

- check consistent language:
 - Agent vs postmaster?
 - POI / Post office / Post office Limited
- consistent format:
 - heading styles
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Briefing Paper

Meeting on 17 October 2018
with

Kelly Tolhurst MP, Parliamentary Under-Secretary (Department for Business, Energy
and Industrial Strategy)
and

Alex Chisolm Permanent Secretary for the Department for Business, Energy and
Industrial Strategy (BEIS)

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look at these
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\. Executive Summary

This section is to be expanded to form "Briefing note" + Perm Sec + Minutes

Context

Post Office Limited ('POL') has been requested to provide a briefing to the Parliamentary Under-Secretary of the Department for Business, Energy and Industrial Strategy ('BEIS') and to the Permanent Secretary for BEIS on the upcoming trial in the matter Alan Bates & Others (Claimants) v. Post Office Limited ('POL'), which is being heard in the Queens Bench Division of the High Court of Justice of England and Wales, before Mr Justice Fraser under a Group Litigation Order, commencing on Monday 5 November 2018.

POL has provided regular updates to the legal team within BEIS and UKGI on the procedural aspects of the litigation and therefore these are not further repeated here.

Governance of the litigation since it commenced in [2016] has included the following:

- An internal 'steering group' mandated by the Group Executive to oversee the litigation. This has included representatives from across the business including those responsible for management of the agency network, the Head of Agents' Development & Remuneration, IT (in relation to Horizon issues), Finance, Communications, as well as internal and external legal counsel.
- Regular briefings are provided to the Group Executive.
- Regular updates are provided to the Post Office Board, and in [January] 2018 the Board established a committee to oversee the progress of the litigation. That committee comprises the Chair, the shareholder appointed director, and the Senior Independent Director.

In addition, the CEO and CFOO have met with POL's external counsel¹ on several occasions, and external counsel briefed the Board Litigation Committee in person following the issue of their Interim Merits Opinion in May 2018.

move to end of
"Background" under
new ~~to~~ sub. heading
"Governance"

¹ Womble Bond Dickinson (led by partner Andrew Parsons) are the solicitors acting in the matter, and Anthony de Gari Robinson QC and David Cavendar QC - both of One Essex Court, together with their respective juniors, Owain Draper and Gidean Cohen are representing POL in Court.

2. Background to the Litigation

1. Transactions at the post office counter are undertaken on the Horizon system. Post Office estimates that c50,000 people use the system each day across the network and that around half a million employees, agents or employees of agents have performed transactions on it since it was introduced in 1999.
2. In 2012 a small number of (mostly former) Postmasters, under the banner of the "Justice for Subpostmasters Alliance" (JFSA) and with support from some MPs led by then MP (now Lord) James Arbuthnot, claimed Post Office's Horizon IT system had caused losses (shortfalls in physical cash against cash holdings recorded on Horizon) which they had had to make good. In some cases they had been prosecuted for these losses (usually for false accounting, theft or both) while, in other cases, they claim that it led to bankruptcy or consequential, personal losses ranging from divorce to suicide.
3. In response to these assertions, Post Office appointed independent forensic accountants Second Sight to perform a 'top down' examination of Horizon. Second Sight issued a report in July 2013 which concluded there was no evidence of system-wide (systemic) problems with the Horizon software but identified some areas where we could have done more to support individual postmasters
4. As a result Post Office set up a Branch Support Programme which led to the introduction of important new measures in areas such as branch operation practices, processes and support. Further, in the Autumn of 2013 Post Office also established the 'Complaint Review and Mediation scheme' as an avenue for postmasters and counter clerks (both former and serving) to raise individual concerns. The scheme was set up in consultation with MPs, the Justice for Subpostmasters Alliance (JFSA) and Second Sight. The scheme was overseen by a working group, chaired by a former Court of Appeal Judge.
5. There were 150 applicants with 136 accepted into the scheme. Many cases were based on allegations which were vague and or not supported by the evidence and no evidence of systemic flaws in the system was found; rather the investigations (by Second Sight and Post Office) found that the main reason for losses in the majority of cases was "errors made at the counter" by the Postmaster or their staff.
6. The process of resolving cases became increasingly challenging in an environment increasingly driven by JFSA campaigning for a universal predetermined outcome of large settlements. Many applicants to the scheme were seeking substantial sums in compensation, which was not forthcoming, and indeed some were seeking to overturn convictions for false accounting, fraud or theft (37 cases in the scheme involved criminal convictions), which the scheme could never resolve.
7. Post Office has never publicly discussed the detail of the individual cases that were put forward (we promised confidentiality) and were therefore constrained in our ability to fully counter some of the media and Parliamentary criticisms generated by JFSA campaigning which centred on some undoubtedly sad, but highly selective, histories of a small number of cases.
8. In the Spring of 2015, following completion of all of our investigations, Post Office took the decision to offer mediation for all cases which remained in the scheme except those that had been subject to a previous court ruling. This accelerated the scheme and also ensured that the commitments we had made to applicants at the outset were met.

9. The JFSA encouraged applicants not to take part in mediation but nevertheless we managed to resolve 50% cases where a mediation took place. Mediations were overseen by the Centre for Effective Dispute Resolution (CEDR).

Applications to the Scheme		150
Applications rejected (ineligible)		4
Cases resolved prior to entry into the Scheme		10
Cases accepted into the Scheme		136
No. of cases not suitable for mediation: 48	Cases POL found unsuitable for mediation	42
	Cases the WG found unsuitable for mediation	2
	Cases closed owing to a missing / ill applicant	4
Residual		88
No. of cases suitable for mediation: 88	Cases resolved during investigation	5
	Cases resolved prior to mediation meeting	4
	Cases resolved at mediation	22
	Cases not resolved at mediation	22
	Cases referred to CEDR for mediation by POL which will not be mediated, owing to the Applicant's decision	35
Residual		0

10. Although total of 41 applicants to the scheme were able to resolve their complaints, the JFSA was not satisfied with the outcome and has continued its campaign against POL.

11. In recent years, the focus of the complaints by Postmasters has shifted from issues with the IT system, to the alleged "unfairness" of the contract between POL and Postmasters. Despite significant lobbying by the JFSA of Parliament and through the media, POL's position has not altered, which is that these are individual disputes are best settled through the Courts.

12. In February 2016 it was reported that a group of postmasters had secured funding for group legal action and in April 2016, a High Court claim was issued on behalf of a number of postmasters against Post Office.

