

Post Office Limited
Postmaster Litigation Subcommittee Agenda



Date:	17 September 2019	Time:	10.00 – 11.00 hrs	Location:	1.19 Wakefield and by telephone
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Present:		Other Attendees:	
<ul style="list-style-type: none"> • Tim Parker (Chairman) (by phone) • Ken McCall (Senior Independent Director) 	<ul style="list-style-type: none"> • Tom Cooper (Non-Executive Director) 	<ul style="list-style-type: none"> • Nick Read (Chief Executive Officer) • Ben Foat (General Counsel) • Andrew Parsons (Womble Bond Dickinson) • Catherine Emanuel (Herbert Smith Freehills) • Richard Watson (General Counsel – UKGI) 	<ul style="list-style-type: none"> • Alasdair Cameron (Chief Financial Officer) • Veronica Branton (Company Secretary) • Rodric Williams (Head of Legal – Dispute Resolution & Brand) • Alan Watts (Herbert Smith Freehills)

Agenda Item	Input needed/ Status	Lead	Timings
1. Welcome and Conflicts of Interest	Noting	Chairman	10.00 – 10.05 hrs
2. Minutes and Matters Arising - 24 April 2019 - 12 June 2019 - 20 June 2019.	Approval	Chairman	
3. Updates on Court Activity (oral updates) Common Issues Appeal a. Horizon Issues Judgment i. Protocol for distribution ii. Instructions on appeal b. Third/Further Issues Trial i. Counsel availability and selection	Noting and Discussion	Womble Bond Dickinson/ Herbert Smith Freehills	10.05 – 10.55 hrs
4. Settlement / Mediation (Draft Board Report) a. Dates (inc. lawyers only pre-meeting with Freeths) b. Costs c. Settlement ranges, approvals and strategy	Noting and Discussion		
5. Claimant case reviews (oral update)	Noting and Discussion	Herbert Smith Freehills	
6. Any other business	Noting	Chairman	10.55 – 11.00 hrs
7. Date of next meeting: 11.30 hrs, 22 October 2019	Noting	Chairman	

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**POSTMASTER LITIGATION SUBCOMMITTEE
BOARD**

Minutes of a meeting of the Postmaster Litigation Subcommittee held on 24 April 2019

Present:

Tim Parker (by telephone)
Tom Cooper
Alisdair Cameron

In attendance:

Lord Neuberger
David Cavender, QC
Andrew Parsons (Womble Bond Dickinson)
Kirsten Massey (Herbert Smith Freehills)
Alan Watts (Herbert Smith Freehills)
Ben Foat (Legal Director)
Rodric Williams (Head of Legal)
Veronica Branton (Head of Secretariat)

Apologies were received from Ken McCall, Senior Independent Director.

Alan Watts provided a summary of the key points from his paper.

Questions and points raised:

- it appeared to be that the appeal on the Common Issues judgment was stronger and more likely to succeed than the appeal on the recusal. Could co-joining the appeals taint our chances of success in seeking leave to appeal the judgment?
- a pause in litigation over the summer could be helpful as we considered settlement options
- there appeared to be significant advantages to not rushing work on the Common Issues appeal. We needed to focus on winning the key points that were important to the operation of the business.

David Cavender QC explained that we had minimal control over when the appeals would be heard but they were likely to be heard together if the appeal on the Common Issues judgment was filed swiftly. He saw the recusal of the Judge as the only way of protecting against adverse findings in the Horizon trial. The functioning of the computer system was at the centre of the dispute. If a finding from the Horizon trial was that the system was not robust it would undermine our position in all of the cases brought against us. The subsequent trials were linked to fact and it was very difficult to appeal on findings of fact. However, that did not take away from the importance of the appeal on the Common Issues judgment. If we were going to co-join the appeals at the permissions stage careful thought would be required on how to do this. DC thought there was a greater degree of overlap between the common issues and recusal appeals than Alan Watts' advice suggested. A separate ground of appeal was on the overriding procedural unfairness and the proposal that the case should not be returned to the Judge for trials 3 and 4 ("recusal light").

DC's view was that if we did not proceed swiftly we would lose the recusal appeal; he did not think that a compromise approach would work and we should be asking for the applications to appeal to be considered by three Leading Judges. The Horizon trial was critical. A draft Skeleton Argument setting out many of the grounds for appeal had already been produced. DC saw advantage in both appeals being heard together because it would show the overlap between the two appeals. Kirsten Massey noted that a counter argument to this was that if the appeals were heard together the CoA might refuse the recusal appeal because the appeal on the Common Issues judgment would allow a number of the same issues to be considered.

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Questions and points raised:

- what were the risks of co-joining the appeals and did we have the resources to submit the documentation required in time? DC reported that the resources required to deliver the documentation were available
- what risks would we face if we lost both appeal applications?

The Subcommittee requested Lord Neuberger's view of the situation and the options available.

Lord Neuberger reported that judges had been recused previously; he largely agreed with the position set out by DC. Both cases were likely to be heard together unless the court decided that the recusal should be dealt with quickly. It was more likely that the Horizon trial would continue if the two appeals were not considered together.

The matter was not black and white, but Lord Neuberger thought that when hearing the two appeals together the judges were more likely to give leave to appeal on all points raised in relation to the Common Issues judgment in order not to constrain the Court of Appeal (CoA). The recusal application was very different in some respects to the Common Issues appeal but there was still a fair degree of overlap.

If Lord Justice Coulson rejected the leave to appeal for recusal and the appeal on the Common Issues judgment found a number of points in our favour the CoA might then have a different view on recusing the Judge. Lord Fraser would have informed the CoA that an appeal was due to be lodged.

Lord Neuberger thought we were likely to obtain permission to appeal the recusal on grounds of apparent bias as the threshold for appeal was not very high. It would be very unusual not to give leave to appeal on the Common Issues judgment. Lord Neuberger thought that Lord Justice Coulson was likely to view matters in this light; on balance he thought it better for both appeals to be submitted together.

Questions and points raised:

- that we needed to take a decision but the case was not clear cut
- that we had little control on when and how the appeal cases would be heard. Further work was needed to determine the grounds for appeal sufficiently well. In addition, Ministers needed to be briefed properly on the issues. Seeking a settlement could be time consuming so a long appeal could be advantageous. It might, therefore, be better to have the hearings separated and we should not co-join the appeals if that gave us no scope to separate the hearings.

Following detailed discussion, the Subcommittee **AGREED:**

- that the appeals for recusal and on the Common Issues judgment should not be co-joined
- we should write to Lord Justice Coulson to advise that we would be submitting the grounds to seek leave to appeal the Common Issues judgment on 16 May 2019
- a meeting would be arranged in the week beginning 29 April to consider the grounds for appeal.



POSTMASTER LITIGATION SUBCOMMITTEE BOARD

Minutes of a meeting of the Postmaster Litigation Subcommittee held on 12 June 2019

Present:

Tim Parker (Chairman) (by telephone)
Ken McCall (by telephone)
Tom Cooper
Alisdair Cameron

In attendance:

Kirsten Massey (Herbert Smith Freehills)
Ben Foat (General Counsel)
Rodric Williams (Head of Legal)
Veronica Branton (Head of Secretariat)
Andrew Griffin (Deloitte) (Item 5.)
James Drummond (Deloitte) (Item 5.)

1. Horizon Trial Update

Action

Ben Foat provided an update on the Horizon Trial which had resumed on 4 June 2019 and was hearing expert evidence. There were important areas of agreement between the experts, including that the Horizon system was relatively robust and that the range of bugs identified in the system was between 12 and 29.

Last week our QC had been cross examining the claimants' expert witness. This had established that remote access of the system had happened rarely and that the actual number of bugs the expert could identify in the system was not clear.

Our expert had begun to be examined the previous day. The claimants' QC was seeking to challenge his credibility and had criticised his statistical analysis for lacking precision.

The claimants' QC continued to criticise Post Office Limited for inadequate disclosure and insufficient access to documents. New documents were being put in front of witnesses which allowed them to be entered into evidence.

The Trial would end on 2nd July 2019 and the Judge would determine which expert witness he preferred on the basis of fact. While it was unlikely that the Judgment would be published until the Autumn we were planning for the possibility of it being published in July 2019.

2. Common Issues Appeal

Kirsten Massey provided an update on the Common Issues Appeal, the papers on which had been circulated to the Subcommittee on 7 June 2019.

The grounds to be submitted on appeal had reduced from 55 pages to 8 pages. Helen Davies' QC (HD) had made a number of recommendations, including that we did not appeal any of the Judge's factual findings or raise points of procedural unfairness which could retrace the grounds of the recusal application. Relational contract and procedural fairness points would be the focus of our appeal. HD had also suggested that we remove the ground relating to the training of assistants and the ground on reasonableness terms as well as the procedural unfairness ground relating to onerous and unusual clauses because POL would not be able to prove that all NCT Sub postmasters had signed their contracts.

A number of points were raised, including:

- that we should be clear that we were not seeking to defend any clauses within the contract that we did not think defensible, even if we agreed that they were not onerous or unusual provisions. It was noted that the main issue would be whether or not the clauses had been enforced. TC requested an analysis of the enforcement, in practice, of contract clauses that it had been argued could be viewed as "onerous or unusual" and where Sub postmasters might not have seen their contracts
- whether there were any case precedents we could look to in relation to onerous clauses. It was reported that there were other relevant cases but that our focus would be on enforcement of contract clauses in practice.

Executive

The Subcommittee **APPROVED** the submission of the grounds of appeal on the more limited basis discussed at the meeting.



POSTMASTER LITIGATION SUBCOMMITTEE BOARD

3. Kelly Tolhurst meeting and Litigation Strategy

Al Cameron provided an overview of the primary objectives for the discussion with the Minister on 24 June 2019:

- we would acknowledge that our approach to the litigation had been flawed, that we had changed our approach and that this was evidenced by our revised approach to the appeal on the Common Issues Judgment and our new legal Counsel. We were looking at settlement options
- Government would like to see information on costings for settlement. This would be discussed at the meeting including thoughts on the potential range for settlement, while noting the inherent uncertainty in the absence of a figure in relation to quantum from the claimants' solicitors.

The information received to date on potential costs was discussed. It was reported that individual claimants had provided a schedule of information in which they had set out their estimated losses, which Womble Bond Dickinson (WBD) held. Previously, the Subcommittee had only been aware that we held information for the 140 cases which had already gone through mediation. Previous discussions at ARC around disclosure of figures in the Annual Report and Accounts (ARA) for 2017/18 and in prior years were raised and it was **AGREED** that WBD should be asked to explain the position to the Subcommittee. It was noted we had not held information on the probable economic output from the litigation because there had been no crystallisation of the liability or quantum of figures received from the claimants' solicitors. The position would be different for 2018/19 because of the Common Issues Judgment and points on which we had lost which meant that the claims were not without merit.

RW to
advise WBD

The disclosures on the litigation and inclusion of a provision in the ARA for 2018/19 were discussed, including whether we should include a provision figure if we were planning to go into settlement negotiations. Inclusion of a modest figure could signal our willingness to seek to settle where we had been at fault but also indicate that we would be testing the legitimacy of each of the cases. It was felt that we needed to be very careful about including a provision and the basis for this given that we were in an appeal process and that the claimants' QC would refer to the provision as an acknowledgement of liability. It was noted that the figure of £90m in relation to a potential settlement was in the public domain. It was **AGREED** that AC would come back to the Subcommittee with more detail on the range of potential settlement figures and the criteria for including cases for consideration for settlement. RW noted that it was important that we segregate the criminal justice system and civil litigation case streams.

AC

It was noted that the ARA was likely to be signed towards the end of July 2019.

4. Operational Work stream Update

Ben Foat reported that in parallel with the litigation work operational transformation work was taking place. We were reviewing whether all of our processes were fair and reasonable, including those for losses and suspension. Processes were being mapped end to end and policies were being reviewed.

A table was being produced for the July Board meeting which set out the processes that had been in place, the processes that would be implemented (where changed), how changes had addressed the trial points and the communications surrounding this. Changes proposed may not have been implemented by July 2018 as a programme of training, implementation and monitoring would be required.

A number of points were raised, including:

- whether the table would include a commentary on losses, processes for dealing with losses and which elements Postmasters were responsible for and which elements PO Limited? It was reported that this information would be included
- a quarterly update for ARC and/ or Board was requested on how the transformation work was being implemented and how it was working in practice.

