

Zoe Brauer

From: Andrew Parsons <[REDACTED]@GRO>
Sent: 01 December 2019 16:48
To: Ben Foat
Cc: Emanuel, Catherine; Rodric Williams; Zoe Brauer; Victoria Brooks; Rachel Scott
Subject: RE: Plan for historic claims [WBDUK-AC.FID26896945]

Ben

The high-level legal principles are set out below. Each of the claims engage a different combination of these points.

1. Where an SPM is claiming not to be liable for a shortfall:

- a. PO needs to have evidence that the root cause of the shortfall was caused by the SPM or their assistant. They cannot rely on the BTS in proving this. The evidence will either be:
 - i. A positive explanation of the root cause based on accounting records or information from the SPM. This route is more likely to be used where there is a single, small shortfall caused by a specific transaction or incident.
 - ii. A process of elimination ruling out that the shortfall was caused by Horizon or PO's actions (eg. TCs), leaving the only explanation as an error in branch. This is more likely to be used where there have been multiple issues and the shortfall is an aggregated amount caused over several days, weeks or months.
- b. If PO cannot reach the evidential threshold in (a) then it will need to compensate the SPM for the shortfall.
- c. If PO can reach the evidential threshold in (a) and the SPM is still in post then it may then need take a decision on whether to terminate (see 4 and 5 below).

2. Where an SPM wants their suspension to be lifted:

- a. PO will need to revisit the grounds for each suspension. For the suspension to remain in place, PO must show:
 - i. a reasonable and proper cause for the suspension (eg. a reasonable suspicious of impropriety by the SPM); and
 - ii. that PO is not in breach of contract itself. This could take many forms but will mainly focus on PO failing to reasonably investigate shortfalls (being a requirement under the implied terms).
- b. Good faith also requires PO to consider the length of the suspension. Post Office must act promptly. If PO has not promptly investigated the circumstances of a suspended SPM then PO will be in breach and the suspension will have to be lifted.

3. Where an SPM is seeking compensation for not being paid when suspended:

- a. PO will need to pay the SPM for any ongoing period of suspension and any back-period of suspension. This applies regardless of whether the suspension was justified or not (ie. regardless of 2 above).
- b. If a historic suspension was unlawful in the first instance, or carried on for longer than was lawful, compensation may be due. But because pay during suspension is now always required (see (a) above), the level of compensation may not be substantially more than PO is already required to pay.

4. Where an SPM is claiming that they have been unlawfully terminated for breach:

- a. PO will need to show that the SPM committed a repudiatory breach of contract. The following should amount to repudiatory breach (this list is non-exhaustive but covers most circumstances):
 - i. Theft by the SPM.
 - ii. False accounting by the SPM (unless there are extenuating circumstances).
 - iii. A significant value of shortfalls have been suffered AND they have shown to have been caused by the SPM (see 1 above).
- b. If there has been a repudiatory breach, then no compensation is due.
- c. If there has not been a repudiatory breach, then compensation is due for the failure to give sufficient notice (see below).

5. Where an SPM is claiming to have been given insufficient notice:

- a. To give notice to termination, Post Office must:
 - i. establish a reasonable and proper cause for the termination (eg. a material / repeated operational failing by the SPM);

- ii. establish that PO is not in breach of contract itself. This could take many forms but will mainly focus on PO failing to reasonably investigate shortfalls (being a requirement under the implied terms); and then
 - iii. set the length of the notice period in good faith (noting that Fraser J indicated that it was unlikely that PO would be required to give more than 12 months' notice).
- b. If PO has given unlawful or insufficient notice to terminate, then compensation will be required.

The above legal principles reflect the CIT judgment and set a framework for when compensation is due. The CIT Judgment does not determine how much compensation is due – this is the subject of the FIT. Assuming the case settles, a policy will need to be developed by the business on what Post Office would offer in each of the above circumstances because there is not a clear legal answer (as can be seen from the parties contested positions in the FIT). That policy would need address at least the following:

- Length of notice period (12 months? 26 months? 12 years? To retirement? – my suggestion would something not exceeding 18 months)
- Whether to make deductions from PO remuneration compensation to reflect SPM business expenses?
- Whether to include retail losses?
- Whether to include capital losses?
- Whether to include stigma losses?
- Whether to pay interest on compensation?