13. In March 2017, following a preliminary, public High Court hearing, a Group Litigation Order (GLO) was made, and at a subsequent Case Management Conference (CMC) on [date], Justice Fraser determined that the litigation would proceed in three stages:

(i) a trial on the 'Common Issues' whose purpose is to determine the correct construction of the contract(s)² between POL and its agents (being independent businesses who operate a post office on behalf of POL); and in particular, whether certain terms proposed by the Claimants should be implied into the contract as binding terms. These terms are set out in Appendix [A];

X

² There have been a series of contracts which are relevant to the trial, having been introduced and subsequently amended at various times during the period covered by the trial, however the core contracts are []

- (ii) a second 20 day trial has been ordered to start on 11 March 2019 on 15 "Horizon Issues". These issues are set out in Appendix [B]
- (iii) one or more further trials which would address issues of causation, loss and damages. Justice Fraser has allocated 4 weeks of court time in May 2019 [which will be used to address]

*to be updated
following CMC
today*

2. Key Issues at the Common Issues Trial

14. The Common Issues trial will not address issues of causation or loss. Instead, the trial will determine as a matter of law the correct construction of the contracts between POL and its agents:

"It has been set down for the express purpose of determining a list of 23 Common Issues in the context of Group Litigation, involving 561 Claimants who contracted with Post Office over a period of many years. The trial is to be conducted by means of Lead Claims. Six have been selected. But the Common Issues are not directed to determining the specific cases of the Lead Claimants alone. Rather, the Common Issues were defined by the Court, with the agreement of the parties, as generic issues "relating to the legal relationship between the parties" being Post Office and wider group of 561 Claimants, whose engagements spanned around 20 years."³

15. The Claimants have sought to have implied into the contract a further [21] terms – details of which are set out in Appendix A, and which would imply a range of additional duties including – most importantly, a duty to investigate branch losses before requiring an agent to make good branch losses.

16. The most important Common Issue is around the liability of agents for "losses". The Claimants argue that POL needs to show that an agent's actions have caused POL to suffer a net economic detriment, not just that a branch's accounts show a shortfall. POL's position is that if a shortfall is shown in the branch's accounts then the default position is the Agent is liable for that shortfall (absent any conflicting evidence to the contrary).

17. POL has proposed that two alternate terms could be implied, and that if they were, then there would be no requirement to imply the 21 terms proposed by the Claimants. :

- [Post Office must provide reasonable cooperation to assist a Subpostmaster in investigating a loss if the Subpostmaster needs such support]
- Post Office will not exercise either arbitrarily or capriciously any contractual discretion it has]

18. These terms are not without risk in themselves given that the litigation covers events that happened over a significant period, the very large numbers of agents who have worked with POL over that period, in which circumstances it would be difficult for POL to assert with certainty that it never acted contrary to these terms.

19. Post Office's external Counsel believe that in relation to the issues to be addressed in the Common Issues trial, POL has the better argument [], however they caution that the areas which are likely to be most problematic for POL are the clauses dealing with suspension, withholding remuneration and 3-month termination.

20. Witness evidence will be heard by reference to the circumstances of 6 'lead cases' (details of these lead cases are set out in Appendix [C]), and in particular, what those witnesses understood about the contract and running a Post Office branch

³ Quoted from the Claimants' skeleton argument ahead of the Case Management Conference to be heard on 10 October 2018.

align with comments in Angela's section

Mark - please check
wording

Mark - can we
include quote from
Heits opinion?

prior to entering into the contract. Witness statements' will not be read out in Court, and the Judge has stipulated a maximum of half a day for cross examination of each witness. There are 6 witnesses for the Claimants, and 14 for POL.

21. To date, the Claimants have not articulated the remedies they are seeking and in particular, they have not quantified any damages which they may seek from POL.

~~Potential Impacts on the Business~~

- ~~9. Common Issues~~
- ~~10. Risk areas (litigation risk)~~
- ~~11. Prospects~~
- ~~12. Media/communications management (before/during trial)~~

bring up next page

5. Operational improvements already underway

Background

22. Now that Network Transformation activity is completing and the last of the specific deployment team are being stood down from the programme, the Network Operations structure is under review with the objectives of:

- Updating and streamlining the Agent Onboarding process to bring this in line with other Franchisors.
- Using the new data and insight from our Contact Centre to better understand branch issues and resolve those. ~~So as to better~~ So as to better
- Bring Agent Loss data and activity together to enable early interventions to prevent an escalation of losses and ~~to~~ resolve disputed losses sooner.
- Introduce an online interactive help facility, Agent Portal, to link branches to help when they need it.

Agent Onboarding

23. This covers everything from the initial application to the point the agent is ready to run the branch independently. The improvements are focused on making each stage easier, quicker and using digital solutions wherever possible.

- Agent application – this is planned to move to an online process. It will include a pre-qualification test to give more information about running a branch, so that only serious applicants move forward at this stage. Once past this first stage, an account manager is assigned to support the applicant through the rest of the application process, which includes ~~submitting a business plan~~.
- The account manager will discuss the business plan and arrange for a property project manager to assess the branch and advise on the operational aspects of installing a Post Office within their retail premises.
- Assuming the financial, personal vetting and location checks are ~~all~~ good, the account manager will organise the contract to be signed – this will be electronic and designed in a way that explains each step before the final signature.
- Before the go-live date, training is provided to the Agent and any assistants. This starts with an online induction, covering the Post Office offer and certain regulatory training. Following this, there is a 2 day classroom training before a trainer joins the agent in the branch for 2 further days. Recent enhancements have been made to the training to simplify the language and make it more focussed on practical transaction practice. The training is followed up by 1, 3 and 6 month reviews at the branch to ensure all colleagues are operating effectively.
- A Local Relationship Manager is a recently introduced role, ~~This role stays~~ in touch with the Agent to ensure they are realising the full potential of the Post Office within their wider business and that they are closely achieving their business plan expectations.
- Once the Agent has been in place for 6 months, the LRM ~~hands~~ over to business as usual support – see next section.

Contact Centre and field support

24. Branch support for all ad-hoc enquiries, including balancing issues, are given by our contact centre who handle c.35,000 calls per period. *is provided* ~~at a rate of 100 calls/month?~~ *in 2018,*

- The contact centre moved to Microsoft Dynamics call recording earlier this year and this has enabled us to track and measure the main causes for calls, thereby allowing projects to be identified to remove these issues for branches. Examples include cash order adjustments, which has led to a project to better forecast branch cash needs which is due to go live in the new year.
- The data also tracks individual branches and a range of issues reported might indicate a trainer or performance manager should be deployed. Only the largest 4,000 branches currently receive regular visits, but this tool will allow field resource to be directed to branches depending on their need. This is expected to remove the frustration felt by branches who would like to see someone from the Post Office to discuss and resolve their issues.

Agent Losses

25. Branches often either declare losses because a mistake has been made, or we notify them of a transaction correction which leads to a loss. We also monitor branch activity to identify potential fraudulent activity in branches.

- The fraud analysis, Horizon investigation and transaction correction activities currently take place across 3 functional areas. These areas have a limited insight into other issues a branch may be experiencing.
- The plan is to bring these areas together so that each loss or mistake is not treated in isolation and we can also consider contact centre or field visit information. Bringing these areas together will also allow us to ~~to~~ identify the loss, identify the cause and evidence this, engage with the branch to explain the loss and how we think it occurred. *and*
- Through this process, losses where the branch is not at fault will be removed and properly accounted for, whilst at fault losses will be addressed either contractually and/or through recovery.
- Repayment terms are sometimes available, ~~but this new department will bring~~ *however the changes will* ~~will~~ bring
- Finally, the Agent Loss levels will be tracked carefully at business level, so that any worrying trends are spotted quickly and acted on.