Executive



**POSTMASTER LITIGATION SUBCOMMITTEE
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5. Horizon Contingency Update & Plan

AC described the context for the Horizon Contingency planning work and the focus on providing reassurance to Postmasters. From late July 2019, a two to three month programme of work would be taking place to address the chief concerns of Postmasters, including remuneration. We would be reversing reductions in remuneration that were associated with the simplification programme and would be implementing improvements to Horizon, including enabling the same till to be used for Horizon transactions and retail transactions, and rolling out Branch Hub.

Committee Members raised the importance of real connections and conversations with people. It was agreed that this was vital and would be supported by the new field network and the Communications Team would be making sure that everyone had the 10 or so central messages we wished to communicate to assist those one-to-one conversations.

Andrew Griffin and James Drummond from Deloitte joined the meeting and provided an update on the Horizon contingency planning work. The Deloitte team was supporting POL's operational readiness to respond to the impact of an adverse Horizon trial. This included looking at what our response needed to be in the coming weeks; the impact of the worst case scenario and the strategic response to this; the "new normal" position and the day one readiness response. Potential business impacts and what could be done to mitigate these ahead of time was a particular focus. The range of impacts from a reputational, political, regulatory and business perspective were all being considered.

It was noted that how we handled complaints and the processes we had in place was critical. There was danger that the Managing Judge would find that our processes or our accounting system were not fit for purpose which was more likely than finding that the Horizon system was unfit for purpose give the views of the expert witnesses.

6. Date of next meeting

A date would be sought for the next Subcommittee meeting.

Chairman..... Date.....

POSTMASTER LITIGATION BOARD SUBCOMMITTEE

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**Minutes of a meeting of the Postmaster Litigation Subcommittee held on Thursday, 20 June 2019
at Finsbury Dials, 20 Finsbury Street, London, EC2Y 9AQ at 16.30****Present:**

Tim Parker (Chairman)
Ken McCall (by telephone)
Tom Cooper
Alisdair Cameron

In attendance:

James Drummond (Deloitte)
Ben Foat (General Counsel)
Andrew Griffin (Deloitte)
Andrew Harding (Womble Bond Dickinson)
Elizabeth Hallissey (Senior Assistant Company Secretary)
Andrew Parsons (Womble Bond Dickinson)
Tony Robinson QC (*Minute 1*)
Alan Watts (Herbert Smith Freehills)
Rodric Williams (Head of Legal)

1. Horizon Trial Update**ACTION**

Tony Robinson QC provided an update on the Horizon Issues Trial, which had restarted on 4 June 2019. He had been asked to provide a review of the trial and his opinion on the likely outcome.

Tony Robinson explained that the cross examination of the Claimants' expert witness had gone well and it had become clear that the documents did not say what the expert witness had claimed. However, there had also been issues with Post Office witnesses and one witness in particular, the Chief Architect of Horizon, could be perceived as not credible to the court after he gave evidence. This was an issue as he was a central witness from Fujitsu. Fujitsu had also provided information used by Post Office at a Parliamentary Select Committee a number of years ago to confirm that there was no remote access to Horizon, which was incorrect.

The Committee discussed the stance and behaviour of the Judge towards Post Office witnesses throughout the trial.

The Claimants' expert witness had agreed that the Horizon system was robust. However, he had displayed bias against Post Office in his evidence. The Committee discussed the evidence given by Post Office's Expert Witness and Tony Robinson explained elements of his evidence could have given the impression that he had not thoroughly investigated the Horizon issues and that the data in his report was unreliable, with imprecise calculations.

Further to questions from the Chairman, Tony Robinson explained that an objective judge would see that the Horizon system was robust and reliable almost all of the time. Both expert witnesses were unsatisfactory but the documents demonstrated the reliability of the system. However, he cautioned that preparations should be made for a similar judgment to the Common Issues Trial. It remained difficult to predict the judgment due to the abstract nature of the case. He expected the Judge to criticise Post Office but find that each individual Claimant's case should be assessed on its own merit, because, although there is insufficient evidence to suggest that the system was not robust, the Judge could not say it worked perfectly at all times in all cases.

Tony Robinson left the meeting.

POSTMASTER LITIGATION BOARD SUBCOMMITTEE

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ACTION

2. Deloitte – Day 1 Readiness Update

The report, which was tabled at the meeting, was noted and James Drummond and Andrew Griffin provided an overview of the progress of the project to date, including the identification of business impacts of likely and worse-case legal scenarios. Next steps included validating the response and mitigation suggestions with operational units, supporting individual units through a focused planning process, defining the 'new normal' for the business and developing rehearsals before the judgment.

An update on the emerging themes was provided. There were four impact areas identified including postmaster relations, Horizon compliance, political and regulatory and commercial partners. Each of these impact areas had sub-sections and there were 32 different impacts. A mitigation and response plan had been drafted and there were 39 activities across the business which included back office resourcing, stakeholder engagement and additional training. It was planned that all mitigation work would be on track for completion at the end of July 2019. In 2 weeks a planning process would commence to understand the commercial and regulatory potential breaches, and how to mitigate these risks and remain as compliant with third party contracts as possible, following receipt of the final judgment.

In response to questions from the Chairman, James Drummond explained that there would be an initial communication to current Postmasters to explain a new collaborative communication channel to discuss Horizon questions. There would then be a longer term 3 month communication plan. The Chairman said it was important to ensure that a bigger issue was not inadvertently caused with Postmasters that did not exist. Postmasters generally thought that Horizon was reliable and there had been little coverage to date of the trial. Ken McCall agreed and suggested that the communications should focus on increased support to Postmasters with an easier communication process. The Committee agreed that it was important to keep the communications positive on how the vital system operated.

Alisdair Cameron added that it would be more useful to provide examples and answers of frequently asked questions in order to further help Postmasters use the Horizon system effectively.

In response to a question from Tom Cooper, Andrew Griffin said that the essential mitigation work included ongoing Postmaster relationships and proactive communication. Tom Cooper highlighted that if additional resources and capacity were required to change processes, this would be more difficult than the communication activities. Alisdair Cameron explained that work had already commenced to update processes.

Ben Foat explained that a report was due to be submitted to the Post Office Limited Board in July 2019 that provided details of an old process against the updated process. It would enable clarity on improvements made to processes that may be directly referenced in the judgment. The Chairman highlighted the importance of a defensible, sustainable reconciliation process that would meet the directions of the judgment.

POSTMASTER LITIGATION BOARD SUBCOMMITTEE

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3. Common Issues Judgment Appeal

ACTION

The Skeleton Argument outlining the basis of appeal would be amended and re-submitted by 27 June 2019 in accordance with the Court of Appeal's order of 18 June 2019. There was no further update.

4. Claimants' Schedule of Information

The Committee discussed the Claimants' schedules of information. The Chairman asked for an explanation as to why the Post Office Limited Board had not been made aware of the schedules in 2017. Andrew Parsons said that the schedules had been submitted to court in mid-2017 for the first 198 Claimants. Further claimants were added and the schedules re-done with the final schedules received at the end of 2017. The schedules included financial claims totalling £224 million. This figure had not been communicated to the Post Office Limited Board.

Andrew Parsons said that he had not been aware that the Board had not received the information contained in the schedules, including the total value of the financial claims. He had not provided this information when asked about a claim estimate when discussing the requirement for a provision in the statutory accounts as this estimate was widely understood to be inaccurate and unreliable, and he thought this information was known within Post Office. The Committee discussed that last year's statutory accounts would not have required a provision, but the position had now significantly changed due to the trials held in November 2018 and March 2019. The chairman expressed dissatisfaction at the assumption that the Post Office Limited Board had all the required information, and noted that approaches may have been changed with the additional information.

Andrew Harding said that a rolling brief would be sent regularly to the Sub-Committee in the future to ensure that no information was assumed. Tom Cooper requested information on the breakdown of the claimants including those that had been previously prosecuted. Appropriate remediation actions could not be agreed without all the facts.

WBD/HSF

5. Report and Accounts

Alisdair Cameron reported that a meeting with the Company's external auditors, PricewaterhouseCoopers (PwC) had been scheduled for the following week to discuss the requirement for a provision in the FY 2018-19 report and accounts related to the ongoing Postmaster Litigation.

Following further discussion, it was agreed that a separate meeting was required to determine the requirement for a provision whilst the trials continued and to discuss the impact of a provision on any future mediation. The meeting with PwC would be delayed, up to 10 days, until these elements had been discussed by members of the Sub-Committee.

AC

6. Next Meeting

The arrangements for the next meeting would be agreed and circulated to all attendees.

POSTMASTER LITIGATION BOARD SUBCOMMITTEE

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There being no further business, the meeting ended at 17.35.

Chairman..... Date.....

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Group Litigation Update

Author: Ben Foat/Rodric Williams

Sponsor: Ben Foat

Meeting date: 24 September 2019

Executive Summary

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Context

We are currently awaiting the High Court's judgment on the Horizon Issues Trial. We expect to receive this any time between mid-September and late October 2019.

There will be a hearing in the Court of Appeal on 9 October 2019 to determine Post Office's application for permission to appeal the Common Issues Judgment. The Court of Appeal's judgment on this will follow shortly after the hearing.

Assuming these judgments are received within this timeframe, mediation to explore settlement with the Claimant Group is likely to take place in mid-November 2019.

In accordance with the legal strategy set out in the July Board paper, this report sets out the potential financial ranges of a settlement and the approvals which may be required, so that Post Office's representatives have delegated authority to settle in accordance with the Board's instructions.

Questions addressed in this report

1. What is the update on the contingency planning?
2. What are the preparations for settlement and mediation?
 - a. What are the potential financial ranges of settlement?
 - b. What level of authority should Post Office have for mediation?
 - c. What formal approvals will be required?
 - d. What is the proposed strategy for mediation and do we have the right resource to manage the mediation?
 - e. If the litigation is settled, how could Post Office treat claims from postmasters who are not claimants?
3. What are the next steps?

NOTE: This paper and the privileged and confidential legal advice it contains is based on advice prepared for Post Office by Herbert Smith Freehills LLP (HSF) (attached in full at **Appendix 6**). The advice will be updated following receipt of the Horizon Issues and appeal decisions given the material impact they could have on Post Office's position.

Conclusion

As matters currently stand:

1. A detailed Contingency Plan is now in place with a Rapid Response Team stood up to manage the execution of this plan. The 'detection' and 'response' processes which

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the plan is reliant upon are now being finalised, baselined and stress tested to understand what level of uplift against baseline levels these processes and the business can withstand.

2. A reasonable outcome would be to settle with the Claimant Group (excluding those who have been criminally convicted) within a range of **REDACTION**
3. For strategic reasons, Post Office should enter mediation with settlement authority of **REDACTION** with a process for obtaining authority above that range during mediation if that would facilitate settlement at an acceptable level.
4. There is a real prospect that settlement will not be available at an acceptable level at the first mediation. Unrealistic expectations from the Claimant Group can however be managed strategically to help achieve a deal further down the line.
5. There is merit in developing an alternative approach for dealing with the 61 convicted Claimants. They have therefore been removed from the settlement calculations.
6. A reactive rather than proactive remediation-style approach can be taken to claims from non-Claimant SPMs.
7. In addition to preparing for mediation, the 9 October 2019 Court of Appeal hearing, and for receipt of the Horizon Issues judgment, we are continuing pre-trial preparations for the third, "Further Issues" trial scheduled for March 2020 to address the legal basis for the Claimants' claims for financial compensation.

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Input Sought

1. The Board is asked to approve the approach outlined in this paper. The Board will be asked to consider (and if appropriate approve) final settlement numbers by way of an updated paper closer to the mediation date.

Input Received

2. Our internal and external (HSF) legal teams have approved this paper.

The Board is asked to exercise caution when communicating about potential levels of settlement. The Court of Appeal recently held that written communications (emails) between Board members concerning settlement of a dispute were not privileged from disclosure (*West Ham v E20 Stadium LLP* [2018] EWCA Civ 2652. Post Office would be materially disadvantaged if settlement numbers or strategy were to be disclosed to the Claimant Group. **Communications about settlement should therefore only be held orally, but if that is not possible, advice should be sought from Post Office's lawyers.**

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Contingency Planning

Not underestimating the potential operational, reputation and commercial implications a negative outcome of the Horizon Issues Trial could have for the Post Office, we engaged Deloitte (the risk advisory team which has relevant experience in crisis preparedness and response work) to work with key business area owners to prepare an effective immediate and short-term response to stakeholder reaction to the Judgment. The work to date has included:

- defining worst-case, medium-case and best-case scenarios
- identifying the key stakeholders (Postmasters, Government & Regulators, Commercial & Retail Partners and Customers)
- identifying potential stakeholder reaction to the trial outcome and assessing the operational, reputational and commercial impact of those reactions
- preparing the business response to those likely impacts by identifying and impact assessing business as usual processes; introducing new impact detection processes (eg branch closure monitoring); designing new processes where BAU processes were not adequate for the worst-case scenarios; and putting mitigation plans in place where possible to minimise the impact.

