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MEETING WITH KELLY TOLHURST MP

Change in strategy

- Post Office recognises that there have been some strategic missteps in the approach taken to the litigation to date. We recognise that there has been too much focus on running the litigation and defending Post Office's legal position and insufficient focus on broader strategic considerations, including necessary improvements to Post Office's policies and processes and the potential resolution of the litigation.
- Following the Common Issues judgment, we have:
 - Appointed a new General Counsel, Ben Foat.
 - Appointed Herbert Smith Freehills to provide strategic advice to the Board and provide oversight of the GLO litigation.
 - Replaced our lead QC on the Common Issues, David Cavender QC, with Helen Davies QC of Brick Court on HSF's recommendation.
- Having put in place a new legal team, we have:
 - Made the decision not to conjoin the appeal of the Common Issues Trial with the appeal of the recusal of the Managing Judge.
 - Reduced the grounds on which we are appealing the Common Issues Trial to focus only on the key legal issues which we think have a real prospect of success or which may otherwise have operational significance.
- We think that the above two steps, which focus attention on important legal issues, both increase the likelihood that the Court of Appeal will grant permission to appeal and demonstrate Post Office is not pursuing unnecessary issues.
- The new legal team is also putting in place a **settlement strategy** (see below) and there has been a renewed focus on **operational improvements** (see below).

Current status of the litigation

- As outlined in our recent letter:
 - **The Common Issues judgment:** was handed down in March 2019 and the Claimants were successful on the vast majority (but not all) issues.
 - Post Office applied to the Managing Judge for permission to appeal against the Common Issues judgment on 23 May 2019, which was refused. This is unsurprising as trial judges rarely give permission to appeal their own judgments.
 - Post Office applied to the Court of Appeal on 13 June 2019 for permission to appeal. The Court of Appeal's decision is expected before the end of the court term in 6 weeks' time, however we are in the Court of Appeal's hands as to timing.
 - Post Office has asked for the appeal to be heard expeditiously, however the Court of Appeal list is extremely busy, including because we understand that the Court has set aside time in the autumn for dealing with potential Brexit-related issues. We hope that the appeal may be able to be heard in the early part of next year, but it may take up to 12 months for the appeal to be heard.
 - Once we know whether we have leave to appeal, we intend to obtain advice from Helen Davies QC as to the prospects of success in the appeal, which will also inform our settlement strategy.

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- **The Horizon Trial:** concerning technical issues relating (in broad terms) to the functions and reliability of Horizon will be completed on 2 July 2019.
 - Based on the time taken for the Common Issues Judgement, we would expect the Horizon Judgment within 3-4 months. However, the timing of this is a matter for the Judge and there is a possibility that he may seek to deliver his judgment more swiftly to encourage settlement discussions. It is fair to say that Post Office is not anticipating a positive judgment on Horizon.
 - The factual evidence fared worse than anticipated. While Post Office was able to successfully challenge the Claimants' key witness, Richard Roll (portrayed as a Fujitsu "whistle-blower"), the Post Office's own witnesses performed poorly. In particular, the witnesses called from Fujitsu did not have a good grasp of their evidence.
 - The experts have performed more or less along the lines as expected – neither expert has dominated. Post Office was able to secure helpful admissions from the Claimants' expert Dr Coyne. The Claimants were able to undermine the methodology used by Post Office's expert Dr Worden. Above all, there is a concern that there is enough before the Managing Judge that if he wishes to find against Post Office he has the material to do so.
 - This is also underlined by a procedural issue of Post Office providing late disclosure. Post Office has already been criticised for withholding documentation, which has continued in the Horizon trial. The Claimants have been able to play to the Managing Judge on this by suggesting that their expert Mr Coyne had not been provided with full and timely access to relevant documentation.
 - On that basis we are anticipating a difficult judgment. We are working closely with the Horizon legal team to ensure that we use the closings submissions to try to bring the Managing Judge back around to the relevant issues, rather than focussing on the procedural points that will otherwise resonate with him.
 - *[Assuming that we have met with Tony de Garr Robinson before the KT meeting – include further feedback from Tony on likely outcome of Horizon Trial]*
- **"Further Issues Trial":** concerning breach, liability and limitation issues in two lead claims is currently listed to be heard in November 2019, although directions have been stayed since March 2019.
 - As this trial is affected by the answers to the Common Issues (which provide the platform for determining what constitutes a breach of duty), if the Court of Appeal grants permission to appeal the Common Issues, there is a compelling case for this trial to be stayed pending the outcome of that appeal. However, the Managing Judge may decide to proceed in any event. This has yet to be canvassed with the Managing Judge, although will be addressed on conclusion of the Horizon Trial.
 - In any event, given directions have been stayed since March 2019, it is likely that the start date for the Further Issues Trial will need to be pushed back to give the parties time to catch up with the directions.
- A **fourth trial** has also been listed to commence March 2020. It is currently unclear what this trial will address – but it is likely to include liability, causation and loss for a selection of lead claimants. The timing of this trial will depend on what happens with the Further Issues Trial.