Agent Portal

26. The only help currently available to branches is via the contact centre. Branches often complain at being kept waiting, particularly when there is a customer in branch.

- Agent Portal will give online help, video tutorials, IT live chat, provide sales MI, access to training materials, enable cash and stock order status to be seen or values to be changed.
- A pilot of 300 branches will go live pre-Christmas and will be quickly rolled out to all branches.
- Access is via users Smart ID log-on – the same as they use for Horizon – so no new passwords or registration needed.

- The key design principle is that the Portal is for all branch staff, not just for the Agent.

Further contingency planning

Need an introductory paragraph to set the context.

Potential Impacts on the Business of Common Issues/Terms being implied.

27. The Common Issues fall into 8 groups, the most significant of which concern the "construction" (i.e. interpretation) of the postmaster contract terms and whether some 21 terms should be implied into those contracts.

28. Counsel's Merits Opinion assesses the likelihood of Post Office losing a Common Issue and/or term being implied into the postmaster contract. Post Office has assessed the business impact should the Common Issues/Terms be decided in favour of the Claimants. If the judgment goes against Post Office the ruling could, in certain circumstances have a material impact on Post Office's current operating practices.

~~any or all of the proposed terms considered~~

29. Those where we have legal advice that they are more likely to be upheld by the court ('likelihood' assessment) are in fact those which have a lower business impact ('impact' assessment). Conversely those that are less likely to be found by the court have a higher business impact.

Likelihood Assessment

30. There are four terms assessed by Counsel as being very likely or more than likely to be implied: **Co-operation; Exercise of Powers; Suspension; Training.** These are set out in detail in Appendix 1. Post Office assessment is that whilst these would involve a change to working practices and increase costs the business impact would be manageable.

Impact Assessment

31. From our high level business assessment of 'impact' against each of the issues/terms if they were implied, there are 3 that are of the greatest concern: **Shortfalls; Liability for Losses and Post Office as Agent;** These are set out in detail at Appendix 2.

32. Whilst the legal assessment is that losing on these is unlikely, were the judgment to go against Post Office the burden of proof would shift onto Post Office to show the root cause of the loss. Post Office would be unable to recover shortfalls in branches unless it positively proves a Subpostmaster is at fault; and the length of time for postmaster to make good the loss will be significantly longer than it is today which could have a significant impact on Post Office cash flow.

33. The outcome would be a significant adverse effect on how we operate today in that Post Office would be required to identify the possible or likely causes of any shortfalls; to work out whether or not there was any shortfall by carrying out a formal investigation; prove as a result of the investigation that the shortfall was properly attributed to the postmaster; and show that the shortfall was a genuine loss to Post Office before seeking recovery of any shortfalls from the postmaster. Ultimately this would result in significant increase in annual operating costs, result in additional business exposure to agent losses and create significant cash flow risk.

~~34. Set out in Appendix C is a table summarising the impact/likelihood of each proposed implied term being determined against Post Office.~~

Contingency actions
We have identified the following key

35. Should the judgement go against Post Office on Shortfalls and Liability for losses the identified mitigating actions are as below (further detail at Appendix 3) to address the consequences of adverse rulings on network size

- **Contract Variation** – addresses any findings regarding the clarity of contractual terms. **Note:** Changes to the contract(s) would only be made if the Judgment were to go against Post Office.
- **Losses Investigation Approach** – proposed as best practice as well as litigation mitigation. Should the Judgment go against Post Office the size of the team would need to be increased significantly to investigate all losses declared by postmasters
- **CCTV** – in conjunction with the investigation approach will provide further mitigation for the implied term. **Note:** due to cost and operational complexity CCTV would only be installed in all post offices if Judgment were to go against Post Office

36. Nothing we do now can reduce the retrospective impact should the Judgment go against Post Office. Accordingly the contingency planning is to prevent further claims being made in respect of the current/future situation. This is not however risk-free in itself as implementing these mitigation options is likely to have an adverse impact on maintaining network size above 11500.

Further Contingency Planning

37. Our approach to contingency planning has been to look at likelihood (legal interpretation) and impact (business assessment) of each of these terms being implied, with those that have the highest 'likelihood' and 'Impact' risk being prioritised for development in advance of the Common Issues trial in November.

38. The other Common Issues/Terms with less 'likelihood' or 'impact' risk will be considered, using lessons learned during mediation process and in parallel with a business as usual review of a wide range of operational aspects of our interaction with agents [Julie's update should cover these]

Appendix 1

Contingency Planning: Risk Assessment & Mitigation Table

39. This table details the 4 Common Issues assessed as having a high likelihood of Post Office losing the issue/having the implied term found against them. It is an extract from the document (9th July 2018) that summarises in Counsel's Opinion on the Common Issues. By its very nature, it is simplistic and should not be relied upon in lieu of a careful reading of Counsel's Opinion.

40. The impact on Post Office is the initial view as set out in the 9th July 2018 document version. This document has been updated with mitigating options identified as part of Post Office contingency planning

Likelihood of Post Office losing a Common Issue / an Implied term being found against Post Office	Impact on Post Office if a Common Issue is decided in favour of the Claimants	
5. Post Office is very likely to lose the issue / The proposed term is very likely to be implied	5	A significant adverse impact on the business that could threaten its existence.

Move this section to Appendix R1

move to Appendix C
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landscape format

4	Post Office is more likely to lose than win the issue / The proposed term is more likely than not to be implied.	4	A major adverse impact on the business that will have a considerable long-term commercial harm.
3	50/50	3	A material impact on the business that will cause some commercial detriment / increased costs
2	Post Office is more likely to win than lose the issue / The proposed term will likely not be implied.	2	There will be some impact on the business but the additional burdens / costs will be manageable.
1	Post Office is very likely to win the issue / It is very unlikely that the proposed term will be implied.	1	There will be negligible impact on the business

Issue	Comments	CONTINGENCY PLANNING STATUS
POST OFFICE IMPLIED TERMS		
Implied term (admitted): Cooperation Post Office and Subpostmasters would not take steps which would stop the other from complying with the contract Post Office and Subpostmasters would cooperate with the other as was necessary to enable the other to carry out their obligations as set out in the contract	Impact These terms apply a low threshold (eg. necessary cooperation) to all Post Office's activity in all areas that touch postmasters. The expectation is that Post Office meets these standards in most areas however a holistic view of Post Office's business is required to say this with certainty.	
CLAIMANTS IMPLIED TERMS		