Ultimately, the response from Day One (the day the judgment is handed down) will be determined by what the Horizon Issues Trial Judgment (the Judgment) actually says and how our stakeholders react to it. The output of our work ahead of the Judgment is the Operational Response Plan (available in the 'reading room') which details the business response to stakeholder reaction to the Judgment with the ultimate aim of continuing to maintain business operations and provide service to our customers as normally as possible. This is underpinned by a Communication Strategy and extensive Comms collateral designed to address worst, medium and best case scenarios¹. This material has been prepared with business area owners, undergone legal review by WBD and HSF and is currently undergoing a further 'tone' review by Lexington.

A Rapid Response Team (RRT) has been established to manage the stakeholder, and execute the Post Office, response to the Judgment. The RRT will be invoked on Day One (preparatory sessions already completed) and will run daily (until deemed no longer required) to coordinate and manage the organisation-wide response to the Judgment, escalating key decisions to the Group Executive as appropriate, collating and distributing business impact information and providing daily update briefings.

Mediation and Settlement

Potential Settlement Range

HSF's settlement range of **REDACTION** has been derived from a detailed analysis of the Claimant Group's claims, and reflects: (a) the quantified claim value; (b) HSF's assessment of the potential legal recoverability of the claims; and (c) the Claimants' anticipated expectations based on their funding arrangements.

¹ E.g. wide-spread, coordinated branch closures across the network; increased non-compliance with branch cash declarations; adverse impact on trading relationships with commercial partners; loss of stakeholder trust in Post Office.

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When assessing a settlement value, the Board can also factor in its risk appetite for inherent uncertainties in the litigation (e.g. that the Claimants better quantify or evidence their claims as the litigation progresses), likely legal costs going forward, reputational and operational considerations (including the operational impacts of the Common Issues judgment), and Post Office's commercial position overall.

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The key ranges can be summarised as:

REDACTION

The figures underpinning HSF's analysis are set out in the table at **Appendix 1**, and discussed further below.

REDACTION

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REDACTION

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REDACTION*Settlement authority for mediation*

Under its current Articles of Association,² Post Office requires shareholder approval to enter into a transaction which involves making a payment or incurring a liability in excess of £50m, or if it requires certain borrowing. Extracts from the relevant sections of the Articles are set out in **Appendix 3**.

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Shareholder approval is required to approve the terms of any settlement which involves a commitment to pay over £50m, irrespective of how the settlement is financed. The shareholder advises us that it will in turn require approval from HM Treasury for any such settlement.

Whether Post Office would need shareholder approval to fund a settlement (at any level) will depend on whether Post Office can do so without incurring new borrowings:

- If Post Office could fund a settlement by utilising its existing facilities, principally the headroom under Post Office's £950m working capital facility, no borrowing approval would be required. (There is also a £50m short-term committed facility provided by BEIS - presently undrawn - which could potentially be used to bridge into other financing but use of this facility for the purpose of funding a settlement would need to be explored further.)
- Whether Post Office can access sufficient funding from its existing facilities will need to be judged at the time. In its budgeted figures, Post Office projected the security headroom under its working capital facility (the true constraining factor) to be £149m at the end of P7. This improves slightly through to the end of the year but does not go above £200m.
- If Post Office needs new borrowings to fund a settlement (at any level), shareholder approval would be required under Article 11.1(S)(a)(iii). Any such borrowings would likely take the form of a market-rate loan from BEIS. As such, in addition to the approval required under the Articles, time would need to be factored in for putting any such facility in place.

The formal approvals process prescribed by the Articles requires the hand delivery of a written notice containing sufficient information for the shareholder to evaluate the matter being proposed (Article 11.2). That process can be streamlined if the special shareholder gives written consent.

We therefore propose agreeing a process by which (a) the shareholder is briefed on settlement ranges so that any necessary approvals can be given in short order; and (b) approvals in connection with settlement can be sought and given less formally via email.

² *New Articles are being considered but appear unlikely to be finalised by November 2019.*

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HSF advise *against* seeking and obtaining formal shareholder approval above £50m prior to mediation as it could undermine Post Office's negotiating strategy and position:

- The Claimants will be aware of the £50m government approval threshold - it is in Post Office's Articles (which are public) and they have expressed interest in the scope of government involvement in settlement.
- If they know that Post Office has that approval, they will infer that Post Office (a) is prepared to spend at least £50m to settle (i.e. it sets the floor); and (b) has access to government's substantial resources (i.e. there is no ceiling).
- Post Office is however looking to set more reasonable expectations at mediation by putting forward a compelling case that legally the claims are worth substantially less than £50m.
- Post Office can use the approvals process for leverage at mediation, e.g. because it involves senior external parties and scrutiny, Post Office should only go through it to close a deal, and not just to bring another party's deep pockets to the negotiating table (which the Claimants will want to do).
- There is also a risk that the approval could become public (e.g. because the request for shareholder approval is not privileged). It could also be used to exert unwelcome pressure through a public lobbying campaign.

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HSF therefore recommend Post Office enter the first mediation with an authority limit within the power of Post Office's Board to approve – on present financial information perhaps [REDACTION]. A pre-agreed process will also need be put in place to facilitate rapid shareholder authorisation to settle above that figure if an acceptable settlement becomes available during mediation.

Settlement strategy

Given that the Claimants' are likely to have an inflated view of the claim, the settlement negotiations must be approached strategically. Post Office will need to take a firm but highly credible position in the early stages if it is not to be driven to negotiate at unmanageable levels. Key to this will be the following:

- Post Office must cause the Claimants (and the mediator) to question the viability of their claims by challenging their legal basis (as influenced by the Horizon Issues and Common Issues appeal judgments), the need to establish liability, and the optimistic claims valuation;
- Post Office must put forward a credible and robust settlement number (HSF recommend starting at the lower end of the recoverability range, i.e. in the tens of millions);
- A significant financial jump should only be made if it would close a deal. That is because Post Office's best offer at mediation will set the floor for further negotiations. Determining when to make such a jump (if at all) will be a delicate matter, requiring judgment and, probably, help from the mediator.

The parties agreed in late January 2019 that Charles Flint QC will act as mediator. He was selected from a short list of recognised top-tier commercial mediators, having regard to the technical skills, energy and assertiveness likely to be required to resolve

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this complex dispute.³ Our recommendations for who should attend mediation for Post Office, and why, will be discussed with the Board Subcommittee prior to the Board's October 2019 meeting.

In view of the anticipated size of the Claimants' funding commitments and the levels of success they have enjoyed to date, there is a very real prospect that settlement at an acceptable level will not be possible at the November mediation. If the November mediation is unsuccessful:

- we expect the mediator to continue liaising with the parties to try to achieve a settlement further down the line. Post Office's litigation strategy should therefore be designed to maximise pressure on the Claimant Group at these times (ideally the Claimants would be facing a trial on "difficult" individual test cases and/or appeal on the Common Issues Judgment);
- Post Office should also consider making "Part 36" settlement offers to each individual Claimant shortly afterwards to put pressure on them to settle and give Post Office a degree of costs protection going forward.⁴

Strategy for Convicted Claimants

A potential stumbling block at mediation will be the convicted Claimants. Given the sensitivity surrounding this cohort, seeking to "exclude" them, even on valid legal grounds, is bound to attract criticism and could frustrate the mediation process.

A better approach would require convicted Claimants to pursue their criminal law remedies to overturn their convictions (through the Criminal Cases Review Commission and/or criminal appeals courts) before entering the civil compensation process, while still offering them "something" in the context of a mediation.

Depending on the content of the Horizon Issues judgment and subject to specialist criminal law advice, that "something" could include Post Office offering:

- to assist the CCRC progress the 33 Post Office-related cases they are currently reviewing;
- to reimburse Claimants for the costs of successful appeals;
- to fund criminal appeals on an unconditional basis;
- to offer to settle with convicted Claimants for a value representing the costs of pursuing a criminal appeal;
- to "not oppose" certain Claimants' appeals as prosecutor;
- to support positively deserving appeals as prosecutor; or even

³Mediation is a consensual and confidential process. Either party can therefore end a mediator's appointment at any time (e.g. if they lose confidence in him/her), with the consequences typically confined to the costs incurred while they acted as mediator.

⁴ Part 36 offers take their name from the section of the Court's Civil Procedure Rules which deals with this type of settlement offer.

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- a remediation program (with or without a settlement formula) for convicted Claimants who overturn their convictions.

This strategy effectively “leaves the door open” to a later settlement with any Claimants whose convictions are overturned. It does however have the disadvantage of not achieving finality through a settlement, leaving Post Office at risk of (potentially more substantial) compensation claims from this cohort further down the line.

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HSF nevertheless recommend this approach because:

- It is a principled approach: A claimant who has been wrongfully convicted can fairly say they deserve maximum compensation. Where however a claimant has been properly convicted, it is right for that conviction to stand.
- Criminal cases are dependent on their own specific facts: The cases cannot be treated all the same. It is therefore appropriate to filter these claims on a case-by-case basis, which the criminal courts will do.
- It is consistent with the civil law: Convicted Claimants should first pursue their complaints through the criminal courts and only then, if their convictions are overturned, pursue related civil claims through the civil courts.
- Prosecution cases are not representative of the wider Claimant Group: If the convicted Claimants have viable claims, they could be much more substantial, e.g. for stigma damage or malicious prosecution. Their cases should not therefore be used to drive up overall settlement values for the majority of Claimants, who were not prosecuted.

Strategy for SPMs who are not Group Litigation Claimants

HSF recommend that Post Office takes a reactive, rather than proactive remediation-style approach to future claims, because:

- the Group Litigation and its subject matter has already been the subject of a great deal of publicity, including two rounds of correspondence inviting participation in the case. It is therefore fair for Post Office to take the view that any postmasters with cause for complaint can (and have had ample opportunity to) take the initiative and come forward.
- settlement offers in the Group Litigation can include a contribution to the individual Claimant’s funding costs, with a cash settlement on top. Future claimants could therefore be offered “the same deal” at considerably reduced expense, given they will not have incurred the same funding costs.

Next Steps

An overview of the main court and settlement-related activity in Group Litigation through to October 2020 is set out in the “Group Litigation Timetable” at **Appendix 4**.

As well as preparing for mediation, between now and the end of October 2020 we are preparing to:

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- receive the Horizon Issues judgment, which we propose is managed in accordance with the protocol set out in **Appendix 5**;
- attend the Court of Appeal hearing on 9 October 2019 on permission to appeal the Common Issues Judgment;
- respond to the Claimants’ formal articulation of their claim for the third trial; and
- identify “test claimant” criteria for representative cases in the as yet unscheduled trials on breach (i.e. whether Post Office acted wrongly), causation (i.e. did that breach cause the Claimant’s harm), and limitation (i.e. is a Claimant’s claim time-barred).

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Appendices

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Quantified Claim Value	REDACTION
Recoverability – notice period only	
Recoverability – 12 months post termination losses	
Recoverability – 2 years post termination losses	
Recoverability – 3 years' post termination losses	
Funding Analysis as at November 2019 (plus 10k/claimant)	
Pay the Claim Analysis (Quantified Claim Value)	
Add back risk factors including: (a) that Claimants better quantify or evidence their claims; (b) risks around assumptions built into the model; (c) legal costs of continuing to litigate; (d) interest; (e) operational costs of supporting the litigation; (f) reputational risk; (g) benefits of Post Office being able to return to core strategic focus.	
Potential settlement range	REDACTION

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2. Funding Costs Table



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Subtotal	£69.8m - £81.5m	£80.9m - £95.9m	£95.9m - £113.9m	£115.9m - £137.9m
Less £5m costs paid	£64.8m - £76.5m	£75.9m - £90.9m	£90.9m - £108.9m	£110.9m - £132.9m
Add individual Claimant recovery	£5.5m - £27.8m	£5.5m - £27.8m	£5.5m - £27.8m	£5.5m - £27.8m



REDACTION

TOTAL	£70.3m - £104.3m	£81.4m - £118.7m	£96.4m - £136.7m	£116.4m - £160.7m
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3. Extracts from Post Office Limited's Articles of Association

11. VARIATION OF SPECIAL SHARE RIGHTS

11.1 Matters requiring consent

Notwithstanding any provision in these articles to the contrary (save for article 116 to which this article 11 shall be subject), each of the following shall be deemed to be a variation of the rights attaching to the Special Share and accordingly shall occur and be effective only with the prior written consent of the Special Shareholder:

...

