

Postmaster Litigation Subcommittee Board



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MINUTES OF A MEETING OF THE POSTMASTER LITIGATION SUBCOMMITTEE OF POST OFFICE LIMITED
HELD ON TUESDAY 13 NOVEMBER 2019 AT BEIS OFFICES, 1 VICTORIA STREET LONDON, SW1H 0ET AT
16.00 HRS

Present:

Tim Parker	Chairman (TP)
Ken McCall	Senior Independent Director (KM)
Tom Cooper	Non-Executive Director (TC)

In attendance:

Nick Read	Group Chief Executive (NR)
Alasdair Cameron	Group Chief Financial Officer (AC)
Ben Foat	General Counsel (BF)
Veronica Branton	Company Secretary (VB)
Rodric Williams	Head of Legal – Dispute Resolution & Brand (RW)
Catherine Emanuel	Herbert Smith Freehills (CE)
Andrew Parsons	Womble Bond Dickinson (AP)
Richard Watson	General Counsel – UKGI (RW)
Alan Watts	Herbert Smith Freehills (AW) (by phone)

Agenda Item	Action
<p>1. Welcome and Conflicts of Interest</p> <p>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.</p>	
<p>2. Minutes and Matters Arising</p> <p>The Postmaster Litigation Subcommittee APPROVED the minutes of the meeting held on 22 September 2019.</p>	
<p>3. Settlement Authority for Mediation</p>	
<p>3.1 Financial range</p> <p>Catherine Emanuel introduced the paper. [REDACTED]</p> <p>[REDACTED] We thought it unlikely that we would be able to reach an agreement during the first mediation. Post termination losses of 24 months were the main justification for the figures proposed. We did not think that the post termination loss figure would be less than 12 months. 12 months was not a legal cap and if the claimants' primary argument succeeded they could argue for a higher figure. A claim was also being made for stigma damages.</p> <p>We did not think permission would be given for leave to appeal on good faith duties and as the tone of permission hearing had not been favourable it would not be a surprise if we were to start to receiving claims for post termination losses from some cohorts of the claimants. The costs came out at £48m but a risk premium could be applied to this figure. Once additions for factors such as an individual suffering (e.g. from depression) were factored in the costs could start to escalate rapidly.</p> <p>Freeths' costs stood at around £15m. We had explained the rationale for our offer to the claimants but the funders could object because they wanted to recover their costs and make a significant profit before making pay outs to the claimants. The claimants could decide</p>	

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whether or not to accept the offer but the funders could threaten to withdraw their funding and in practice there was likely to be a three way discussion bet Therium, the claimants and Freeths. We could not see how they could justify the settlement figures proposed and conversations at mediation needed to be realistic and reflect the potential costs to all parties of additional trials and court time. Our strongest case was on quantum and our weakest on liabilities. We needed to be able to justify their claim through heads of damages.

Tom Cooper reported that a working group involving HM Treasury and BEIS had been convened to discuss the settlement range proposals and that the Minister was due to be briefed on 15 November 2019. HMT and BEIS would wish to be assured that we were not seeking to make too high a settlement.

A number of points were raised, including:

- [REDACTED]

[REDACTED] in that event we could take into account factors such as the costs associated with managing the case, the call on management time etc. We needed to be in a position to act quickly if we thought we could settle the case in relation to all the claimants

- how would the mediation be conducted in relation to other claims such as stigma where the amount could not be linked to a period of time in the way we expected to with post termination losses? It was reported that the cases would be argued between the parties but that the test for success was higher than that for post termination losses
- what was the number below which it did not make sense to go into mediation? It was reported that it was important to retain the confidence of the claimants which influenced what the settlement range should be. We needed to consider what the sum of the part 36 offers would be and our offer at mediation should not be lower than this and should arguably be higher as we would want settle all claims in one hearing.

3.2 Settlement approach for Convicted Claimants

Catherine Emanuel introduced the paper. The convicted claimants were likely to be POL's most vocal critics and be represented on the claimants' committee which would consider any proposed settlement figure. It was very difficult to treat this group as a cohort because of their convictions and because some had admitted theft or fraud. It would be important to review the Horizon Issues trial judgment and our QC would need to look at these cases in light of this.

POL had the option making a global settlement for the non-convicted claimants but the claimants would then have the discretion to distribute the settlement as they wished.

A number of points were raised, including:

- whether making a global settlement on a part 36 basis would aggravate the convicted claimants and whether the lawyers for each of the parties should discuss the treatment

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of the convicted claimants? It was reported that we did not have to particularise the claim in respect to each of the claimants and we could add other elements into the settlement proposal which would be discussed during the mediation process. Tom Cooper remained concerned that we were not doing anything further to consider the cases of the convicted claimants. We could, for example review the cases which had been published in the press. The mediation might not be successful so it would be important to understand all the risks associated with the approach we were proposing. The counter view was that we should be exercising caution in our approach to the convicted claimants given that their cases had been considered by the courts. It could however be sensible for the lawyers to consider the issue further once the Horizon Issues trial judgment had been issued and we knew whether additional disclosures were required. It was **AGREED** that we should look at the implications of making settlement payments to convicted claimants and discuss the issue further at a Subcommittee meeting.

Action:
HSF

4. Further Issues Trial

The update on the Further Issues trial was **NOTED**.

4.1 Approach to Defences

The approach to the defences was **NOTED**.

5. Common Issues Judgment/Permission to Appeal Hearing

An overview of the hearing held on 12 November 2019 on leave to appeal the Common Issue trial judgment was provided. The Judge had challenged our position on relational contracts and duties of good faith. We were not confident that he supported POL's view. We thought we would lose the arguments on relational contracts and good faith and if so would need to look at how we amended our contracts and operations.

6. Any Other Business

Al Cameron noted that the information being provided to the working group considering the settlement for the Shareholder included a letter from him as the CFO setting out what could be said at this stage about funding the settlement.

7. Date of Next Meeting:

10 December 2019.

GRO

Chairman

10 December 2019

Date