YEP

Implied term: Exercise of powers 1 [In relation to (i) contract variations and (ii) withholding Subpostmaster remuneration during suspension.] Post Office would exercise any power (under the contracts or generally) honestly and only for the purpose the power was created to achieve. Post Office will not exercise a power arbitrarily, capriciously or irrationally.	<p>Note: This issue has been split into two parts because it depends on which express terms are being considered.</p> <p>Post Office has a high degree of freedom when deciding to (i) vary the Subpostmaster Contracts and (ii) withhold Subpostmaster remuneration during suspension. Counsel has advised that the Court is likely to place some restrictions on these discretionary powers, namely that these powers should not be used arbitrarily, capriciously or irrationally.</p> <p>Impact</p> <p>Post Office will need to pro-actively consider and document in every case whether remuneration should be withheld during a period of suspension. This could lead to significant back-claims for withheld remuneration. Going forward this could be remedied with a process change to approve and document these decisions. It is considered unlikely that Post Office would vary the Subpostmaster Contracts without careful consideration. More effort may be required to document these decisions.</p>	<p>Current contracts state that remuneration may be withheld during period of suspension. As best practice the process should clearly document the decision rationale for withholding remuneration. This rationale should be shared with the suspended postmaster. Refreshed policy and process documentation is to be introduced as best practice from Oct 2018 onwards.</p> <p>Whether to concede - that the suspension/repayment of remuneration during suspension terms of the SPMC should be subject to an implied term that our discretion will not be used dishonestly, or in an arbitrary, irrational or capricious manner – is subject to SteerCo decision on 11th Oct</p> <p>Should we lose/concede this implied term the cost pa is estimated to be c £1.5m. This cost can be mitigated by adopting a pre-audit investigation approach that will result in a reduction of the current ave 12 week period of suspension to 4 weeks. The resultant cost of paying remuneration during suspension is c £500k pa (existing run-rate).</p>
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AAR

Implied term: Training Post Office would provide adequate training and support. Post Office would especially provide adequate training and support where: A) new working practices were introduced; B) new systems were introduced; or C) where Subpostmasters were required to provide new services.	Impact If Post Office already provides adequate training and support, this additional terms will have minimal impact. It should be noted that the admitted term of "necessary cooperation" will likely require Post Office to provide adequate training and support. If more is required from Post Office, this could require more trainers and training sessions, a greater amount of more detailed training material, consideration of the form of training and a way to track whether the training provided had been properly instilled into the audience aimed at. The impact would be further increased if this training was also required for Subpostmaster assistants. Additional in-house training may be needed to ensure face to face contacts are giving Subpostmasters consistent advice.	A review of the Postmaster training was initiated in January the purpose of which is to ensure that: - the initial training adequately equips postmasters to successfully run their post office; - they know how to access ongoing support and training as required; - that the training offer for new products and services is appropriate; - that all training is reviewed periodically to ensure that it continues to be fit for purpose. - New training offer introduced June/July 2018 (includes revised 2 day classroom training and on-line training for Locals). Rolling 6 month review of effectiveness of training now in place. Training is currently offered to assistants on transfer of the post office to a new subpostmaster. The number of assistants to be trained is agreed with the postmaster at interview. If the obligation to provide training to all new assistants was shifted from the postmaster to Post Office this would increase the cost of training which is currently provided free of charge by c £500k pa. (11 additional Training & Audit Advisors would be required)
END OF IMPLIED TERMS		

APC ✓

<p>Suspension</p> <p>On a proper construction of the SPMC and NTC, in what circumstances and/or on what basis was Post Office entitled to suspend pursuant to SPMC Section 19, clause 4 and Part 2, paragraph 15.1 NTC?</p> <p>Note: the Claimants also seek an implied term in relation to Suspension.</p> <p>Post Office would not to suspend Claimants:</p> <p>A) without reasonable and proper cause; and/or</p> <p>B) when Post Office had breached its duties to the Subpostmasters.</p>	<p>Summary: There is a real risk that the court will find that there is an implied term that Post Office would only suspend SMPR where there was a <u>reasonable basis</u> for suspension on one of more of the grounds listed in the express clauses.</p> <p>Detail: The Claimants say these clauses act in a more limited way than the way Post Office has historically applied them. They seek to limit the circumstances in which Post Office can suspend Subpostmaster.</p> <p>For the most part, Counsel thinks the Claimants arguments are weak. However, there is a risk that the court could instead decide that although it will not imply a "reasonable basis" for the suspension, it may instead treat the right to suspend as a <u>discretion</u> which cannot be exercised arbitrarily, irrationally or capriciously by Post Office.</p> <p>Impact</p> <p>Post Office could still suspend but may need to take more care before exercising the right to suspend.</p> <p>Ability to make quick decisions could be hindered</p> <p>Concern for Post Office's reputation if it is required to keep a questionable postmasters in their position whilst</p>	<p>Pre-audit investigation approach has been designed as best practice. Implementation date tbc. This ensures that there is sufficient evidence to support reasonable grounds for suspension. The detailed findings of the investigation will be shared with the postmaster as part of the suspension process.</p>
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MP

		investigations are carried out. Risk to assets whilst decisions made.	
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Appendix 2

Contingency Planning: Risk Assessment & Mitigation Table

41. This table details the 3 Common Issues assessed as having a significant adverse impact on the business if the issue/ the implied term were to go against Post Office. It is an extract from the document (9th July 2018) that summarises in Counsel's Opinion on the Common Issues. By its very nature, it is simplistic and should not be relied upon in lieu of a careful reading of Counsel's Opinion.
42. The impact on Post Office is the initial view as set out in the 9th July 2018 document version. This document has been updated with mitigating options identified as part of Post Office contingency planning

Issue	Comments	CONTINGENCY PLANNING STATUS	
		CLAIMANTS	
IMPLIED TERMS			
Implied term: Shortfalls Post Office would: A) produce, keep and maintain accurate records of all transactions carried out using Horizon; B) be able to explain all relevant transactions; and C) use the records to explain any shortfalls.	Impact This would reverse the current responsibilities between Post Office and Subpostmasters in relation to losses. Post Office would need to put processes in place to enable it to explain all transactions and shortfalls. This would make recovery of losses in branches very difficult if not impossible in many cases.	A 'formal investigation' approach has been designed ie end to end from issue/discrepancy being flagged/identified to findings of investigation being produced and shared with postmaster a. Approach is based on the existing Support Services Resolution Team (SSRT) investigation approach (heavily HORice based) and is to be used as basis for best practice for formal losses investigation approach. b. Best practice involves the branch flagging an issue with a discrepancy they couldn't resolve. Step check to understand what investigation the spmr/branch had done before flagging to	

Landscape
also.