- (O) the entry into or implementation of a relevant transaction by any member of the group which involves or is likely to involve (either individually or when taken together with all other related relevant transactions (other than any related relevant transaction previously approved under this article 11.1(O) entered into or implemented in the previous 12 months)) the incurring of a commitment or liability, or the payment of a sum, by any member of the group which is an amount in excess of £50,000,000;

...

- (S) (a) the incurring of (or entry into of any commitment to incur) any borrowing by any member of the group in circumstances where the borrowing:
- (i) (1) individually; or
 - (2) taken together with the aggregate principal amount in respect of borrowings already incurred in the same accounting period without approval under this article 11.1(S); or
 - (3) if part of any series of related borrowings to finance a single investment, then taken together with the aggregate principal amount incurred in respect of such related borrowings exceeds £75,000,000; or
 - (ii) is to be provided from any source other than another member of the Enlarged Group, the National Loans Fund or the Crown, save in respect of borrowings which are due from the Secretary of State, the Bank of England and (other) Monetary Financial Institutions, a Local Authority or a Public Corporation; or
 - (iii) if taken together with the aggregate principal amount outstanding of all money borrowed by the group from any source (excluding amounts borrowed by any member of the group from any other member of the Enlarged Group, other than amounts to be taken into account under article 11.1(S)(b)(v) below) exceeds an amount equal to the lesser of £2,000,000,000 and 2.5 times the aggregate of:

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- (1) the amount paid up on the issued share capital of the company; and
- (2) the total of the capital and revenue reserves of the group, including any share premium account, capital redemption reserve and credit balance on the profit and loss account, but excluding sums set aside for taxation and amounts attributable to outside shareholders in subsidiary undertakings of the company and deducting any debit balance on the profit and loss account, all as shown in the then latest audited consolidated balance sheet and profit and loss account of the group (or if consolidated financial statements are not prepared, as would have been shown in such consolidated financial statements had they been prepared), but adjusted as may be necessary in respect of any variation in the paid up share capital or share premium account or capital redemption reserve of the company since the date of that balance sheet and further adjusted as may be necessary to reflect any change since that date in the companies comprising the group;

....

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4. Group Litigation Timetable

	August 2019	Sept 2019	Oct 2019	Nov 2019	Dec 2019	Jan 2020	Feb 2020	March 2020	April 2020	May 2020	June 2020	July 2020	Aug 2020	Sept 2020	Oct 2020
Common Issues Appeal			Oral hearing for Court determination of permission to appeal (9 Oct. decision to follow asap)		File additional documents with Court as required for appeal (if permission granted)										Likely window for hearing (if permission granted) Note: Court vacation August & September so unlikely appeal will be heard in these months.
Horizon Issues Trial		Likely window for Horizon Issues Judgment		Hearing on costs of Horizon Issues trial											
Further Issues Trial	Disclosure (30 Aug)		Costs Budgets (2 Oct) Discussion Reports (16 Oct) Costs Management Conference (23 Oct) Particulars of Claim (25 Oct)	CMC (7 Nov) Defences (25 Nov)	Statement of Assumed Facts (2 Dec) CMC (4 Dec) Replies (9 Dec)	PTR (23 Jan)		Further Issues Trial (2-20 Mar)			Likely window for Further Issues Judgment		Hearing on costs of Further Issues Trial		
Trial 4				Agree selection criteria (27 Nov)											Likely window for Trial 4
Settlement	Scoping settlement / initial engagement with Cs			Target window for first mediation		Window for possible second mediation									

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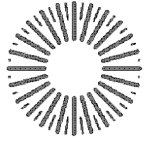
5. Horizon Judgment

Post Office proposes adopting the following protocol for the Horizon Issues judgment:

- i. Authority: Post Office's Postmaster Litigation Board Subcommittee ("Subcommittee") will be authorised to instruct Post Office's external legal team to seek permission to appeal the judgment when it is handed down, if so decided.
- ii. Trial Team Standby: the trial team is on standby to receive and consider the judgment immediately upon receipt from the court.
- iii. Initial Impressions: the trial team will immediately review the judgment to assess at a high level how Post Office has fared over all, and communicate this through the General Counsel and/or Post Office's external lawyers to the Subcommittee within 8 hours of receiving the judgment.
- iv. First Review: the trial team will undertake a more detailed review to identify areas of potential appeal, and within 24 hours of receiving the judgment report these through the General Counsel and/or Post Office's external lawyers to the Subcommittee.
- v. Consultation: the Subcommittee has the opportunity to consult the external legal team on any issue they require to inform their decision on whether to seek permission to appeal. This consultation can take place in person or by phone, with 48 hours of receiving the judgment
- vi. Instructions: the Subcommittee provides its instructions on whether to seek permission to appeal to the external legal team, such instruction to be delivered through the General Counsel and/or Post Office's external lawyers at any time prior to the judgment being handed down.

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Appendix 6



HERBERT
SMITH
FREEHILLS

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Draft: 13 September 2019

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**ALAN BATES & ORS – V – POST OFFICE
LIMITED
ADVICE ON SETTLEMENT**

Herbert Smith Freehills LLP

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1. **INTRODUCTION**

1.1 This note sets out our thoughts on settlement strategy in light of our further analysis of the heads of loss presently claimed in the GLO. It covers:

- 1.1.1 Timetable;
- 1.1.2 Summary of workstreams;
- 1.1.3 Preliminary thoughts on case theory;
- 1.1.4 Comments on particular categories of Claimant;
- 1.1.5 Comments on particular heads of loss and quantum verification;
- 1.1.6 Settlement analyses, including:
 - (A) Ground-up recoverability analysis;
 - (B) "Better off paying" analysis;
 - (C) Funding-driven analysis; and
 - (D) Recommended way forward.
- 1.1.7 Authorisations required pursuant to Post Office Limited's Articles of Association;
- 1.1.8 Mediation strategy;
- 1.1.9 Part 36 strategy; and
- 1.1.10 Strategy for SPMs who have not joined the GLO.

1.2 The observations made on these topics come with two material caveats. First, we do not yet know the outcome of the Horizon Issues trial or whether Post Office will be given permission to appeal the Common Issues judgment.¹ Secondly, they have been prepared without the benefit of an analysis of the strength of the individual claims. All these matters will have a material impact on the merits of Post Office's position in the litigation. We will therefore need to consider the position further once the outcome of these matters are known and the ongoing individual claimant review is complete.

1.3 Subject to the above, our present view is that Post Office goes into the first mediation with settlement authority of between [REDACTION] with a view to obtaining approval to settle for a value up to [REDACT.] (with a separate process in place for the 61 convicted Claimants, to be implemented in due course) if a deal at that level is available on the day.

2. **TIMETABLE**

2.1 At the CMC which took place on 23 July 2019, the scope of the March 2020 Further Issues trial was reduced. Instead of covering both limitation and "measure of loss" issues, the trial will now cover only "measure of loss" issues. These are to be determined by way of submissions on assumed facts drawn from the pleadings, without any documentary or oral evidence. This is a helpful development from Post Office's perspective, not only because it means there will now not be an enquiry in March 2020 into the Claimants' fraud and deliberate concealment allegations (likely a difficult area for Post Office²), but also because the timetable leading up to trial will now be more relaxed, leaving a window for a meaningful mediation process to take place.

2.2 We are in correspondence with the Claimants' solicitors as regards dates for the mediation. As matters presently stand, the parties have provisionally agreed a two-day mediation on 13 and 14 November 2019, subject to having received the Horizon Issues judgment and permission to appeal determination by that time. There is likely to be a preparatory meeting between solicitors in advance.

¹ On 6 September 2019, Coulson LJ ordered that there be a half-day oral hearing of Post Office's application for permission to appeal on 9 October 2019, with judgment to follow "as soon as possible" thereafter. The Claimants have asked for the permission hearing to be scheduled for an alternative date.

² See below at paragraph 10.

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- 2.3 Subject to that, we envisage pursuing the same broad timetable outlined in our initial note, namely:
 - 2.3.1 an initial mediation designed to gauge expectations and understand the true values attached to the Claimants' funding arrangements, in November 2019;
 - 2.3.2 a formal settlement offer process aimed at protecting Post Office's position on costs in the litigation, in late 2019 or early 2020;
 - 2.3.3 a further mediation at which we hope to make meaningful progress towards settlement, ideally in April/May 2020;
 - 2.3.4 further ad-hoc settlement discussions leading to a final settlement; and
 - 2.3.5 development of a strategy for dealing with SPMs who have not joined the GLO but may bring claims in the future.

3. **SUMMARY OF PREPARATIONS**

3.1 Our preparations thus far have focussed on six areas:



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3.1.3 **Claimant grouping analysis**

We have analysed the different categories of Claimant to which special principles apply, for example convicted Claimants, Claimants who have previously entered into settlement agreements with Post Office, non-SPM Claimants (for example assistants).

3.1.4 **Liability analysis**

Because the individual claims are not of equal merit, the next step is to understand which individual claims, as a matter of principle, have value. In that regard, we are working with WBD to develop workstreams to consider (a) factual and (b) expert IT issues.

3.2 Our conclusions on the work we have done to date and recommendations as to the way forward are discussed in more detail below.

4. **CASE THEORY**

4.1 The starting point for any settlement discussion is to have a case theory which explains why Post Office is not legally liable for the losses claimed.

4.2 At the risk of some oversimplification, the Claimants' case is presently put on two broad footings:

4.2.1 **Bug theory**

The argument will likely be that bugs within the Horizon system generated false shortfalls. Alternatively, it may be said that Post Office cannot rely on Horizon to prove disputed shortfalls because the system is insufficiently robust (in effect, obliging Post Office to prove disputed shortfalls by other means).

4.2.2 **Transparency theory**

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The argument will likely be that, whatever the position with Horizon, the Claimants have suffered losses because Post Office breached its duties of co-operation and good faith owed to SPMs as a result of:

- (A) inadequate training;
- (B) inadequate investigation and/or denial of access to records; and
- (C) inadequate disclosure and/or false representations about the existence of bugs and/or complaints about Horizon (i.e. the work referred to at paragraph 3.1 above).

- 4.3 The way the Claimants' case develops is likely to be driven by the outcome of the Horizon Issues trial and the Common Issues Appeal:
- 4.3.1 If the findings made in the Horizon Issues trial lend credence to the bug theory, the Claimants' focus is likely to be on the losses said to flow from false or unproven shortfalls (i.e. claims for repayment of shortfalls, suspension and termination-related losses as well as consequential losses such as personal injury, stigma and so forth).
 - 4.3.2 If the bug theory loses traction (and the Common Issues judgment stands), the Claimants' focus is likely to shift to claims under the transparency theory. In the transparency-type claims, the Claimants will seek to demonstrate that they would have been in a better financial position had Post Office complied with its "good faith" duties. There will likely be a debate around whether alleged breaches on the part of Post Office have an impact on its ability to terminate for accounting failures. In particular, we anticipate that the Claimants may allege that any accounting failures on their part were caused by, or connected to, those breaches and, as a result, their contracts could not have been terminated summarily.
 - 4.3.3 Of course, if the Common Issues Appeal is upheld then, subject to the precise scope of the duties found to exist, fewer claims are likely to be available under the transparency theory.
- 4.4 We have given thought as to how, as a matter of advocacy, Post Office can best advance its case under both the bug and transparency theories so that we can react quickly when the Horizon Issues judgment lands:
- 4.4.1 Post Office's best arguments on the "bug theory" are likely to be on breach³. In view of the anticipated findings in Horizon, we would recommend a strategy aimed at developing:
 - (A) **Independent factual evidence of breach**
Identifying cases where there is evidence independent of Horizon which demonstrates that the shortfalls (if any) were not caused by bugs.⁴
 - (B) **Expert IT evidence on the likely cause of shortfalls**
Exploring the extent to which we might be able to show through expert IT evidence that the bugs identified by the Claimants (or found to exist as part of the Horizon Issues trial) are unlikely to have caused the shortfalls complained of, at least in certain cases.⁵
 - 4.4.2 Post Office's best arguments under the transparency theory are likely to relate to the Common Issues Appeal, causation/loss and (potentially) limitation:

³ Other defences relating to specific categories of Claimant and on quantum are dealt with separately.

⁴ For example, cases of clear fraud or those where (unforced) admissions were made.

