were involved during the 20-year period. How are matters handed over? To what extent can, or should, you rely on the information you’re given as opposed to challenging and investigating yourself?

Privileged and Confidential

4. If you become aware of matters that require L&C input, to what extent do you raise the need for L&C to intervene or become involved in account-led matters?
5. If you are asked to support a matter for which you don't feel you have sufficient experience, what would you do?

Disclaimer - these case studies are based on facts and events that occurred within FSL over the past 25 years. However, some of the names of FSL employees have been anonymized and some of the events and roles have been modified or composited for the purpose of this exercise to encourage discussions around key themes that have arisen during the course of Project Holly and the Post Office Horizon IT Inquiry.