App D

<p>Post Office would co-operate in trying to:</p> <p>A) identify the possible or likely causes of any shortfalls without any input from the Subpostmasters and/or</p> <p>B) work out whether or not there was any shortfall by carrying out a formal investigation</p> <p>C) prove as a result of the investigation that the shortfall was properly attributed to the Subpostmaster under the contract.</p> <p>Post Office would not seek recovery of any shortfalls from the Subpostmasters unless and until:</p> <p>A) it had complied with its duties (which include the duties in the implied terms);</p> <p>B) it had shown that the shortfall was a genuine loss to Post Office</p>		<p>Post Office for further investigation.</p> <p>c. Root cause analysis to be routinely taken as part of the investigation to not only identify the cause of the shortfall but also to identify any improvements to product, transaction, process or system that would prevent or mitigate a repeat scenario.</p> <p>d. Approach is defined as a Signature Process ie transparent approach hardwired into ways of working</p> <p>The above approach is implementation ready. Date tbc</p>
END OF IMPLIED TERMS		
<p>Liability for Losses</p> <p>What is the proper construction of section 12, clause 12 of the SPMC?</p> <p>Clause 12 states "<i>The Subpostmaster is responsible for all</i></p>	<p>2</p> <p>Summary: Post Office is likely to succeed on the major issues arising out of the construction of these clauses.</p> <p>See also the comments above in relation to</p>	<p>The losses investigation approach detailed above will piece together what has or rather what has not happened in branch in a timely manner with a high degree of accuracy so Post Office can establish whether</p>

App D.

<p><i>losses caused through his own negligence, carelessness or error, and also for losses of all kinds caused by his Assistants. Deficiencies due to such losses must be made good without delay."</i></p> <p>What is the proper construction of Part 2, paragraph 4.1 of the NTC?</p> <p>Para 4.1 states: "The Operator shall be fully liable for any loss of or damage to, any Post Office Cash and Stock (howsoever this occurs and whether it occurs as a result of any negligence by the Operator, its Personnel or otherwise, or as a result of any breach of the Agreement by the Operator) except for losses arising from the criminal act of a third party (other than Personnel) which the Operator could not have prevented or mitigated by following [Post Office's] security procedures or by taking reasonable care. Any deficiencies in stocks of products and/or resulting shortfall in the money payable to [Post Office] must be made good by the Operator without delay so that, in the case of any shortfall, [Post Office] is paid the full</p>		<p>implied terms regarding shortfalls.</p> <p>The major challenge on these clauses whether for a "loss" to be recoverable it needs to be a real financial loss to Post Office or whether it can be an accounting loss in a postmasters accounts. The difficulty with the former is that Post Office would need to track the loss in a branch accounts and show how that loss caused it real financial detriment. This would require a significant forensic accounting exercise, tracing a loss through all Post Office's back-office accounting systems.</p> <p>Impact</p> <p>Losing this point would make it very difficult for Post Office to recover losses without significant effort and details investigation into every loss in every branch.</p> <p>It also has the effect of shifting the burden of proof onto Post Office to show the root cause of the loss. In many cases, this will be impossible to discharge.</p> <p>It may give rise to substantial claims for repayment of losses to</p>	<p>there has been a shortfall and in many cases it's likely root cause.</p> <p>By default the length of time for postmaster to make good the loss will be significantly longer than it is today which could have a significant impact on Post Office cash flow.</p>
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App D.

<i>amount when due in accordance with the Manual."</i>		Subpostmasters dating back many years.	
<p>Post Office as Agent</p> <p><u>Post Office as agent</u></p> <p>Was Post Office the agent of Subpostmasters for the limited purposes at GPOC paragraphs 82 and 83?</p> <p>If so, was Post Office required to comply any or all of the obligations at GPOC paragraph 84, which include that Post Office would:</p> <ul style="list-style-type: none"> a) properly and accurately to effect, execute, record, and/or maintain and keep records of all transactions which the Claimants initiated using Horizon or for which the Claimants were potentially responsible; b) to render and make available to the Claimant accounts (in accordance with paragraph 84 (a); and/or c) a where the Defendant alleged shortfalls to be attributed to the Claimants, to comply with the duties the Claimants have said they are owed in relation to Horizon. 	<p>1</p> <p>Summary: The contracts make it clear that Subpostmasters are agents of Post Office, not the other way around.</p> <p>Counsel considers that it will be a steep challenge for the Claimants to succeed on this Agency issue, as it will be difficult for them to reserve the relationship so that the Post Office subordinates its interests to the Subpostmasters' interests.</p> <p>Impact</p> <p>This would reverse the current responsibilities between Post Office and Subpostmasters, making recovery of losses from Subpostmaster very difficult if not impossible.</p>	<p>Implementing the losses investigation approach detailed above will determine whether there has been a loss and in many cases its likely root cause.</p> <p>If CCTV installed to cover the complete movement of cash in and out of the post office then in conjunction with the investigation approach the cause of the loss should be able to be determined.</p>	

Appendix

App E [look to combine
with App D]

1. Contract Variation

Amend the wording of the postmaster contracts (Community/Spsos; Local; Main) to make it explicitly clear that postmasters are responsible for shortfalls in their branch accounts and are required to make good those shortfalls. The postmaster is also responsible for investigating the cause of any discrepancies in the first instance and advising Post Office of any large [to be quantified] unresolved discrepancy.

Three options to vary the contract:

1. **Unilateral variation** – from a process point this would have the shortest timescale. Assuming no consultation* with NFSP and notification to Spmr by way of a letter than **2-4 weeks timeline** for Community branches (Spsos). Mains & Locals contracts have 3 month notice clause for variations. **Trial Dependency** This is one of the terms that the claimants are arguing should be implied into the contract and therefore is part of the Common Issues trial. If the judgement goes against Post Office on this point then unilateral variation would not be option.
2. **Variation by agreement** – not as expedient as unilateral variation however more favourable from Spmr engagement perspective. 4 weeks for NFSP negotiation. Financial incentive to agree the variation could help keep the timescale tight. At best **8 weeks timeline**. **Incentive cost £5m - £23m** (£0.5k - £2k per branch dependent on extent of contract variation)
3. **Terminate contract and re-contract** – If we were unable make the necessary amendment to the contract by unilateral variation or with spmr agreement then we would need to serve notice to terminate in line with the specified term in the contracts: 3 months for Spsos; 6 months for Local; 12 months for Main. **Trial Dependency** Termination notice is one of the terms that claimants are arguing should be implied into the contract and therefore is part of the Common Issues trial. If the judgement goes against Post Office then a 12 month notice period for all contract types is likely **Cost: c £0.5-£1m**

Exposure risk:

- **At best 3 months** – this assumes Judgement doesn't go against Post Office for unilateral contract variation.
- **Worst case 15 months** – this assumes Judgement goes against Post Office for unilateral contract variation and minimum notice period without cause.

*whilst legally possible, is a contradiction with precedent and comes with other risks

2. Investigation Approach

An end to end investigation process from issue/discrepancy being flagged/identified to findings of investigation being produced and shared with spmr/branch. Includes a full root cause analysis by Post Office when a branch flags a discrepancy. This approach is based on the existing Support Services Resolution Team (SSRT) investigation approach (heavily HORIce* based) and is proposed as best practice for formal losses investigation approach.