⁵ Even if the IT experts cannot establish why shortfalls arose, it may be possible to demonstrate in particular cases that the alleged bugs were not in play at the relevant period, or that the Claimant's branch did not feature across the "known error log", or that the Claimant's data does not reveal a signature typical to a particular bug.

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(A) **Common Issues Appeal**

If permission to appeal is given, the risk to the Claimants is that some of the duties alleged to have been breached under the transparency theory fall away with the result that the claims available to them are reduced.

(B) **Causation and loss**

In the transparency-type claims, the onus will be on the Claimants to prove the counterfactual scenario (i.e. what would have happened had Post Office complied with all its relevant duties) and/or the link between the breaches and the reason for their termination. We can see scope for Post Office to say, in some cases at least, that any breaches had no relevant bearing. Ultimately this will be a factual question but our impression is that these arguments will be less straightforward for the Claimants.

REDACTION

4.5 If we can identify a selection of "good" cases for Post Office across all these issues, we anticipate that will advance Post Office's position, both in the litigation (allowing Post Office to put good test cases forward) and in the context of settlement discussions (enabling Post Office to put forward a more compelling case theory and make meaningful Part 36 offers). The work involved⁶ will dovetail with that required for the Court-ordered test case selection process in respect of which the parties are to serve their proposed test case selection criteria by 27 November 2019.

5. **QUALITATIVE AND QUANTITATIVE ANALYSIS OF THE CLAIMANT GROUP**

5.1 Whilst the Horizon Issues judgment is awaited, we have worked extensively with Post Office to conduct a qualitative and quantitative analysis of the Claimant Group.

5.2 To date, this has focussed on (a) categories of Claimant who raise unique issues relevant to settlement and (b) the recoverability in principle and potential quantum of the individual heads of loss.

5.3 Our work product has been captured in an interactive spreadsheet which allows us to apply a range of different multipliers and percentages to the various claims to enable us to analyse rapidly different settlement scenarios. The numbers referred to in this note have been drawn from that spreadsheet. To place those numbers in context:

5.3.1 Where we refer to the "Quantified Claim Value" we mean the value of the claims which have been quantified by the Claimants in their Statements of Information. It does not include claims which have been made in principle but have yet to be quantified by the Claimants (i.e. claims for personal injury, harassment, malicious prosecution and stigma).⁷

5.3.2 The "Assessed Value (Quantified Claims)" is our assessment of the potential quantum of the quantified claims.

5.3.3 The "Assessed Value (All Claims)" is our assessment of the potential quantum of the claims made by the Claimants, whether quantified or otherwise.

⁶ To take this forward we are doing two things: (a) working with WBD to conduct a "good case – bad case" analysis – this will allow us to assign a merits rating to individual cases and selecting some good examples to use by way of mediation advocacy; and (b) investigating with the IT experts how Post Office might go about proving that identified bugs were not responsible for particular shortfalls.

⁷ The quantified claims in the Claimants' schedules of information all effectively reserve the Claimants' rights to amend any quantified figures following disclosure and expert quantum assessment.

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- 5.4 As set out above, we are working with WBD to overlay this analysis with factual/expert analyses of the individual claims to form a clearer view on liability. That analysis has not been factored into the assessments made in this note.

6. **CATEGORIES OF CLAIMANT**

Our work thus far has identified the following categories of Claimant which raise unique issues:

- 6.1.1 Convicted Claimants;
- 6.1.2 Settled Claimants;
- 6.1.3 Assistants (i.e. non-SPM) Claimants; and
- 6.1.4 Time-barred Claimants.

7. **Convicted Claimants**

- 7.1 The Claimant Group includes 61 convicted Claimants. The convictions are typically for fraud, theft or false accounting. In some cases, the Claimant pleaded guilty to a charge of false accounting, with Post Office dropping the associated charge(s) of fraud or theft.⁸
- 7.2 In order to get a flavour of the criminal cases, we have collated the readily available information from Cartwright King (criminal solicitors to Post Office) on a sample of 31 Claimants. To give a flavour, the key points emerging from the 31 cases are summarised at Annexure 1.
- 7.3 The facts of the criminal cases are diverse. Of the sample of 31:
- 7.3.1 4 Claimants were found guilty after a full trial;⁹
 - 7.3.2 The remainder pleaded guilty to charges of either false accounting, theft, fraud by misrepresentation or fraud by abuse of position;
 - 7.3.3 There are a number of cases where the Claimants have admitted that shortfalls were caused by external factors, independent of Horizon:
 - (A) In one case, the Claimant admitted to misplacing funds;¹⁰ and
 - (B) In another 10 cases, there is evidence (typically in the form of admissions) that the Claimants or members of their families took (or "borrowed") funds for their own use.¹¹
 - 7.3.4 In at least 12 cases, the Claimants positively accept (over and above their guilty pleas) that they entered false figures into Horizon to cover up discrepancies;¹²

⁸ See, for example, Jo Hamilton (claimant 69) where Post Office prosecutors agreed not to prosecute her for a single count of theft but rather to let the charge lie on the file on the understanding that Ms Hamilton would plead guilty to false accounting (14 counts) and repay the entire outstanding shortfall amounts.

⁹ (a) Seema Misra (claimant 119) (Ms Misra pleaded guilty to false accounting (6 offences) and not guilty to theft (1 offence)); (b) Damian Owen (claimant 128) (theft (1 offence)); (c) Chantelle Chapman (claimant 242) (fraud by abuse of her position (1 offence)); and (d) Senepathy Narenthiran (claimant 564) (theft (4 offences)).

¹⁰ See the case of Kashmir Kaur Gill (claimant 351) who was convicted of false accounting (2 offences). In interview, she stated that she had mistakenly placed a remittance pouch into a mail bag, thereby losing the cash, and falsely declared more money to ensure the accounts balanced. She does not suggest that Horizon was at fault (there is reference to an ill-defined ATM problem but the Cartwright King report suggests that this was not a Horizon issue).

¹¹ See, for example, (a) Julie Cleife (claimant 249) who was convicted of fraud by false representation (one offence) following a guilty plea. Ms Cleife admits to allowing her children to withdraw money from her branch till and forgetting to process the transactions; (b) Sarah Rudkin (claimant 444) who pleaded guilty to theft (1 offence). She admitted in interview that she had "borrowed" money from Post Office but had not been able to pay it back and that she had taken cash to pay it into her business account to pay for shop, wage and household bills.

¹² See, for example, Siobhan Sayer (claimant 161) who was convicted of fraud (1 offence) following a guilty plea. She admitted to falsifying accounts to cover up losses. Similarly, Peter Homes (claimant 550

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- 7.3.5 Around half of the Claimants raised issues with Horizon in the course of their criminal investigations;¹³
- 7.3.6 At least 6 Claimants sought to blame inadequate training and support (including Helpline support) on the part of Post Office;¹⁴
- 7.3.7 One Claimant admitted false accounting on an *R v Eden* basis (i.e. "putting off the day for dealing with the muddle");¹⁵ and
- 7.3.8 Given the number of prosecutions, there are likely to be some convicted Claimants who would attract the sympathy of the Court/the public.¹⁶
- 7.4 The position likely to be taken by this cohort is that they were misled (through inadequate disclosure or otherwise) about the "bug issues" with Horizon and that (in many cases) they pleaded guilty to false accounting to avoid the risk of being given custodial sentences on more serious charges of fraud or theft.¹⁷ It may also be alleged that Post Office misused the criminal process to achieve civil recoveries in respect of unpaid shortfalls.¹⁸
- 7.5 To date, 34¹⁹ Claimants have referred their cases to the Criminal Case Review Commission (the "CCRC"). In their most recent annual report (2018/19)²⁰, the CCRC stated:

"In December 2018 the Commission informed the applicants in these cases that we had decided it was necessary for us to wait for the first judgment of the High Court in Group Litigation against the Post Office by more than five hundred former Sub-Postmasters (the judgment in the 'Common Issues' trial) before making any decisions in the Horizon cases under review. The applicants were informed that we would then need to take a view on whether we should also wait for the outcome of the second in the series of High Court trials (the "Horizon trial") on the basis that that second set of proceedings appeared on the face of it to be the most relevant to the Horizon applications under review. At the end of the

(personal representative)) who was convicted of false accounting (1 offence) on the basis of a guilty plea. He accepted that he had falsified documents to cover up discrepancies.

- ¹³ See, for example, Jacqueline McDonald (claimant 377) who pleaded guilty to theft (1 offence) and false accounting (6 offences). In interview, Ms McDonald admitted to entering false amounts into the Horizon system to cover up losses which she described as inexplicable. In doing so, she questioned the reliability of the Horizon system and the Defence commissioned an expert to investigate the case. There was criticism made of the support available.
- ¹⁴ See, for example, Jo Hamilton (claimant 69) who was convicted of false accounting (14 offences) following a guilty plea. She presented a statement during interview stating she had received inadequate training, had made calls to the Helpline and that the systems were "shambolic". It is unclear whether she specifically blamed Horizon for the losses. The Prosecution, however, suspected that Ms Hamilton would raise a defence that Post Office systems/lack of training caused her to become muddled which in turn resulted in the false accounting. The Prosecution appear to have been of the view that any such claims should be refuted.
- ¹⁵ See Lynette Hutchings (claimant 80) who was convicted of false accounting (1 offence) following a guilty plea. Ms Hutchings pleaded guilty on the basis of *R v Eden* (i.e. putting off the day when she had to deal with the muddle) rather than that she took/intended to take the money.
- ¹⁶ See, for example, Allison Henderson (claimant 73) who was convicted of false accounting (1 offence) on the basis of a guilty plea. In an amended Defence statement she pointed to a malfunction of the Horizon system as being a possible cause of the deficit. At no stage in the interview or in the Defence statement did she concede to any false accounting by her or indeed to any dishonesty at all. The plea only came after a Goodyear indication that she would not receive a custodial sentence (Cartwright King note that it is difficult to rule out that her guilty plea was merely a pragmatic decision to avoid an immediate custodial sentence).
- ¹⁷ See, for example, Nicholas Clark's (claimant 248) case where the charge of theft (1 count) was not pursued following a guilty plea to false accounting (7 offences). Similarly, the charge of theft against Pauline Thomson (claimant 178) was not pursued following a guilty plea to false accounting (3 offences).
- ¹⁸ The Claimants allege this to be the case in their pre-action letter of claim dated 28 April 2016 at paragraph 147.
- ¹⁹ We understand that since the CCRC Report was published, the CCRC have informed Post Office it has concluded its investigation into one Claimant, deciding not to refer the case to the Court of Appeal (Criminal Division) on the basis that it did not concern Horizon and commenced an investigation into another Claimant.
- ²⁰ https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1/uploads/2019/07/CCRC-Annual-Report-and-Accounts-2018-19_Web-Accessible.pdf

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reporting year the Horizon trial had not concluded; further delay had been caused by an application by lawyers for the Post Office attempting to have the judge recuse himself from those proceedings (that application ultimately proving unsuccessful). We are acutely aware of the need to ensure that relevant matters from the High Court proceedings are considered in the review of the applications to the CCRC, and will be paying close attention as matters continue to unfold."

- 7.6 The CCRC therefore appears to be taking the view that the findings in the Horizon Issues judgment will be material to how it proceeds. Post Office has been keeping the CCRC updated on the progress of matters relating to the Horizon Issues trial.

7.7 **Approach**

- 7.8 The cohort of convicted Claimants is likely to prove the most challenging to deal with. They are the most vocal, raise the most significant reputational issues for Post Office and will also likely be the most difficult to appease. There is no obvious half-way house for dealing with these individuals as criminality is a binary (and indeed serious) issue. If an individual has been wrongfully convicted, they can fairly complain that their life has been ruined and that they are deserving of the maximum in compensation. By the same token, if Claimants were properly convicted, it is in the interests of justice that the conviction stands. That is particularly so in view of Post Office's unique position as prosecutor: any (material) settlement could be evidence of an admission of failures on the part of Post Office in the exercise of its prosecutorial powers.

