



**NOTE OF CONFERENCE WITH RICHARD MORGAN QC
MAITLAND CHAMBERS
26 OCTOBER 2011**

**IN THE MATTER OF POTENTIAL CLAIMS BY SCOTT DARLINGTON & OTHERS AGAINST
POST OFFICE LIMITED**

In attendance

Richard Morgan QC (**RMQC**) – Maitland Chambers
Rebekah Mantle (**RM**) – Royal Mail Legal Services
Emily Springfield (**ES**) – Royal Mail Legal Services
Sabrina Jethwa (**SJ**) – Post Office Legal Services
Anna Maxwell (**AM**) – Bond Pearce LLP
Helen Watson (**HW**) – Bond Pearce LLP

Initial considerations

POL's appetite to defend these claims is great. POL has Horizon audited regularly and is confident in its integrity. As a result, there is little desire to get involved in WP negotiations, with the preference being to keep all correspondence open. POL needs to convince Shoosmiths that it will fight these cases to the end, and that it is not sufficient for them simply to claim that "Horizon is wrong".

RMQC explained that *Castleton* had been dealt with in a very fact-specific way, and these cases would need to be treated similarly: the various rules and policies governing SPMs change frequently (e.g. the Horizon User Guide and branch trading policies), and would therefore undoubtedly vary in respect of the different SPMs' claims. A Group Litigation Order (**GLO**) or test case was unlikely to be appropriate, as it would be difficult to define the issue to be fought on a group litigation basis.

The key risks for POL in fighting these cases were agreed to be: (i) the PR implications, and the fact that the media will always favour the luddite "underdog"; (ii) the costs of fighting each case one at a time; (iii) proving that certain of the losses were the result of keying errors; and (iv) that if several claims were pursued in different County Courts, the quality of the judges would be unpredictable making it more likely that one or two cases might be lost.

Proving loss

RMQC was concerned to learn that the branch accounting processes have changed since *Castleton*, so that there is now limited paper evidence for transactions carried out at the branch. ES and HW explained that they were meeting the Product and Branch Accounting (**P&BA**) team next week to go through with them in detail the process of reconciling transactions carried out at the counter with the details recorded on Horizon. Gareth Jenkins from Fujitsu would be attending the meeting and he would be asked to set out an end-to-end transaction. The P&BA team would be asked to explain, for each type of transaction (including internet banking), how the reconciliation process works.

RMQC advocated a high-level approach to the allegations around branch losses: taking the figures set out in the most recent branch trading statement (which POL is entitled to rely on following *Shaw v. Picton* (1825) as clarified further in *Castleton*), plus all transactions carried out since the date of that statement, and comparing that to the cash in the tills at audit. This figure will be POL's loss.

Expert evidence

RMQC advised that the SPMs would not be able to prove their claim without expert evidence to show that the Horizon system generates errors. In order to minimise costs at this stage and manage the PR angle, RMQC suggested that POL request, in an open letter, that the SPMs appoint an expert at this early stage to investigate and report on Horizon. POL would need to check that it is possible to access the older versions of Horizon and obtain Fujitsu's agreement to this. The report would need to be confidential as between Shoosmiths and a defined list of SPM claimants (those where there has not been a conviction – see further below), but it may be necessary to waive that confidentiality in respect of additional SPM claimants that come forward later.



Agreed strategy

SPMs' claims

RMQC advocated a hard line in respect of those SPMs who had been convicted of false accounting (i.e. Darlington and Wilson), and that POL should not respond in any detail to their letters of claim, at least in the first instance. POL's position should be that their convictions put them in repudiatory breach of their contracts with POL, and, as such, they have no claim for wrongful termination. As far as Somaskandarajah is concerned, POL should wait until her claim becomes statute-barred at the end of November 2011, and then write to Shoosmiths explaining that she is out of time.

In relation to Walters, and any subsequent claims where there is no conviction or limitation issue, an aggressive stance would still be adopted, so that POL would challenge Shoosmiths' document requests, request better particularised allegations, and demand repayment of any debt owed to POL. In addition, RMQC advised inviting Shoosmiths, in open correspondence, to appoint an expert to investigate the Horizon system, as set out above, before responding to each of the allegations made.

It was agreed that the PR implications of the above, more aggressive strategy were no more negative than if POL were to respond at the outset and in full to each of the allegations.

POL as claimant

In view of the significant risks inherent in defending a number of claims in different County Courts, Counsel recommended that attempts should be made to identify a large debt claim which POL might itself bring – ideally in the Central London County Court – in order to take control of the litigation process and seek transfers of Shoosmiths' claims against POL (if any are issued) to that Court. POL would need to be confident that it had sound evidence to support any such claim, however.

Security for costs

RMQC noted ES's concerns about Shoosmiths' attempts to run this litigation on a very low budget, and the fact that there did not appear to be any "after the event" insurance in place, but advised that it would not be possible to apply for security for costs, as impecuniosity in an individual (as opposed to a company) was not a basis on which the court would make such an order.

Mrs Lynne Prosser

After discussion, it was decided that the risk to POL of not agreeing to the stay was that POL could end up defending a claim it currently knows nothing about and finding itself in Court within the next 6 months. However, it was recognised that Shoosmiths had behaved very unreasonably. It was agreed that we would write to Shoosmiths explaining that POL would agree to a 6-month stay, but only if the claim form and particulars were served on POL within the time prescribed by the Civil Procedure Rules.