This type of investigation approach will piece together what has or rather what has not happened in branch in a timely manner with a high degree of accuracy so Post Office can establish whether there has been a shortfall and, in many cases, its likely root cause.

App E

By sharing the investigation findings with the postmaster/branch, Post Office can reach a final position more quickly resulting in increased recovery of losses from postmasters by showing that they are at fault

Benefits

- Specialised team - skilled at understanding the accounting info and piecing together what has or rather hasn't happened in branch so can establish whether there has been a shortfall in a timely manner with a high degree of accuracy.
- By sharing the investigation findings with spmr/branch Post Office can reach an absolute conclusion and final position will be quicker with a more accurate/informed view
- "Nip in the bud" – resulting in reduction in branch losses, NBSC calls and transaction corrections (TCs)
- Improved Postmaster understanding of controls and how to prevent repeat errors and losses
- Branches have support available should they be unable to identify how the discrepancy occurred

*Horizon Information Centre – Fujitsu information tool that gives a view of previous 6 month branch data eg which user did what transaction & when

Does this mitigation option address the risk? Yes; in the main (see CCTV proposal)

Post Office assessment is that the contingency plan goes a long way to addressing the risk but cannot completely as unless Post Office had 24/7 access to CCTV that recorded all cash and stock movement in and out of the branch any investigation done by Post Office is reliant on what has been input to the Horizon system by the postmaster and their staff. Any error in the amount of cash given to or taken from a customer cannot be determined from the Horizon records. The same applies if monies were to be stolen.

2. CCTV

Install CCTV into all post offices to effectively follow the cash in and out of branches ie from Post Office Supply Chain cash deliveries and cash from customers to PO Supply Chain collections and cash to customers including transactions in and out of Horizon. This would be a deterrent to internal theft and fraud but would also enable cause to be determined as transaction errors and cash over the counter errors could be viewed.

Costs range from c£800 to c£1155 per system depending on data storage ie cloud or local. Risk based approach could be adopted. Risk model utilizes crime data, overnight cash holding, ATM data, number of positions and branch type to arrive at the risk output (includes core and outreach branches, BFPO's etc.)

Branches split into three risk categories:

1. 1200 High Risk branches (4 camera system, remotely monitored, cloud recording, £1155 per branch (£675 Capex; £480 Opex per year for cloud storage). **Total c.£1.4m (£810k Capex £576k Opex)**
2. 9098 Medium Risk branches (4 camera system, local recording, £830 Capex) **Cost c.£7.5m**
3. 1904 Low Risk branches (2 camera system, local recording, £800 Capex) **Cost c.£1.5m**

1.

App E

Whole network c.£10.5m (Capex c £9.9m; Opex c £600k) based on specification and costs as set out in 1,2,3 above. If we implemented whole network with cloud storage (no footage stored in branch) **c£13m** (Capex c£7.5m; Opex c£5.5m)

Implementation timeline: BAU upgrade program for high risk (1200 branches) is planned to start Oct 18 and complete Aug 19. Opportunity to upgrade specification and install full branch view option being explored. Whole estate installation could take up to 5 years dependant on availability of asbestos reports in branches. (Branches need to have an asbestos report available before work can start. If Post Office pays for survey additional cost of **c.£3m**).

Does this mitigation option address the risk? Yes

In conjunction with the losses investigation approach outlined on previous slides then the footage from CCTVs installed in the branch should actually be able to determine the cause of the loss

Communication Strategy

5. Further media management (post decision)

bring up from p34 + format.

6. Settlement options

43. Settlement has been considered at each meeting of the Board Litigation Committee, however to date management and the Board have been of the view that settlement will not satisfactorily address the issues at stake.
44. There are a series of issues which make settlement problematic at present:
 - The Claimants' costs are funded by [Therium Capital Management Limited], an off-shore hedge fund which specialises in litigation funding. Our expectation is that based on the known level of costs incurred by the Claimants (in excess of £10 million), Therium would expect to recover a multiple of at least 3 times the costs under any settlement or award, and that their 'fee' would be paid before any amounts are paid to the Claimants themselves. As the Claimants have not yet been required to articulate their claim for damages, POL has no clear view of the scale of the amount that might be acceptable through a settlement. Note that the Court has advised both parties that it expects the parties to attempt mediation in the period between the Common Issues and Horizon trials.
 - A settlement is only binding on the parties to the action. While it is usual that the terms of a settlement are confidential, the fact of a settlement is unlikely to remain confidential. This is likely to be construed by media and followers as a capitulation by POL, and is therefore likely to give rise to further claims by other former or current agents who believe they have been wrongly treated.
 - Settlement will not resolve the questions posed by the claimants as to the correct interpretation of POL's obligations under the contract or the robustness of Horizon. This would mean that agents will continue to challenge the veracity of data from Horizon which is relied on by POL in recovering losses, and will at least perpetuate the current issues POL faces whereby branch losses are increasing at the rate of c[£2] million per year. It is unlikely that, absent litigation funding, no single agent would be able to afford the necessary legal costs to have the Horizon issues fully determined; by contrast whereas the current group litigation structure and funding allows those issues to be addressed.
 - POL currently enjoys the confidence of both customers and 'clients' to whom POL provides services. An outcome which does not address the robust operation and resilience of Horizon risks undermining that public and commercial confidence in Post Office.

- *Common Issues*
- *Risk areas (litigation risk*
- *Prospects*
- *Media/comms management (before/during trial)*
 - 'win'
 - 'lose'

•

Appendix A
Details of the terms sought to be implied in to the contract by the Claimants

1. The Claimants seek to imply the following terms into the contract:

- a. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2018.
- b. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2019.
- c. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2020.
- d. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2021.
- e. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2022.
- f. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2023.
- g. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2024.
- h. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2025.
- i. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2026.
- j. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2027.
- k. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2028.
- l. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2029.
- m. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2030.
- n. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2031.
- o. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2032.
- p. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2033.
- q. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2034.
- r. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2035.
- s. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2036.
- t. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2037.
- u. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2038.
- v. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2039.
- w. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2040.
- x. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2041.
- y. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2042.
- z. That the Defendant will pay the Claimants the sum of £100,000.00 (One hundred thousand pounds) by 1st January 2043.

**Appendix B
AGREED LIST OF HORIZON ISSUES**

Agreed pursuant to §4 of the Third CMC Order

The following proposed issues are confined to issues that concern the Horizon system (as defined here) and which (a) arise on the parties' generic statements of case, (b) can be resolved by IT expert evidence, and (c) require limited, if any, evidence of fact.⁴

DEFINITIONS FOR THE PURPOSE OF THIS LIST OF ISSUES

"the Horizon System" shall for the purposes of this list of issues mean the Horizon computer system hardware and software, communications equipment in branch and central data centres where records of transactions made in branch were processed, as defined in GPOC, at §16 and as admitted by Post Office in its Defence, at §37.