- 7.9 From Post Office's perspective the best approach to this cohort will depend on a number of factors:

7.9.1 From a GLO perspective:

- (A) There is a legal question as to whether the Claimants are entitled to try their claims in the civil courts (i.e. to what extent is the civil court entitled to go "behind" cases where the criminal courts have already made findings?) We discuss this further below.
- (B) There would, however, be something to be said for including criminal Claimants within the process as they are likely to be favourable "test Claimants".²¹

7.9.2 From a settlement perspective:

- (A) Any GLO-wide settlement which excludes criminal Claimants will not achieve finality for Post Office. Post Office may find itself in the undesirable position of having paid a substantial sum by way of settlement without having resolved matters with some of its most vocal critics.
- (B) Brian Altman QC²² has, however, advised that making settlement payments to convicted individuals risks undermining the safety of all Post Office's (numerous) previous convictions, regardless of whether they relate to Claimants in the GLO.²³

7.9.3 From a criminal law perspective:

²¹ This point should not be overstated. We understand that Post Office stopped prosecuting SPMS around 2013/14 if doing so would entail reliance on Horizon data. There are therefore likely to be some examples of "poor" cases in more recent years.

²² Brian Altman QC was previously the First Senior Treasury Counsel at the Old Bailey. He has been retained by Post Office to provide independent advice relating to the criminal prosecutions.

²³ We are exploring with Brian Altman QC whether this would be the case even if the settlement offer made was "de minimus" or represented the costs of an appeal against a criminal conviction.

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- (A) Post Office is in the unique position of prosecutor in many of these cases. Cartwright King has advised that Post Office may well be duty-bound to make further²⁴ disclosures to convicted parties following the Horizon Issues judgment.
- (B) Post Office may also need to take a position before the criminal courts (in its capacity as prosecutor) on any criminal appeals that are brought.

7.9.4 From a reputational perspective:

- (A) There are obvious reputational issues for Post Office in relation to this cohort (for example in relation to parliamentary questions). Post Office will need to develop a clearly-reasoned position in relation to such cases.

7.9.5 The findings made by the civil courts relating to Horizon (many of which we anticipate will be made in the forthcoming judgment) are likely to be a key driver behind the approach Post Office decides to take across these interrelated issues. If Horizon is found to have been riddled with bugs, that could create the foundations for reasonable doubt with knock-on consequences for how Post Office decides to approach these Claimants and reputational messaging. If, however, Horizon is found to be robust, Post Office may lean towards taking a neutral approach. Plainly there could be a wide range of more nuanced potential outcomes in between.

7.9.6 Pending the Horizon Issues judgment, it would be premature to develop an inflexible strategy with regard to this cohort. We have, however, set out our preliminary thoughts on strategy and identified some potential options for consideration.

7.10 Convicted Claimants in the GLO

7.10.1 The status of convicted Claimants within the GLO has not yet been resolved. In 2016, WBD invited the Claimants to discontinue all such claims on the basis that they were an abuse of process in that they constituted a collateral attack on the decisions of the criminal courts.²⁵ The Claimants' position was that the collateral attack doctrine would not apply because fresh evidence had emerged which would have had an important influence on the outcome of the cases. They proposed, however, that the claims brought by the convicted Claimants be stayed pending the outcome of the CCRC's enquiries.²⁶ WBD responded that any stay would need to be revisited once the parties could assess whether the allegations made in the civil claims mirrored those in the criminal proceedings.²⁷ The issue has not been revisited since or resolved.

7.10.2 We have given careful thought to whether a civil court would be able to hear fresh evidence in relation to the convicted Claimants' claims. We think that this would be an unlikely outcome:

- (A) Under the collateral attack doctrine, the general principle (as summarised in *Hall v Simons*²⁸, endorsing the House of Lords' approach in *Hunter v Chief Constable of the West Midlands Police*²⁹) is that:

"It will ordinarily be an abuse of process for a civil court to be asked to decide that a subsisting conviction was wrong. This applies to a plea of guilty as well as after a trial. The resulting conflict of judgments would bring the administration of justice into disrepute ... The proper procedure is to appeal, or if the right of appeal has been exhausted, to apply to the

²⁴ Bug issues revealed by the Second Sight report were the subject of a disclosure exercise conducted by Cartwright King, covering all prosecutions that came before the Court after 1 January 2010.

²⁵ See letter from Bond Dickinson to Freeths dated 28 July 2016.

²⁶ See letter from Freeths to Bond Dickinson dated 27 October 2017.

²⁷ See letter from Bond Dickinson to Freeths dated 30 November 2016.

²⁸ [2002] 1 AC 615.

²⁹ [1982] AC 529.

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Criminal Cases Review Commission under section 14 of the 1995 Act. I say it will ordinarily be an abuse because there are bound to be exceptional cases in which the issue can be tried without a risk that the conflict of judgments would bring the administration of justice into disrepute."

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- (B) The only exception which has been recognised in the authorities is where new facts have emerged. The new fact must not simply have had an "important influence" (as the Claimants suggest) – it must be one which "entirely changes the aspect of the case" and "it was not and could not by reasonable diligence have been ascertained ... before".³⁰ This is a particularly high threshold.
- (C) Despite this exception having been recognised in principle, the civil courts have consistently declined to re-open issues decided by the criminal courts, even where fresh evidence is alleged to have been found. In *Smith v Linskills*³¹, the Court reasoned:

*"We cannot of course shut our eyes to the possibility that a criminal defendant may be wrongly convicted, perhaps because his defence was ineptly prepared or conducted. When that occurs, it represents an obvious and serious injustice. There are two possible solutions. One is to relax the present constraint on seeking to establish that injustice by civil action. The other is to ensure that, in appropriate cases, the conviction itself can be reviewed. It seems to us clear that it is this second solution which has, over the past century, been favoured: by giving a criminal defendant a right to appeal; by providing a relatively low standard for the admission of fresh evidence on appeal; by empowering the appellate court to order a new trial; by giving the Home Secretary power to refer a case back to the Court of Appeal; and by proposals to establish a new review body [a reference to the CCRC]".*³²
- (D) As such, although we cannot discount the possibility that Fraser J will take a novel approach, we consider that he will be constrained to require the convicted Claimants to pursue their remedies through the CCRC and the criminal appeals court first and, only if their convictions are overturned, will he be entitled to consider their claims. The fact that the CCRC is already engaged with a number of Claimant cases would tend to support that outcome.

7.11 Approach to settlement

- 7.11.1 If the right approach is for convicted Claimants to pursue their grievances through the CCRC and not the GLO (at least at this time), the principled position for Post Office to take is that settlement with these Claimants should be considered only after the outcome of the criminal process, and then only if Claimants succeed in having their convictions overturned. This approach presents several difficulties:
 - (A) Post Office will not be able to achieve finality as part of the settlement process.
 - (B) Convicted Claimants may object (possibly in vocal terms) to being excluded on the basis that (a) it creates an extra hoop for them to jump

³⁰ *Phosphate Sewage Co Ltd v Molleson* (1879) 4 App Cas 801.

³¹ [1996] 1 W.L.R. 763.

³² Similarly, in the Privy Council case *Humam v Bholah* [2010] UKPC 12 Lord Rodger held that: "assuming that this is fresh evidence, the appropriate step would have been for Mr Humam to place it before the Supreme Court... and to invite the court on that basis to direct the reopening of the criminal proceedings against him. In other words, if Mr Lowtoo's evidence is really a basis for saying that his conviction was wrongful, then Mr Humam should put it before the Supreme Court in a procedure which would allow the court to consider the evidence and either set aside or confirm his conviction, depending on its view of the significance of the evidence. Instead, Mr Humam seeks to use it in these proceedings where the conviction cannot be reviewed but where, he hopes, he may achieve a result which will – indirectly – undermine faith in his conviction. That is an utterly impermissible tactic."

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through (which their present funding may not cover); and (b) it will be apparent that they are being treated differently to post-2014 Claimants in respect of whom we understand Post Office took a pragmatic decision to cease prosecutions.

- (C) It may splinter the Claimant Group, making any settlement more difficult to achieve.
- (D) It may also prevent Post Office from making Part 36 offers in respect of this cohort (as to which see below).

7.11.2 We have given some thought as to how Post Office might mitigate these difficulties. The right approach will be driven by future developments – in particular the outcome of the Horizon Issues trial, the CCRC's reaction to the judgment and any progress made with the criminal cases themselves. In the meantime, however, we would make the following observations:

- (A) In view of the sensitivity surrounding this cohort, we would counsel against Post Office seeking to exclude convicted Claimants from the civil process in a unilateral or high-hand fashion. Doing so may well attract criticism (as it did in Parliament³³ and in correspondence with MPs³⁴ in connection with the Mediation Scheme).
- (B) If Post Office does take the view that these Claimants should first exhaust the criminal process, we think that result could be achieved in a "softer" fashion: Post Office could take a publicly neutral position on whether this cohort should be included in the GLO (a point which will arise when eligibility under the test case selection process is considered) and invite the Claimants (and, if necessary, Fraser J), to decide how they should be treated. Given the legal position, it is likely to be in the convicted Claimants' interests to ask that their claims be dealt with separately (and even if Freeths take a different view, Fraser J is likely to be driven to that conclusion.) If Post Office were to proceed in this way, it can, in effect, relinquish responsibility for the decision made.
- (C) Although it may be in Post Office's interests to remain neutral on convicted Claimants in the context of the GLO, from a strategic perspective we consider it will be necessary for Post Office to take a position on this cohort: (a) in the context of the mediation; (b) in Post Office's capacity as prosecutor; and (c) with reputational considerations in mind. Once the Horizon Issues judgment is to hand, it is likely that numerous parties – the Claimants, the CCRC and also potentially the media – will be considering Fraser J's findings with an eye to determining whether the criminal convictions remain sound.
- (D) If the Horizon Issues judgment is favourable, Post Office might well be justified in maintaining a neutral position and deferring to the CCRC and the criminal courts.
- (E) If, however, the Horizon Issues judgment is critical or the CCRC interpret it unfavourably, an option might be for Post Office to take steps to assist the Claimants with their criminal appeals. That would allow Post Office to offer convicted Claimants something in the context of settlement.

³³ For example, Albert Owen MP in the House of Commons Adjournment debate (17 December 2014) stated: *"I was of the opinion that people who had been found guilty, for the reasons we have outlined, would be allowed to enter the mediation system. I am very disappointed with the way this is turning out, because— I shall repeat this a number of times—we are talking about people's lives being ruined by this process."*

³⁴ For example, in a letter to Paula Vennells (8 December 2014) James Arbuthnot MP stated: *"You agreed that the Mediation Scheme was to be available to all SPMRs whose cases had been identified by Second Sight as giving rise to concern. Specifically you agreed that it would be available to SPMRs, such as my own constituent, Jo Hamilton, who had pleaded guilty to criminal charges. You knew that I – amongst many other MPs – would not otherwise have agreed to it."*

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- (F) Depending on which approach appears most justified in light of the findings made, Post Office could take any one (or a combination of) the following approaches³⁵:
- (1) engage with the CCRC in light of the judgment;
 - (2) offer to reimburse Claimants for the costs of successful appeals;
 - (3) offer to fund appeals on an unconditional basis;
 - (4) not oppose certain Claimants' appeals as prosecutor;
 - (5) positively support deserving appeals as prosecutor; or even
 - (6) offer a remediation program (with or without a settlement formula) for convicted Claimants who succeed in having their convictions overturned in view of reasonable doubt on Horizon issues.
- (G) These alternative strategies could be used to break any deadlock in the settlement discussions arising out of the exclusion of the convicted Claimants.
- 7.11.3 Given that these strategies are available to mitigate the downsides of exclusion identified above, our present view is that settling with this cohort on the same basis as other Claimants would probably do more harm than good.
- 7.11.4 One issue that we do intend exploring with Brian Altman QC (criminal counsel to Post Office) is whether it would be open to Post Office to make pragmatic offers to this cohort – by, for example, offering the value of the cost of pursuing a criminal appeal, which individual Claimants could elect to keep instead of spend on an appeal. That sum could form the basis of any Part 36 offers made.

8. **Settled Claimants**

- 8.1 There are around 147³⁶ Claimants who have entered into previous settlement agreements with Post Office, either under the Mediation Scheme or as part of Network Transformation.
- 8.2 These cases will raise a preliminary question as to whether the settlement agreements are binding on the Claimants. In that regard, there are three potential arguments the Claimants could advance:
- 8.2.1 That the Claimants were induced to enter into the settlement agreements by fraudulent misrepresentation;

³⁵ Some of these approaches will only be open to Post Office where it prosecuted the Claimant. We understand that in a number of cases the Crown Prosecution Service acted as prosecutor.

³⁶ We note that 5 Claimants entered into settlement agreements as part of the Network Reinvention Programme; 5 Claimants entered into settlement agreements as part of the Network Change Programme; and 2 Claimants entered into unknown settlement agreements. We do not consider these further in this note as we have not reviewed the underlying settlement agreements.

