

**From:** Russell, Mark - UKGI  
**Sent:** Fri, 15 Mar 2019 20:11:30 +0000  
**To:** Robert Swannell  
**Subject:** Fwd: Post Office Litigation

FYI

There are some Magnox parallels, not least that the judge is the same!

Hope you have had a good time in [REDACTED] GRO [REDACTED]

Mark

Mark Russell  
UK Government Investments  
[REDACTED] GRO [REDACTED]

Begin forwarded message:

**From:** "Watson, Richard - UKGI" [REDACTED] GRO [REDACTED]  
**Date:** 15 March 2019 at 19:09:30 GMT  
**To:** "Russell, Mark - UKGI" [REDACTED] GRO [REDACTED]  
**Cc:** "Cooper, Tom - UKGI" [REDACTED] GRO [REDACTED]  
**Subject: Post Office Litigation**

Mark

You asked for some information about today's judgment in the Post Office Group Litigation. Apologies for the delay but I have only recently come from a ministerial briefing.

### Background

Since 2017 the Post Office has been defending a Group Litigation claim brought by approximately 560 mainly former sub-postmasters. The issues in the claim have been known about for many years and go back to the 1990's when Post Office introduced its Horizon accounting system. At a very high level the sub-postmasters claim they have been wrongly held responsible for branch losses.

The conduct of the Group Litigation has been broken down into 4 separate trials, with each representing a building block towards an outcome on the ultimate question of whether there has been a breach of contract and if so any liability to the sub-postmasters, as follows:

- a. The proper interpretation of the contract between sub-postmasters and the Post Office;
- b. The reliability of the Horizon, the electronic point of sale system used in post offices;
- c. The parties to proceedings who are eligible to claim; and
- d. The liability, if any, for breach of contract (as interpreted in trial a) above).

The judgment handed down today concerns the first of these individual trials, and nothing beyond it. It does not, therefore, address any questions of breach or liability for any such breach. The second of these trials, focusing on the operation and reliability of the Horizon system, began on Monday, 11 March, and is expected to conclude in early May. The rest of the litigation is expected to continue well into 2020

### **Today's judgment**

The principal legal finding is that the contract is relational and not a normal agency contract as the Post Office were contending. As consequence, it contains a number of significant obligations on Post Office including:

- Post Office bears the onus to prove that there has been a loss and that it was caused through the fault of a postmaster or his assistant.
- Post Office must be able to demonstrate that they carried out a reasonable and fair investigation into the loss as to the cause and reason for any alleged shortfall and whether it was properly attributable to the postmaster.
- The branch trading statement currently in use cannot be relied on as an 'account' where there are matters in dispute.
- While the right to suspend postmasters remains, certain process changes will be required, including a requirement to pay any postmaster who is suspended.
- On the right to terminate contracts, Post Office have a duty to consider the appropriate notice period in each case; and cannot act arbitrarily or capriciously.

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

### **Post Office's position**

This is a very difficult verdict for the Post Office, both culturally, and operationally. They have stated to BEIS that their unrelenting focus will be on recognising the impact of this judgment, in both its legal and cultural dimensions, and working tirelessly to improve the services they provide their sub-postmasters, and address the perception of Post Office behaviour identified by the judgment. Internally they are considering possible grounds of appeal

### **Risks to UKGI**

UKGI and ShEx have had a shareholder role in Post Office for many years. UKGI and BEIS have not had any role in approving the litigation strategy or the matters giving rise to the litigation. They are all operational matters for Post Office. We are in a different position from, for example, our role in the NDA. Undoubtedly there will be pressure on HMG as owner of the Post Office to ensure it improves, and through our shareholder role we will be able to monitor and raise appropriate challenge. The litigation is an opportunity for these long standing complaints to be properly considered by an independent tribunal and to bring finality.

Kind regards

Richard

Richard Watson|General Counsel  
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