BUGS, ERRORS AND DEFECTS IN HORIZON

Accuracy and integrity of data

- (1) To what extent was it possible or likely for bugs, errors or defects of the nature alleged at §§23 and 24 of the GPOC and referred to in §§ 49 to 56 of the Generic Defence to have the potential to (a) cause apparent or alleged discrepancies or shortfalls relating to Subpostmasters' branch accounts or transactions, or (b) undermine the reliability of Horizon accurately to process and to record transactions as alleged at §24.1 GPOC?
- (2) Did the Horizon IT system itself alert Subpostmasters of such bugs, errors or defects as described in (1) above and if so how.
- (3) To what extent and in what respects is the Horizon System "robust" and extremely unlikely to be the cause of shortfalls in branches?

[GPOC §23 and 24; Defence §§49 to 56]

Controls and measures for preventing / fixing bugs and developing the system

- (4) To what extent has there been potential for errors in data recorded within Horizon to arise in (a) data entry, (b) transfer or (c) processing of data in Horizon?
- (5) How, if at all, does the Horizon system itself compare transaction data recorded by Horizon against transaction data from sources outside of Horizon?
- (6) To what extent did measures and/or controls that existed in Horizon prevent, detect, identify, report or reduce to an extremely low level the risk of the following:
 - a. data entry errors;

⁴ In accordance with the indications given by the Court at the CMC on 22 February 2018

- b. data packet or system level errors (including data processing, effecting, and recording the same);
- c. a failure to detect, correct and remedy software coding errors or bugs;
- d. errors in the transmission, replication and storage of transaction record data; and
- e. the data stored in the central data centre not being an accurate record of transactions entered on branch terminals?

[GPOC §§5, 14-15, 24.1, 24.1A, 94A, 95;
Defence §§35(2), 36, 38(1), 50(1), 52-54; Reply §41]

OPERATION OF HORIZON

Remote Access

(7) Were Post Office and/or Fujitsu able to access transaction data recorded by Horizon remotely (i.e. not from within a branch)?

[Defence §7; Reply §9]

Availability of Information and Report Writing

(8) What transaction data and reporting functions were available through Horizon to Post Office for identifying the occurrence of alleged shortfalls and the causes of alleged shortfalls in branches, including whether they were caused by bugs, errors and/or defects in the Horizon system?

[Defence §7; Reply §9]

(9) At all material times, what transaction data and reporting functions (if any) were available through Horizon to Subpostmasters for:

- a. Identifying apparent or alleged discrepancies and shortfalls and/or the causes of the same; and
- b. accessing and identifying transactions recorded on Horizon?

[GPOC §§14.2-14.3, 17 and 19.3; Defence §§38(2)(b), 38(3), 46(2); Reply §15.2-15.3]

Access to and/or Editing of Transactions and Branch Accounts

(10) Whether the Defendant and/or Fujitsu have had the ability/facility to: (i) insert, inject, edit or delete transaction data or data in branch accounts; (ii) implement fixes in Horizon that had the potential to affect transaction data or data in branch accounts; or (iii) rebuild branch transaction data:

- a. at all;
- b. without the knowledge of the Subpostmaster in question; and

c. without the consent of the Subpostmaster in question.

(11) If they did, did the Horizon system have any permission controls upon the use of the above facility, and did the system maintain a log of such actions and such permission controls?

[GPOC §§21.3, 23, 25; Defence §§48(3), 50, 57]

(12) If the Defendant and/or Fujitsu did have such ability, how often was that used, if at all?

(13) To what extent did use of any such facility have the potential to affect the reliability of Branches' accounting positions?

[GPOC §§21.3, 23, 25; Defence §§48(3)(c), 57]

Branch trading statements, making good and disputing shortfalls

(14) How (if at all) does the Horizon system and its functionality:

- a. enable Subpostmasters to compare the stock and cash in a branch against the stock and cash indicated on Horizon?
- b. enable or require Subpostmasters to decide how to deal with, dispute, accept or make good an alleged discrepancy by (i) providing his or her own personal funds or (ii) settling centrally?
- c. record and reflect the consequence of raising a dispute on an alleged discrepancy, on Horizon Branch account data and, in particular:
 - i. does raising a dispute with the Helpline cause a block to be placed on the value of an alleged shortfall; and
 - ii. is that recorded on the Horizon system as a debt due to Post Office?
- d. enable Subpostmasters to produce (i) Cash Account before 2005 and (ii) Branch Trading Statement after 2005?
- e. enable or require Subpostmasters to continue to trade if they did not complete a Branch Trading Statement; and, if so, on what basis and with what consequences on the Horizon system?

[Defence §§42-46; Reply §§17.1-17.2, 21]

Transaction Corrections

(15) How did Horizon process and/or record Transaction Corrections?

[Defence §§12, 39-40, 45-46; Reply §21]

Appendix C
Background to the 6 lead claimants

Get from Angela.

Move to become

"S. Communications
Swaley"

~~IN STRICTEST CONFIDENCE AND SUBJECT TO LEGAL PRIVILEGE~~

~~DRAFT BRIEFING FOR UKGI DOCUMENT~~

MEDIA AND COMMUNICATIONS MANAGEMENT PRE AND DURING TRIAL

The GLO presents some significant communications challenges. This paper sets out our approach to handling these challenges.

// We expect the claimants to seek to maximise publicity around the opening of the trial and for its duration. The freelance journalist, Nick Wallis, who has followed the story for many years and is close to campaigners, has crowdfunded to enable his attendance at every day of the trial, started a website for his reporting and has publicised via social media that he has, so far, two national news organisations interested in his reporting. He has been successful in the past in securing coverage on various BBC TV and radio programmes, in the Daily Mail and elsewhere. The issue has also been closely followed by Computer Weekly magazine and Private Eye. Nick Wallis has recently been in touch with us to let us know that he is planning some pre-trial coverage, most likely featuring 'case studies' of some of the claimants.

// We expect significant activity on social media, broadcast outlets and daily national and regional newspapers when the trial begins. The extent will depend to an extent on Nick Wallis' continued attempts to secure commissions as well as the attempts of the claimants and their representatives to generate interest in the issue. The news agenda at the time of the trial will also be a factor but we expect coverage in any event. The unions are likely to provide public comment and may connect it to other issues such as the future of the DMB network and ongoing pay talks. MPs and peers who have previously supported the claimants, and those with constituency cases, are also likely to comment. The principle risks in the pre-Christmas period are that substantial media coverage is triggered, with wider issues drawn in to present Post Office with significant reputational challenge. Our communications approach is designed with this in mind.

Strategy

// Our media and communication strategy objectives are centred on (1) underlining how seriously the Post Office, as a responsible business, takes the issues in the trial and the opportunity to resolve them through the legal process (2) making clear our robust defence of our position and (3) ensuring colleagues across the business are able to address questions during the trial

// Our tactics, tone, behaviours and messaging throughout the trial will reflect these areas as we seek to contain negative publicity from the trial and minimise reputational damage for Post Office. We are deploying external expertise through an agency with substantial experience of handling disputes such as this.