Kind regards
Andy

Andrew Parsons

Partner
Womble Bond Dickinson (UK) LLP

d: GRO
m: GRO
t: GRO
e: GRO

[Sign up for legal updates, e-newsletters and event invitations](#)



**WOMBLE
BOND
DICKINSON**

womblebond Dickinson.com



From: Ben Foat <GRO>
Sent: 01 December 2019 15:38
To: Andrew Parsons <GRO>
Cc: Emanuel, Catherine <GRO>; Rodric Williams <GRO>; Zoe Brauer <GRO>
Subject: RE: Plan for historic claims [WBDUK-AC.FID26896945]

Hi Andy

I really need the legal principles (even at a high level). In what circumstances would we pay; what wouldn't we pay; etc Can someone please send them to me. We have sat on these for 6 months there must be some view as to the legality of the claim? Id like a high level understanding before 11:30 tomorrow as I have GE and will need to communicate it.

Thanks
Ben

**Ben Foat**

Group General Counsel
Ground Floor
20 Finsbury Street
LONDON
EC2Y 9AQ

Mobile: **GRO**

This email and any attachments are confidential and intended for the addressee only. If you are not the named recipient, you must not use, disclose, reproduce, copy or distribute the contents of this communication. If you have received this in error, please contact the sender by reply email and then delete this email from your system. Any views or opinions expressed within this email are solely those of the sender, unless otherwise specifically stated.

POST OFFICE LIMITED is registered in England and Wales no 2154540. Registered Office: Finsbury Dials, 20 Finsbury Street, London, EC2Y 9AQ.

From: Andrew Parsons **GRO**
Sent: 29 November 2019 17:00
To: Ben Foat **GRO**
Subject: Plan for historic claims [WBDUK-AC.FID26896945]

Ben

As discussed.

- Split the 33 historic claims into two buckets. Claims that arise out of events after late 2018 onwards ("new claims") and those that arise out of truly "historic" events. The line in the sand of late 2018 has been selected to reflect when new ops processes went live / HNG-A was live.
- New claims sit with Julie's new team under her new investigation processes.
- Historic claims to be investigated by Angela's team. Lawyers then to input with final decisions to be escalated to a decision group (members TBC) for approval.
- Probably need to wait until January / February next year before making final decisions to avoid risk of setting precedents in case there is a flood of claims off the back of the HIT judgment. This is to be balanced against the need to crack on and get these claims resolved.
- Angela and others are speaking on Monday morning to discuss further. Angela will then update you.

I'll do you a separate note on the legal issues involved.

Kind regards
Andy

Andrew Parsons

Partner
Womble Bond Dickinson (UK) LLP

d: **GRO**
m: **GRO**
t: **GRO**
e: **GRO**

[Sign up for legal updates, e-newsletters and event invitations](#)



womblebond Dickinson.com



Please consider the environment! Do you need to print this email?

The information in this e-mail and any attachments is confidential and may be legally privileged and protected by law. ben.foat@wombledickinson.com only is authorised to access this e-mail and any attachments. If you are not ben.foat@wombledickinson.com please notify andrew.parson@wombledickinson.com as soon as possible and delete any copies. Unauthorised use, dissemination, distribution, publication or copying of this communication or attachments is prohibited and may be unlawful. Information about how we use personal data is in our [Privacy Policy](#) on our website.

Any files attached to this e-mail will have been checked by us with virus detection software before transmission. Womble Bond Dickinson (UK) LLP accepts no liability for any loss or damage which may be caused by software viruses and you should carry out your own virus checks before opening any attachment.

Content of this email which does not relate to the official business of Womble Bond Dickinson (UK) LLP, is neither given nor endorsed by it.

This email is sent by Womble Bond Dickinson (UK) LLP which is a limited liability partnership registered in England and Wales under number OC317661. Our registered office is 4 More London Riverside, London, SE1 2AU, where a list of members' names is open to inspection. We use the term partner to refer to a member of the LLP, or an employee or consultant who is of equivalent standing. Our VAT registration number is GB123393627.

Womble Bond Dickinson (UK) LLP is a member of Womble Bond Dickinson (International) Limited, which consists of independent and autonomous law firms providing services in the US, the UK, and elsewhere around the world. Each Womble Bond Dickinson entity is a separate legal entity and is not responsible for the acts or omissions of, nor can bind or obligate, another Womble Bond Dickinson entity. Womble Bond Dickinson (International) Limited does not practice law. Please see www.wombledickinson.com/legal notices for further details.

Womble Bond Dickinson (UK) LLP is authorised and regulated by the Solicitors Regulation Authority.

This email and any attachments are confidential and intended for the addressee only. If you are not the named recipient, you must not use, disclose, reproduce, copy or distribute the contents of this communication. If you have received this in error, please contact the sender by reply email and then delete this email from your system. Any views or opinions expressed within this email are solely those of the sender, unless otherwise specifically stated.

POST OFFICE LIMITED is registered in England and Wales no 2154540. Registered Office: Finsbury Dials, 20 Finsbury Street, London EC2Y 9AQ.

"Post Office Limited is committed to protecting your privacy. Information about how we do this can be found on our website at www.postoffice.co.uk/privacy"