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- 8.2.2 That, as a matter of construction, the current claims are not caught by the settlement wording in each case;^{37 38 39} and
- 8.2.3 By application of the "unconscionability" principle.⁴⁰
- 8.3 On the facts alleged here (that Post Office misled the settled Claimants, whether by omission or otherwise, as to the true position with Horizon), affected Claimants are most likely to take the position that they were induced to enter into the settlement agreements by fraudulent (or reckless) misrepresentations.
- 8.4 If any such claim were to succeed (which will depend on the findings of fact made by the Court), the Claimants would be entitled to set aside the settlement agreements. In doing so, however, they would be obliged to restore the status quo ante (i.e. repay the settlement sums they had received).
- 8.5 Here, it is significant that each sub-category of settlers received fairly sizeable payments from Post Office under their settlement agreements. The payments in question can be broken down as follows:

Settlement agreement type	Number of Claimants	Total payments received
Mediation Scheme	12	£34,000 ⁴¹
Network Transformation ⁴²	135	£5,645,909.51 ⁴³
Total:	147	£5,679,909.51

³⁷ A sample wording from a Mediation Scheme settlement was: *"In full and final settlement, the Applicant releases any and all claims, whether or not presently known to the parties, that she ever had or may have against Post Office and/or of its Related Parties including without limitation anything related to the Complaint".* The Complaint is defined as *"a complaint to the Scheme with reference number M048".* The Scheme is defined as *"the Initial Complaint Review and Mediation Scheme was established to address the concerns of subpostmasters and counter clerks employed by Post Office in relation to Post Office's Horizon IT system and associated issues".* Given the Mediation Scheme was set up against the background of the Horizon issues, it will be more difficult for Claimants to take the position that they did not have these issues in mind when settlement was agreed.

³⁸ A sample wording from an Network Transformation Converter settlement was: *"The Conversion Payment paid to the Operator under the Agreement shall be in full and final settlement of any and all claims that I (being either the operator being appointed by Post Office Ltd under the Agreement) have or may have against Post Office Limited (or any other member of the Royal Mail Group) or its officers or employees howsoever arising and whether arising out of termination of my position and the Existing Contract and whether under common law, contract, statute or otherwise."* These settlements were not entered into with the object of settling Horizon issues. However, they do specifically cover claims in respect of the termination of the contracts and so it may be difficult for the Claimants to contend that the more significant termination-related losses are not caught by this wording.

³⁹ A sample wording from an Network Transformation Leaver settlement was: *"The Leaver's Payment is paid in full and final settlement of all and any claims that you have or may have (whether or not contemplated or asserted as at the date on the Covering Letter) against Post Office Limited (or any other member of Post Office Group) or its officers or employees howsoever arising and, without limitation, whether arising out of your resignation and the resulting termination of your Contract and any other associated contractual documents, the occupation of your Premises or otherwise and whether under common law, contract, tort, statute or otherwise".* This wording likewise specifically contemplates losses relating to termination.

⁴⁰ The scope of this principle is largely untested in English law. However, the House of Lords in *BCCI v Ali* [2002] 1 AC 251 has expressed the view that equity will not permit a party to rely upon a settlement release in general terms (i.e. releasing all future claims whether known or unknown etc.) if he knew that the other party had a claim and also knew that the other party was not aware that he had a claim.

⁴¹ Of the 12 Mediation Scheme settlement agreements, we are only aware of the settlement amounts for 6.

⁴² Claimants that entered into Network Transformation Conversion settlement agreements and remained a SPM would still be able to claim losses which were caused/incurred after the date on which they entered into a settlement agreement. We do not yet have the information needed to calculate the proportion of the claimed values that arose after the settlement agreements were concluded.

⁴³ Of the 135 Network Transformation settlement agreements, we are only aware of the settlement amounts for 115.

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8.5.1 We have identified 53 cases where the settlement payments made are greater than the value of the quantified claims made (excluding claims categorised as "other losses").

9. **Assistants To SPMs**

9.1 A number of Claimants are not SPMs. They fall into "other" categories of Claimant which can be broken down as follows:

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Type	Number
Assistants/Managers	28
Crown Office Employees	5
Franchisees	3
Temporary SPMs	13
Unknown	5
Total	54

9.2 The largest category of "other Claimants" is that of assistants/managers. These are individuals who were employed by the SPM concerned to undertake Post Office related work. In some cases, the SPMs delegated the day-to-day running of the branch to these assistants (the SPMs being largely absent).⁴⁴ In other cases, the SPM and assistant were a husband-and-wife team.⁴⁵

9.3 Such assistants have no direct contractual relationship with Post Office. Rather, Post Office contract with the SPMs who in turn contract with the assistants. SPMs were simply required to notify Post Office of any assistant's identity.

9.4 There are, however, a number of cases where Post Office has prosecuted assistants in respect of shortfalls arising in branch⁴⁶ and in some cases sought to make recoveries from them.⁴⁷

9.5 **Analysis**

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⁴⁴ See, for example, Damian Owen (claimant 128) who was employed as the branch manager by Nicholas Pritchard (who is not a Claimant in the GLO). Mr Owen was prosecuted and convicted for theft.

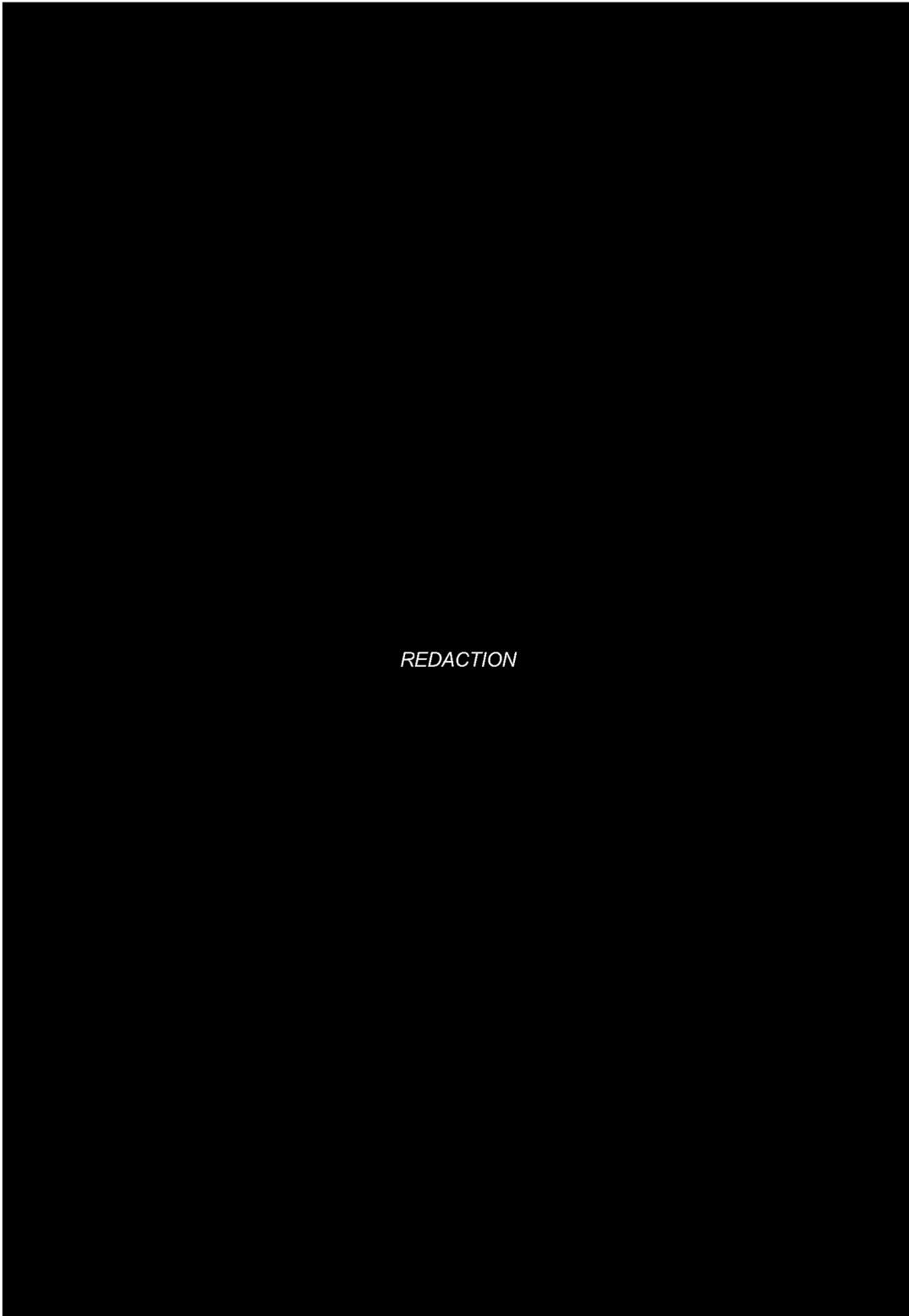
⁴⁵ See, for example, Moresby Parks branch where the branch assistant, Jason Turner (claimant 501) assisted the SPM, his wife, Kerry Turner (claimant 502).

⁴⁶ See, for example, Dawn O'Connell (claimant 402) who was employed as a branch assistant (the SPM is not a Claimant in the GLO). The Claimant was found guilty of false accounting and received a suspended sentence (12 months). Similarly, Barry Capon (claimant 237) who was employed as a branch assistant (the SPM is not a Claimant in the GLO) was convicted of false accounting following a guilty plea.

⁴⁷ See, for example, Susan Rudkin (claimant 444) who was employed as a branch assistant (her SPM was Michael Rudkin (claimant 156 in the GLO)). The Claimant pleaded guilty to false accounting and received a suspended sentence (18 months). Prior to the criminal trial, she claims that she reached an agreement with Post Office to repay the shortfalls.