// Whilst we will not provide 'running commentary' for media outside of the hearing, we will proactively ensure that our position is reflected in external coverage and be prepared for rapid rebuttal where necessary. A statement and set of clear lines to take will be in place and kept under continual, daily review. We will keep our focus on 'bigger picture' to counter balance negative accusations from the claimants and to provide perspective about the case. It will not be appropriate for us to proactively directly comment on issues being heard by the court: this could both cause irritation

Separate
numbered para
following bar
previous sections.

to the Judge which would be unhelpful but also 'fan the flames' of coverage, as well as potentially compromising our legal position/ strategy.

|| We will engage with our stakeholders and partners in advance of the trial to raise awareness and set out our position and approach and there will be comprehensive, proportionate internal communications which ensure colleagues are informed and equipped with information, including background facts and Qs and As.

|| Throughout, we will monitor and assess coverage across all media channels and assess customer sentiment through social media and insight channels.

|| In addition to managing media and communications directly related to the trial we will implement a proactive communications plan featuring positive Post Office developments which give proper context. This will include extending a brand campaign aimed at raising customer awareness of the changing Post Office. This campaign will use newspaper advertising, radio, video on demand and social media. A pilot in the Midlands targeted to reach 4.3m people will be extended to London and South East. Other campaigns during the period include a social media campaign highlighting the work of our best branches and a Christmas trading marketing campaign. A series of positive news announcements and 121 interviews with selected senior journalists are being planned, linked to business developments - for example the Payzone acquisition; a new bank joining the Banking Framework; further franchising and new branches in the network. We will also work with credible 'third parties' such as the NFSP and individual agents to amplify particular messages.

Annex 1

Broad Key messages – pre and during trial

- Post Office is vigorously defending the claim – we have confidence in our network of 11,500 Post Offices throughout the UK and the systems underpinning it. Millions of transactions are successfully processed for our customers every day, including on behalf of the high street banks
- Post Office values the people working hard at its branches every day for our millions of customers. We depend on our agents and employees for the services we bring to the UK's communities – if they raise concerns we take these very seriously, it's in our interests to do so
- We have gone to great lengths in the past to respond to the allegations and grievances made by a group of (mainly former) postmasters involved in the litigation, including extensive investigations and a mediation scheme which resolved a number of cases at the time
- We've welcomed the Group Litigation Order (which enables the Court to efficiently manage litigation affecting multiple parties). We believe it provides the best opportunity to have the matters in dispute heard and resolved.
- The litigation is phased. *Neither of the two trials the Court has ordered for 2018/19 are to address or decide liability* – the Court has not yet determined a process for this. The November trial is about contractual matters between Post Office and its agents. The second trial, scheduled for March 2019, concerns the Post Office's computer system, Horizon.
- The number of claimants is a very small percentage of the [x000000] of postmasters we have worked with over the past two decades.
- The vast majority of Post Office branches, large and small, are run on an agency or franchise basis, alongside local shops and always have been. It's a successful way of helping to keep thriving businesses and Post Offices on high

// Set out in Appendix
() are the key statements
messages we will use during the trial.

Move
to
Appendix

Appendix F

streets and at the heart of communities. Post Office is a successful partner with both large UK-wide retailers as well as small, independent traders.

- Post Office has continued to successfully adapt and transform its business, working with our postmasters and employees. We've responded to dramatic changes in consumer trends and today's Post Office network provides – for example – for the collection or return of online shopping, a 'click and collect' service for Travel Money foreign currency and everyday banking for the majority of customers of UK banks.

MEDIA AND COMMUNICATIONS MANAGEMENT – POST DECISION

// An embargoed Judgement will be provided to the legal team 2-7 days in advance of it being handed down by the Court. There might be provisions made by the Judge which limit the embargoed Judgment being shared beyond the legal team. In preparing communications in advance we will have to work within legal parameters set which could be very limiting. In addition the Judgement could be complex and will need careful legal consideration which will take some time. Our communications stance must reflect this.

// For the purposes of communications planning we are assuming scenarios where all or parts of the Judgment (which would not be 'stayed' by Appeal) could mean potential changes to the relationship/contracts with agents. The most significant would be Post Office becoming liable to investigate and determine root cause of losses before recovery from agents. This would cause delays to debt recovery and have immediate impacts on cash flow, as well as raised costs because of additional investigation activities. Operational and contractual contingency plans are well developed for this and the various other potential outcomes, which might be additional or not, which would cause less, though still serious, impact internally and in terms of reputation. Potential operational solutions being explored include, for example, significant expansion of CCTV in branches, 'closed cash' technology (a project which is already underway), increase of audits, upgrading of training, payments during suspension etc. Our legal team is exploring how contract changes might be made for various scenarios (termination & rehire/ variation to existing contracts/ amendments to existing contracts by agreement). However variation to existing contracts is one of the contested areas within the litigation and therefore there is a dependency on the Judgment.

// Our communications will align with this work and comprehensive plans are being produced for all scenarios, including any potential settlement scenario which might arise after the trial when a period of mediation is likely to be ordered at some stage.

Strategy

// There are essentially two broad phases to post-trial communications: the immediate aftermath of the Judgment and, later, in support of any contractual or operational changes that need to be made.

Post Office is unlikely to be in a position to provide a detailed statement either externally or internally when the Judgment is handed down because of the complexity of this legal area and to ensure we preserve our legal position as the litigation continues.

We will therefore provide measured, factual information and responses for our stakeholders, agents and employees, with strong rebuttals of any misleading/

*— continue
from
previous*

*These are described
elsewhere in this
paper.*

Commented [MC1]: I don't know whether I have this right at all in terms of it being ordered – need legal advice here. Also whether to mention in this document or not.

inaccurate media coverage. Our proactive positive news agenda will continue providing context.

As we move forward, detailed communications plans and messaging will be produced for all the business's mitigations of impacts following the Judgment.

Annex 2

Broad Key messages – immediate aftermath of Judgment (additional to pre and during trial messages, most of which remain relevant)

- Post Office welcomes [xxxxx as appropriate] but we intend to appeal aspects of this Judgment [reasoning].
- The ways in which we operate more than 11,000 Post Offices throughout the UK is of course of the utmost importance to all the agents we successfully work with and we will want to involve them as much as possible as we consider any implications.
- This is a complex legal area so it will take a little time to look at whether there are operational or contract changes we need to make.
- Post Office is continuing to vigorously defend the High Court claim. This trial was about determining some specific contractual matters and not liability regarding specific cases within the claim. We are confident of our network of Post Offices throughout the UK and the systems underpinning it.

Risk Table

	Risk	Likelihood	Impact	Mitigation
1.		H		
2.				
3.				
4.				
5.				
6.				
7.				