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Post Office Group Litigation

Update for UKGI Following Post Office Limited Board Meeting on 25 September 2018

Sent on 1 October 2018 in accordance with UKGI/Post Office Limited Information Sharing Protocol dated 11 June 2018

1. Common Issues Trial – November 2018

- 1.1 Witness Statements were exchanged on 24 August 2018 setting out the factual evidence to be presented to the Court by individual witnesses (i.e. the six Lead Claimants and 14 Post Office staff members). This was the last substantial exchange of information between the parties about the Common Issues before the trial starts.
- 1.2 Now that all information has been exchanged, Counsel reviewed the opinion they gave on the merits of Post Office's case in May 2018, and updated that opinion (without material change) on 28 September 2018.
- 1.3 As anticipated, the Claimants included in their Witness Statements very substantial material which we are advised is inadmissible for the Common Issues trial (30-50% of the Lead Claimants' statements).
- 1.4 Post Office has therefore applied to "strike out" that evidence (i.e. remove it from the Court record) to help focus our defence preparations on relevant issues, and ensure trial time is not wasted on inadmissible and irrelevant material.
- 1.5 That application will be heard on 10 October 2018. The Managing Judge has also invited the parties to consider for the 10 October 2018 hearing the issues that could be addressed at a third trial (which may take place in May 2019).
- 1.6 On 19 September 2018, the Managing Judge heard Post Office's application for security for costs. Post Office was successful in its application, with the Claimants (through their litigation funders) being ordered to provide £3.9m security by way of deeds of indemnity issued by recognised insurance companies. Post Office was also awarded its costs of the application (the amount has not yet been determined).
- 1.7 Despite making (and continuing to make) complaints about Post Office's conduct of its defence (e.g. the adequacy of document disclosure), the Claimants have not escalated any of these into a formal application to the Court. Their ability to do so now is very limited given the proximity of the trial. Post Office's admissibility/strike out application should therefore be the last significant issue to be resolved before the trial starts.
- 1.8 The trial timetable is still being finalised, but is currently shaping as follows:
 - 1.8.1 Monday 5 and Tuesday 6 November 2018 – Reading Days (the parties will not attend court while the judge reads into the Court's file).
 - 1.8.2 Wednesday 7 November 2018 – Opening Statements (each side has half a day to explain their case to the judge).
 - 1.8.3 Cross-examination of witness on their Witness Statements will begin on Thursday 8 November 2018 (the timing and sequencing is still being finalised), limited as follows:

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- examination-in-chief (15 mins per witness; the Witness Statements will not be read out in court);
 - cross-examination (½ day per witness); and
 - re-examination (30 mins per witness).
- 1.8.4 Closing submissions will follow cross-examination and an interval for drafting written submissions, over 4 days (2 days each party) commencing Monday 3 December 2018.
- 1.8.5 The Court will not sit on Fridays 9, 16, 23 or 30 November 2018, but will be available to address any specific issues that arise during the course of the trial.
- 1.9 Our communications plan is being developed to cover the:
- 1.9.1 trial (including the run up to it);
 - 1.9.2 announcement of the judgment (and its consequences); and
 - 1.9.3 implementation of any contingency planning (to the extent required).
- 1.10 The communications plan will also address social media activity, given our expectation that a lot of Claimants will seek to attend the trial. They have requested a large court room, which the judge has noted but cannot address until closer to the hearing given court allocation is dependent on availability.
- 1.11 We are also aware that Nick Wallis, a freelance journalist with BBC connections, will attend and report on each day of the trial.

2. Horizon Issues Trial – March 2019

A. The "Horizon Issues"

- 2.1 In addition to the Common Issues Trial, a second 20 day trial has been ordered to start on 11 March 2019 on 15 "Horizon Issues", broadly summarised as:
- 2.1.1 The robustness of Horizon, including:
 - the extent to which bugs, errors etc in Horizon could undermine Horizon's ability to process and record transactions and/or cause shortfalls; and
 - the controls and measures in place to address them.
 - 2.1.2 "Remote access", including whether Post Office and/or Fujitsu:
 - were able to access transaction data remotely; and
 - have had the ability/facility to insert, inject, edit or delete transaction data or data in branch accounts.
 - 2.1.3 The Horizon facilities available to Postmasters to identify problems with Horizon and/or challenge its record of branch accounts.
 - 2.1.4 The Horizon facilities available to:
 - Post Office to identify possible causes of branch shortfalls; and
 - Post Office and Fujitsu to access and amend branch accounts.

(A full list of the full Horizon Issues is attached as Appendix 1 to this Report.)

