

From: Permanent Secretary
Sent: Fri, 15 Mar 2019 15:49:22 +0000
To: Chisholm, Alex (BEIS); Cooper, Tom - UKGI
Cc: Permanent Secretary
Subject: RE: Post Office judgement

Hi Alex,

Please find the summary attached and copied out below.

Best wishes,
Sophie



Sophie Lewis
Private Secretary to the Permanent Secretary
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GLO – Post Judgment Briefing for BEIS/UKGI & Ministers

Background

1. A dispute between the Post Office and a number of mainly former subpostmasters has been ongoing for a number of years. Despite attempts to resolve these without recourse to litigation, the Post Office has been defending a Group Litigation in the High Court since last year.
2. The Group Litigation has been broken down into a number of separate trials, with each representing a building block towards an outcome on the ultimate question of breach of contract and any liability, as follows:
 - a. The proper interpretation of the contract between subpostmasters and the Post Office;
 - b. The reliability of the Horizon, the electronic point of sale system used in post offices;
 - c. The parties to proceedings who are eligible to claim; and
 - d. The liability, if any, for breach of contract (as interpreted in trial a) above).
3. The litigation is, therefore, expected to continue well into 2020, although there is a requirement at various stages for the parties to consider whether mediation might sensibly be explored as an alternative to litigation.
4. The judgment handed down and made public today, concerns the first of these individual trials, and nothing beyond it. It does not, therefore, address any questions of breach or liability for any such breach. The second of these trials, focusing on the operation and reliability of the Horizon system, began on Monday, 11 March, and is expected to conclude in early May.

5. While the litigation is focused on the resolution of these legal disputes, it clearly produces effects beyond them, particularly in a matter which has already attracted considerable attention in the media, in Parliament, and beyond.

Judgment

Legal Findings

6. The principal legal finding is that the contract is relational and, as a consequence, it contains a number of significant obligations on Post Office which, until this judgment, were not apparent. A number of terms must therefore be implied into the letter of the contract, including the majority of terms Post Office contested in the trial. Those that will give us the greatest issues are:

- While in principle our postmasters can be responsible for losses, Post Office now bears the onus to prove that there has been a loss (it can only recover a 'true loss' – that is physical loss of cash or stock, or a real financial loss eg payment to a client), and that it was caused through the fault of a postmaster or his assistant.
- We must be able to demonstrate that we carried out a reasonable and fair investigation into the loss (proportionate to the amount lost) as to the cause and reason for any alleged shortfall and whether it was properly attributable to the postmaster.
- The branch trading statement currently in use cannot be relied on as an 'account' where there are matters in dispute. The judge does not address the status of the account where there is no dispute. This gives us issues going forward, as well as potentially undermining the basis of historic convictions. We will seek specialist advice on the impact of this as will be relevant for the CCRC review.
- While the right to suspend postmasters remains, certain process changes will be required, including a requirement to pay any postmaster who is suspended.
- On the right to terminate contracts, we now have a duty to consider the appropriate notice period in each case; and we cannot act arbitrarily or capriciously, or where we are in breach in respect of matters giving rise to the suspension or termination.
- We can amend the contracts unilaterally but any such amendments must be reasonable

Other Findings

7. Beyond the legal findings, the judge is exceedingly critical of the Post Office, expressing himself in unusually strong language. He was critical about the handling of the case, and finds the Post Office's conduct in its dealings with the Claimant subpostmasters to be have been oppressive. He also considered its operations lacking in transparency, and its procedures and processes haphazard.

8. He is also very critical of the National Federation of Subpostmasters, which he does not consider to be an independent body, or one capable of putting its members' interests above its own separate commercial interests.

Post Office Response

9. The Post Office is clear that this verdict is extremely challenging and the outcome will depend on how the company responds to the situation, both internally and externally. Provided we understand the urgent need to do things differently, and to change certain of our priorities,

we believe we can emerge stronger from this situation. Beyond the management of the ongoing proceedings themselves, our focus and efforts are squarely on the substance of the changes we need to make to comply with the judgment, improve the ways in which we work with our postmasters, and maintain confidence and business continuity. The issues we are working through are set out below.

