



POSTMASTER LITIGATION SUBCOMMITTEE

Minutes of a meeting of the Postmaster Litigation Subcommittee held on 12 June 2019

Present:

Tim Parker (Chairman) (by telephone)
Ken McCall (by telephone)
Tom Cooper
Alisdair Cameron

In attendance:

Kirsten Massey (Herbert Smith Freehills)
Ben Foat (General Counsel)
Rodric Williams (Head of Legal)
Veronica Branton (Head of Secretariat)
Andrew Griffin (Deloitte) (Item 5.)
James Drummond (Deloitte) (Item 5.)

1. Horizon Trial Update

Action

Ben Foat provided an update on the Horizon Trial which had resumed on 4 June 2019 and was hearing expert evidence. There were important areas of agreement between the experts, including that the Horizon system was relatively robust and that the range of bugs identified in the system was between 12 and 29.

Last week our QC had been cross examining the claimants' expert witness. This had established that remote access of the system had happened rarely and that the actual number of bugs the expert could identify in the system was not clear.

Our expert had begun to be examined the previous day. The claimants' QC was seeking to challenge his credibility and had criticised his statistical analysis for lacking precision.

The claimants' QC continued to criticise Post Office Limited for inadequate disclosure and insufficient access to documents. New documents were being put in front of witnesses which allowed them to be entered into evidence.

The Trial would end on 2nd July 2019 and the Judge would determine which expert witness he preferred on the basis of fact. While it was unlikely that the Judgment would be published until the Autumn we were planning for the possibility of it being published in July 2019.

2. Common Issues Appeal

Kirsten Massey provided an update on the Common Issues Appeal, the papers on which had been circulated to the Subcommittee on 7 June 2019.

The grounds to be submitted on appeal had reduced from 55 pages to 8 pages. Helen Davies' QC (HD) had made a number of recommendations, including that we did not appeal any of the Judge's factual findings or raise points of procedural unfairness which could retrace the grounds of the recusal application. Relational contract and procedural fairness points would be the focus of our appeal. HD had also suggested that we remove the ground relating to the training of assistants and the ground on reasonableness terms as well as the procedural unfairness ground relating to onerous and unusual clauses because POL would not be able to prove that all NCT Sub postmasters had signed their contracts.

A number of points were raised, including:

- that we should be clear that we were not seeking to defend any clauses within the contract that we did not think defensible, even if we agreed that they were not onerous or unusual provisions. It was noted that the main issue would be whether or not the clauses had been enforced. TC requested an analysis of the enforcement, in practice, of contract clauses that it had been argued could be viewed as "onerous or unusual" and where Sub postmasters might not have seen their contracts
- whether there were any case precedents we could look to in relation to onerous clauses. It was reported that there were other relevant cases but that our focus would be on enforcement of contract clauses in practice.

Executive

The Subcommittee **APPROVED** the submission of the grounds of appeal on the more limited basis discussed at the meeting.



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3. Kelly Tolhurst meeting and Litigation Strategy

Al Cameron provided an overview of the primary objectives for the discussion with the Minister on 24 June 2019:

- we would acknowledge that our approach to the litigation had been flawed, that we had changed our approach and that this was evidenced by our revised approach to the appeal on the Common Issues Judgment and our new legal Counsel. We were looking at settlement options
- Government would like to see information on costings for settlement. This would be discussed at the meeting including thoughts on the potential range for settlement, while noting the inherent uncertainty in the absence of a figure in relation to quantum from the claimants' solicitors.

The information received to date on potential costs was discussed. It was reported that individual claimants had provided a schedule of information in which they had set out their estimated losses, which Womble Bond Dickinson (WBD) held. Previously, the Subcommittee had only been aware that we held information for the 140 cases which had already gone through mediation. Previous discussions at ARC around disclosure of figures in the Annual Report and Accounts (ARA) for 2017/18 and in prior years were raised and it was **AGREED** that WBD should be asked to explain the position to the Subcommittee. It was noted we had not held information on the probable economic output from the litigation because there had been no crystallisation of the liability or quantum of figures received from the claimants' solicitors. The position would be different for 2018/19 because of the Common Issues Judgment and points on which we had lost which meant that the claims were not without merit.

RW to
advise WBD

The disclosures on the litigation and inclusion of a provision in the ARA for 2018/19 were discussed, including whether we should include a provision figure if we were planning to go into settlement negotiations. Inclusion of a modest figure could signal our willingness to seek to settle where we had been at fault but also indicate that we would be testing the legitimacy of each of the cases. It was felt that we needed to be very careful about including a provision and the basis for this given that we were in an appeal process and that the claimants' QC would refer to the provision as an acknowledgement of liability. It was noted that the figure of £90m in relation to a potential settlement was in the public domain. It was **AGREED** that AC would come back to the Subcommittee with more detail on the range of potential settlement figures and the criteria for including cases for consideration for settlement. RW noted that it was important that we segregate the criminal justice system and civil litigation case streams.

AC

It was noted that the ARA was likely to be signed towards the end of July 2019.

4. Operational Work stream Update

Ben Foat reported that in parallel with the litigation work operational transformation work was taking place. We were reviewing whether all of our processes were fair and reasonable, including those for losses and suspension. Processes were being mapped end to end and policies were being reviewed.

A table was being produced for the July Board meeting which set out the processes that had been in place, the processes that would be implemented (where changed), how changes had addressed the trial points and the communications surrounding this. Changes proposed may not have been implemented by July 2018 as a programme of training, implementation and monitoring would be required.

A number of points were raised, including:

- whether the table would include a commentary on losses, processes for dealing with losses and which elements Postmasters were responsible for and which elements PO Limited? It was reported that this information would be included
- a quarterly update for ARC and/ or Board was requested on how the transformation work was being implemented and how it was working in practice.

Executive



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5. Horizon Contingency Update & Plan

AC described the context for the Horizon Contingency planning work and the focus on providing reassurance to Postmasters. From late July 2019, a two to three month programme of work would be taking place to address the chief concerns of Postmasters, including remuneration. We would be reversing reductions in remuneration that were associated with the simplification programme and would be implementing improvements to Horizon, including enabling the same till to be used for Horizon transactions and retail transactions, and rolling out Branch Hub.

Committee Members raised the importance of real connections and conversations with people. It was agreed that this was vital and would be supported by the new field network and the Communications Team would be making sure that everyone had the 10 or so central messages we wished to communicate to assist those one-to-one conversations.

Andrew Griffin and James Drummond from Deloitte joined the meeting and provided an update on the Horizon contingency planning work. The Deloitte team was supporting POL's operational readiness to respond to the impact of an adverse Horizon trial. This included looking at what our response needed to be in the coming weeks; the impact of the worst case scenario and the strategic response to this; the "new normal" position and the day one readiness response. Potential business impacts and what could be done to mitigate these ahead of time was a particular focus. The range of impacts from a reputational, political, regulatory and business perspective were all being considered.

It was noted that how we handled complaints and the processes we had in place was critical. There was danger that the Managing Judge would find that our processes or our accounting system were not fit for purpose which was more likely than finding that the Horizon system was unfit for purpose give the views of the expert witnesses.

6. Date of next meeting

A date would be sought for the next Subcommittee meeting.

Chairman..... Date.....