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Settlement strategy

- The parties have been ordered by the Court to use reasonable endeavours to attend mediation and have agreed that a mediation should be held.
- Charles Flint QC of Blackstone Chambers has been mutually selected as mediator.
- The Claimants' QC has indicated that a mediation could be held after the Horizon Issues Trial has completed (c. September 2019). Post Office will confirm that it agrees that a mediation should be held in this window and will liaise with the Claimants on the arrangements.
- The Claimants have not provided an overall claim value but each Claimant has produced a Schedule of Information which summarises their claim and provides some high level information on the damages which they are seeking to recover. The aggregate claim value in the Schedules of Information is £224 million, which breaks down as follows:

Head of Loss	Claim Value
Post termination loss of earnings	£150m
Loss of investment/diminution in capital value of branch	£38m
Repayment of shortfalls	£13m
Loss of earnings for failure to give notice	£6m
Loss of earnings during suspension	£3m
Other – including loss of earnings relating to bankruptcy and prosecution	£14m
Stigma damages and personal injury	Unquantified

- The other major financial factor in any settlement will be the **Claimants' costs**. We know that Freeths are operating under a CFA, the Claimants are funded by Therium, that they have ATE insurance and will have incurred costs in providing security to Post Office.
- While our work reviewing the losses claimed is ongoing, it is fair to say that we think that the Claimants' losses as set out in the Schedules of Information are significantly overvalued at £224 million. Indeed, it seems that the Claimants' expectations may also be materially lower than that, as reflected in their Skeleton Argument lodged for a court hearing on 5 June 2018, which said: "*The likely aggregate value of the case is estimated to be of the order of £80 to £90 million (or in excess thereof, subject to further quantum analysis and formulation).*"
- In anticipation of mediation, we will:
 - Identify and advise on which heads of loss are most likely to be recoverable if the Claimants are successful.
 - At face value the following three heads of loss appear to be the most realistically arguable: payment of alleged shortfalls; loss of income during suspension period; and loss of income during notice of termination period - totalling approximately £22 million.
 - In any event, these three heads of loss should be capable of being verified using Post Office's own records.
 - We will consider whether any further information is required from the Claimants in advance of mediation and may wish to provide a revised schedule to them, if the figures that we are able to verify from Post Office's systems are materially different to those advanced by the Claimants.

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- We will also need to consider whether Post Office is willing to resolve the litigation with the following categories of Claimant:
 - **Claimants who settled their claims**, for instance as part of the earlier mediation scheme or on leaving/converting under the network transformation (112 Claimants). These Claimants are seeking to unwind these settlement agreements on the basis of a fraud/concealment claim
 - **Time barred Claimants** who issued their claims outside the normal 6 year limitation period for contractual claims (197 potentially fully time barred, 154 partially time barred – total 351). These Claimants are also seeking to extend limitation on the basis of fraud/concealment.
 - **Convicted Claimants** (61 Claimants).
- We are also giving consideration to different settlement structures i.e. single pot of compensation and for all the Claimants, Freeths and their funder (Therium) to distribute it amongst themselves; settlements to specific Claimants or sub-groups of Claimants; verification process for each individual claim.
- If the Claimants' expectations are as set out in the Schedules of Information, the first mediation is unlikely to be successful, but will nevertheless be useful to establish the distance between the parties and to identify the issues in dispute.
- We therefore anticipate that it is likely to be necessary to have a second more focussed mediation in early 2020.
- Two other key considerations that will need to be addressed:
 - **The interaction with the Common Issues appeal**: If a settlement is reached with the Claimants before the Common Issues appeal is heard, then the appeal would stop and Post Office would be left with the Common Issues Judgment as handed down. We are currently working to review whether Post Office can live with the Common Issues judgment (for example because we are altering our processes and policies in any event) or whether the appeal needs to be advanced.
 - **The impact on other historic SPMs**: a settlement with the 557 current Claimants would not prevent claims from other SPMs (over 11,000). We are considering how best we seek to manage this risk. For instance, we may want to put in place a remediation scheme that could reflect the principles of any settlement with the Claimant SPMs.

Litigation costs

- *[WBD to complete – costs to date and anticipated costs of Further Issues trial – both sides]*

Operational consequences

- *[Ben Foat to complete]*