10. **Appeal and Management of the Ongoing Litigation** – a separate document provides additional detail, but Post Office is considering the question of appealing the judgment. We understand that BEIS will wish to be consulted on any decision in this regard.

11. **Communications** – it is key that, beyond accepting the judge's findings, we acknowledge the judge's criticisms and express contrition over the perception of our business as having behaved in an oppressive manner. On both fronts, we will accept that given this perception, there is a need for change. We will also need to stress that this dispute has no impact on the services we provide at the counter for both our corporate and retail customers. Finally, we will need indicate that we will have some questions over aspects of the judgment, and will be considering the question of appeal on points of law. A comprehensive communications plan to deliver this has been created covering all stakeholders. Please note that our media statement and materials for Parliament, have been or will be discussed with BEIS/UKGI officials and ministers.

12. **Impact on Operations** – the judgment clearly raises a whole host of challenges to way in which we currently work with our subpostmasters. Without seeking to be exhaustive, it is probably most helpful to provide a flavour of these through the following list:

- a. We need to manage an expected rise in the number of disputes from subpostmasters over trading statement
- b. We need to manage an expected increase in subpostmasters wishing to revisit historic disputes
- c. We need to consider any necessary amendments to the contract, and the process by which we make these in the light of the judge's criticism
- d. We need to consider the effect on new branch openings, including which contracts to use for signature
- e. We must continue to meet cash requirements in branch while amounts remain in dispute
- f. We will need to redesign cash declaration processes, so they fit the requirements of the contract as interpreted
- g. We are establishing helplines to field higher volumes of enquiries
- h. We are taking steps to manage key stakeholders, including commercial partners
- i. We are considering re/de-prioritising activity to release sufficient budget and human resources to support all change
- j. We are contingency planning to respond to all potential outcomes in the ongoing Horizon trial

13. **NFSP** – given the criticisms levelled by the judge at the NFSP, we are considering how best to revise of our ways of working and considering whether there is scope for new user groups to complement our engagement.

14. **Postmasters** - We also consider that the judgment could catalyse and broaden our plans to build a much closer partnership with our subpostmaster community, strengthening the appeal of the role, making it easier to make a commercial success of the model, and improving the service provided in communities across the country.

Conclusion

15. There is no mileage in, or intention to, sugar the pill – this is a very difficult verdict for the Post Office, both culturally, and operationally. Our unrelenting focus will be on recognising the impact of this judgment, in both its legal and cultural dimensions, and working tirelessly to improve the services we provide our subpostmasters, and address the perception of Post Office behaviour identified by the judgment.

16. We are available to support Ministers in the challenges they are likely to face in the immediate aftermath of this judgement and beyond. If it were felt helpful, that might include placing one or more members of staff to work alongside BEIS and UKGI officials for a period.

15 March 2014

From: Chisholm, Alex (BEIS) [GRO]
Sent: 15 March 2019 15:47
To: Cooper, Tom - UKGI [GRO]
Cc: Permanent Secretary [GRO]
Subject: Re: Post Office judgement

Please send me summary of judgement asap, then free for a call from 4pm, though on a mobile on a train

A

[GRO]

From: Cooper, Tom - UKGI [GRO]
Sent: Friday, March 15, 2019 2:03 pm
To: Chisholm, Alex (BEIS)
Cc: Lambert, Gavin (Advanced Manufacturing and Services); Watson, Richard - UKGI; Mark Russell
Subject: Post Office judgement

Alex

The judgement in the first trial is out and it is adverse to POL. You'll get the briefing by 3pm.

There are a couple of things that I need to brief you on and on which POL is asking for a quick decision. It's a high profile decision to do with handling the case with significant implications for BEIS.

Do you have time for a call later today or over the weekend?

Tom

Sent from my iPhon

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