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- 2.2 The Court has directed that the Horizon Issues should be resolved through expert evidence without reference to individual Claimants' experiences (which, by definition, would not be common to the wider group of Claimants).
- 2.3 The Claimants' expert is Jason Coyne of IT Group. Post Office's expert is Dr Robert Worden of Charteris.
- 2.4 Between March and April 2018 Post Office provided (with Fujitsu's support) demonstrations of Horizon and disclosure of technical documents to the Claimants and Mr Coyne. Further document disclosure was provided between July and August 2018.
- 2.5 On 8 August 2018 Post Office also responded to requests for information from Mr Coyne, who then had 10 days to challenge those responses if he considered them inadequate. Although no challenge was received during that period, one was made on 19 September 2018 (i.e. some 4 weeks after the deadline).
- 2.6 On 17 August 2018 the Claimants provided a "Provisional/Outline Document" on the Horizon issues, which had been ordered by the Court due to the lack of specific allegations about what they say is wrong with Horizon. The allegations in the Provisional/Outline Document remain very high-level, and are essentially that:
 - 2.6.1 Horizon has had bugs; so
 - 2.6.2 there is the possibility of further bugs; such that
 - 2.6.3 Horizon is not robust (with the inference being that it could be responsible for shortfalls in branch accounts).
- 2.7 On 4 September 2018, both experts filed a "Joint Statement" setting out where they agree and disagree on the Horizon Issues. The areas of agreement were limited and high level (e.g. they agree IT system changes have the potential to introduce bugs), in part because the Claimants were still investigating many of the issues.
- 2.8 Post Office and Dr Worden will not therefore have a clear understanding of the Claimants' case until Mr Coyne produces his full report to the Court, which is due on 16 October 2018.
- 2.9 Nevertheless, Dr Worden's current view is that:
 - 2.9.1 Horizon is a robust system;
 - 2.9.2 There are a small number known bugs in Horizon but these either did not have material impact on branches or were remedied;
 - 2.9.3 Although we cannot eliminate the possibility of an undetected bug impacting a postmaster, that risk within Horizon is very small and therefore immaterial.
- 2.10 Dr Worden's current view is based on substantial investigative work. He cannot however finalise his opinion until after he has considered Mr Coyne's report.

B. Next Steps

- 2.11 Although the Horizon Issues trial will largely be based on disclosed documents and the experts' opinions, some witness evidence is required. Post Office therefore filed four witness statements on 28 September 2018:
 - 2.11.1 two from Fujitsu personnel (concerning Horizon's architecture, Core Audit Process, "remote access", and Fujitsu's development and testing practices as audited); and

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2.11.2 two from Post Office personnel (concerning the Horizon functions available to help a Postmaster identify branch account shortfalls, and how the Finance Service Centre responds to challenges about branch accounts).

2.12 The Claimants filed nine Witness Statements on 28 September 2018, which are currently being reviewed.

2.13 Mr Coyne's Report is due to be filed on 16 October 2018. Assuming this is not extended (e.g. as a consequence of the belated challenge received on 19 September 2018 referred to above), any further evidence replying to specific content within Mr Coyne's report will need to be filed by 30 October 2018.

2.14 Dr Worden is due to file his report as Post Office's expert on 30 November 2018.

2.15 The remaining steps as currently ordered by the Court are for any supplemental expert reports to be exchanged by 18 January 2019, the experts to file a second Joint Statement by 20 February 2019, and for a Pre Trial Review on 22 February 2019 to address any outstanding issues before the scheduled start of the Horizon Issues trial on 11 March 2019.

3. Contingency Planning

3.1 In July 2018 we shared an analysis on the likelihood/impact of each of the Common Issues being found against Post Office, which were then grouped with potential mediation actions.

3.2 Work is continuing across all issues in advance of the meeting with government stakeholders on 17 October 2018

4. Criminal Cases Review Commission (CCRC)

4.1 The CCRC has advised POL that it is nearing completion of its reviews (commenced in 2015) into 33 Post Office prosecutions of former postmasters (31 of whom are Claimants in the Group Litigation).

4.2 However, given that the CCRC's reviews touch on issues similar to those in the Postmaster Litigation (in particular with respect to Horizon), delivery of the CCRC's findings is likely to be delayed by the litigation.

4.3 We continue to liaise with the CCRC, respond to its requests for information, and seek information about the status of its investigations, mindful always of the need not to interfere with the independence of the CCRC's work.

5. Agency Postmasters Claim for Worker Status

5.1 On 9 July 2018 Post Office received a claim issued in the Employment Tribunal from 123 agency postmasters under the name Mr M Baker & 122 Others v Post Office Ltd, Employment Tribunal Case No. 1402149/2018 and 122 Others. The claim was issued by the Claimants' solicitors Penningtons Manches.

5.2 On 2 August 2018 Post Office filed its response with the Tribunal, essentially denying the claim on the basis that the principle of "no personal service" (which we say precludes an agent from being a "worker") operates across all the different types of agency contract.

5.3 Beyond moving the claim by consent from Bristol to London, there has been very little activity to date. The next material step in the litigation will be for the Tribunal to give case management directions, which will most likely include an initial case management discussion.

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- 5.4 Work is underway to assess the claimants' profiles and risk categories within the agent population.

6. Upcoming activity

- 6.1 The main activities between now and the next Board and Subcommittee meetings will be:

- 6.1.1 Finalising preparations for the Common Issues trial, including resolving the admissibility/strike out application before or at the 10 October 2018 hearing;
- 6.1.2 For the Horizon Issues Trial, considering and responding to the Claimants' Witness Statements and expert's report when filed on 16 October 2018;
- 6.1.3 Preparing for the meeting with government stakeholders on 17 October 2018;
- 6.1.4 Continuing with contingency planning.

END

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APPENDIX 1 - 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.¹

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;
 - b. data packet or system level errors (including data processing, effecting, and recording the same);

¹ In accordance with the indications given by the Court at the CMC on 22 February 2018

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- 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.

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(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]