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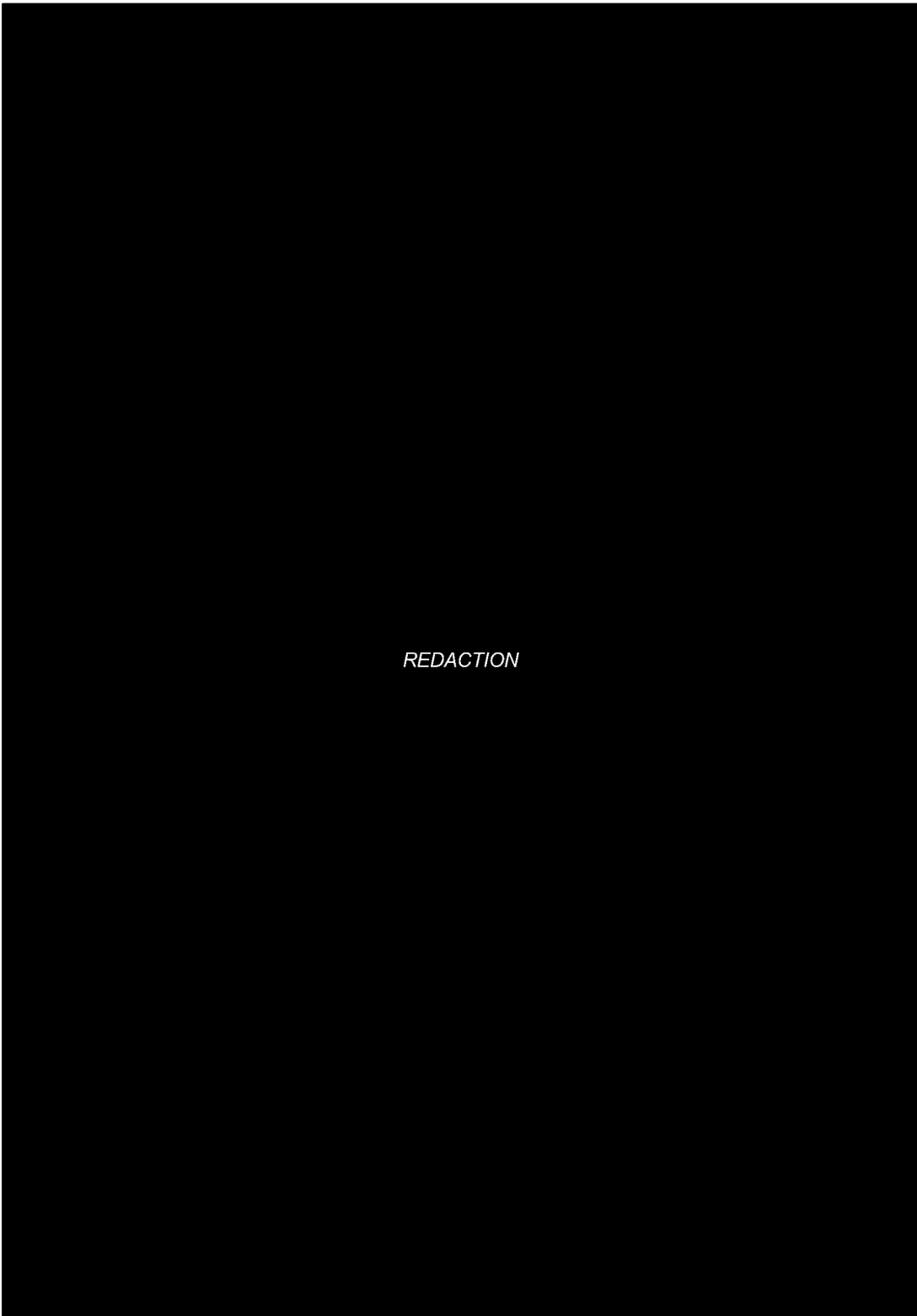
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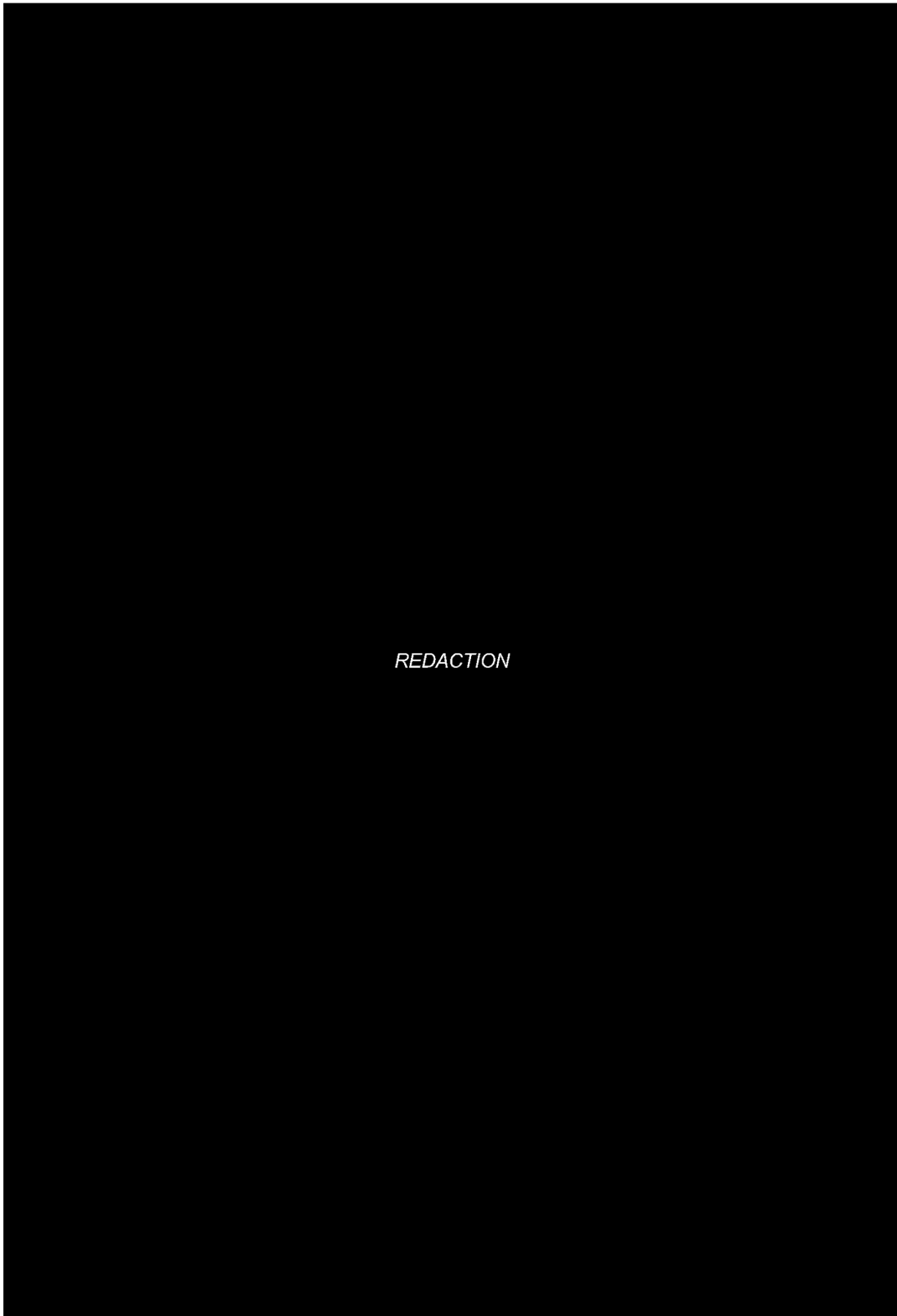
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	Quantified Claim Value	Assessed Value (Quantified Claims)	Total
Suspension pay	£3m	£1.6m	£1.6m



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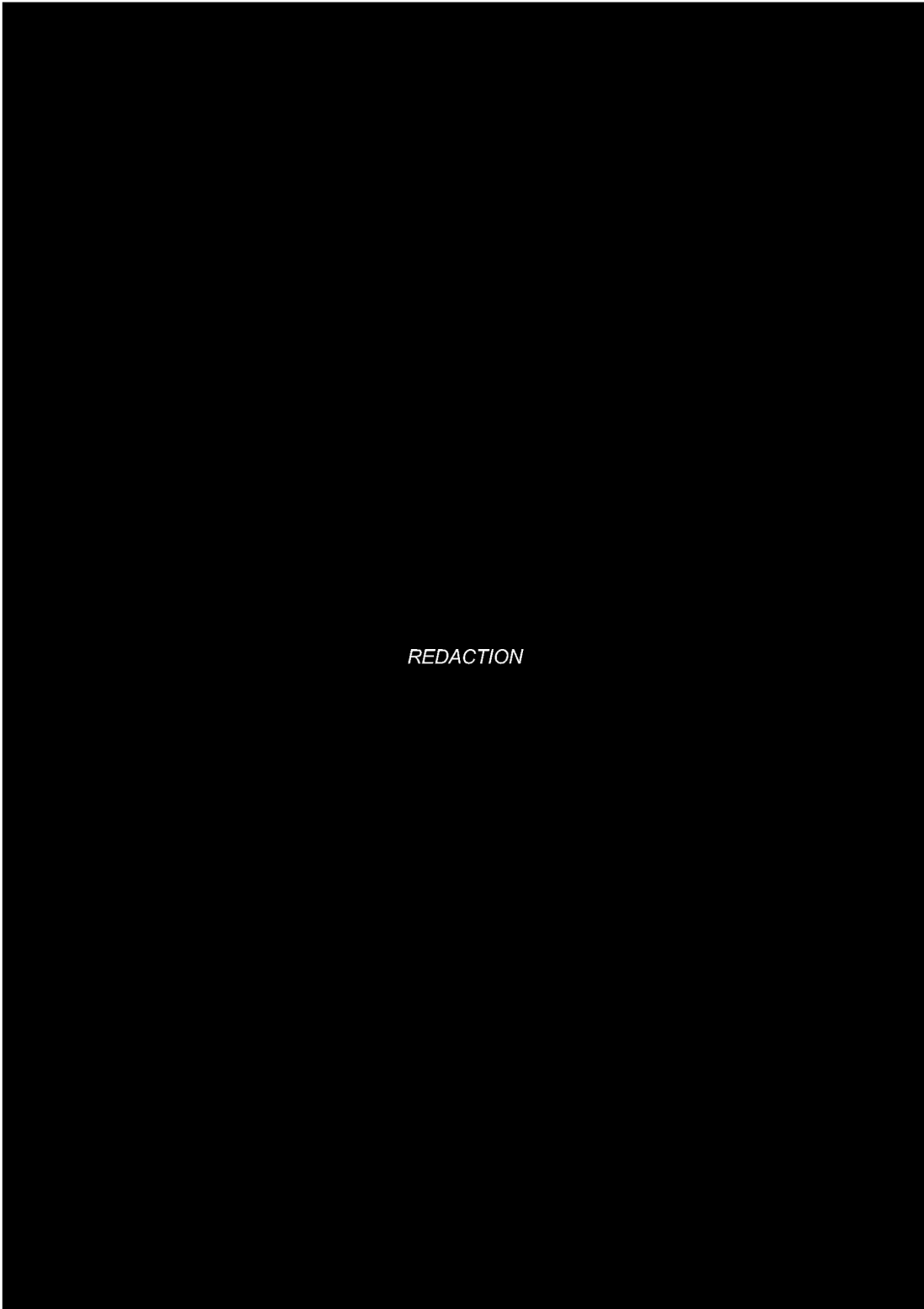
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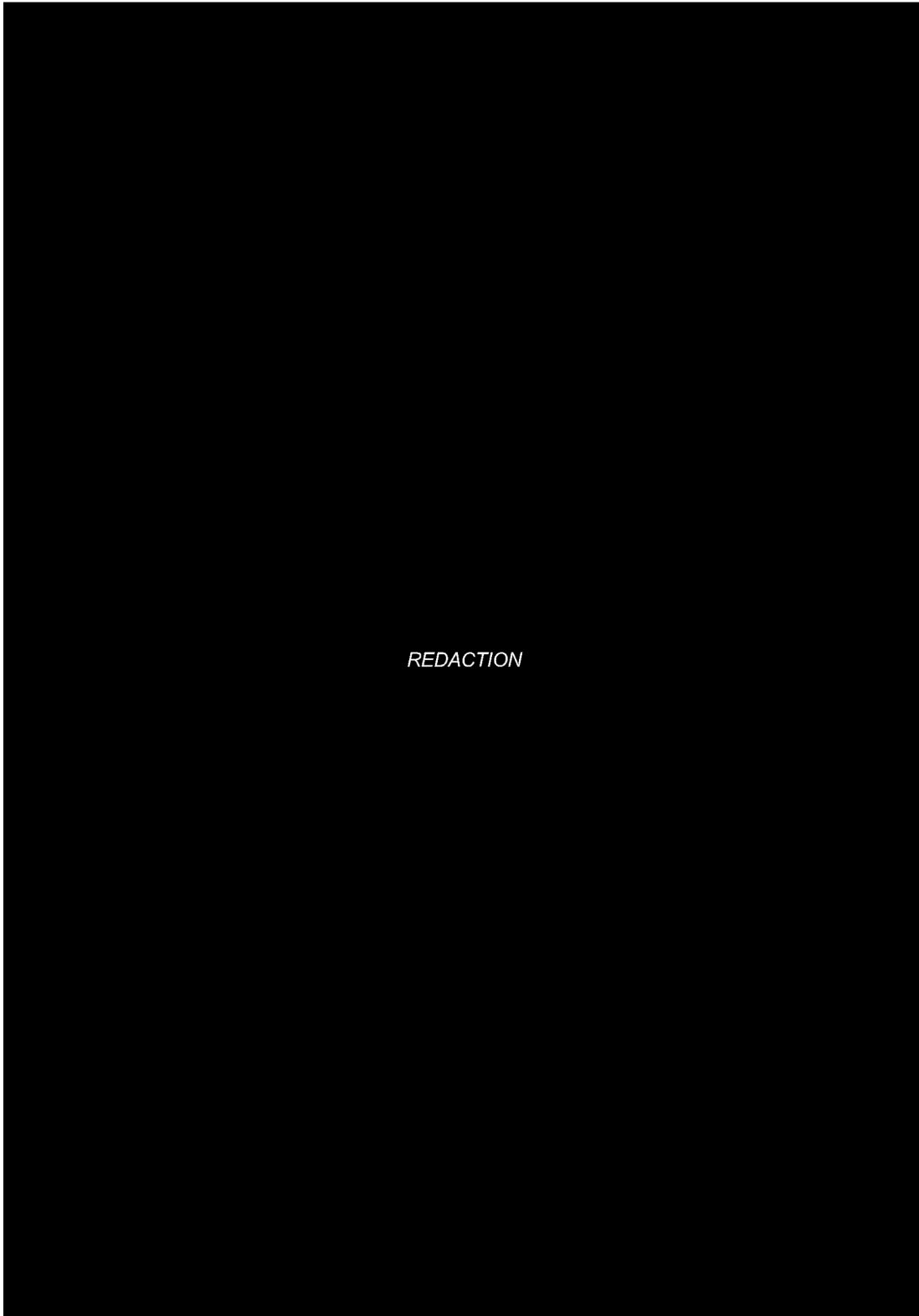
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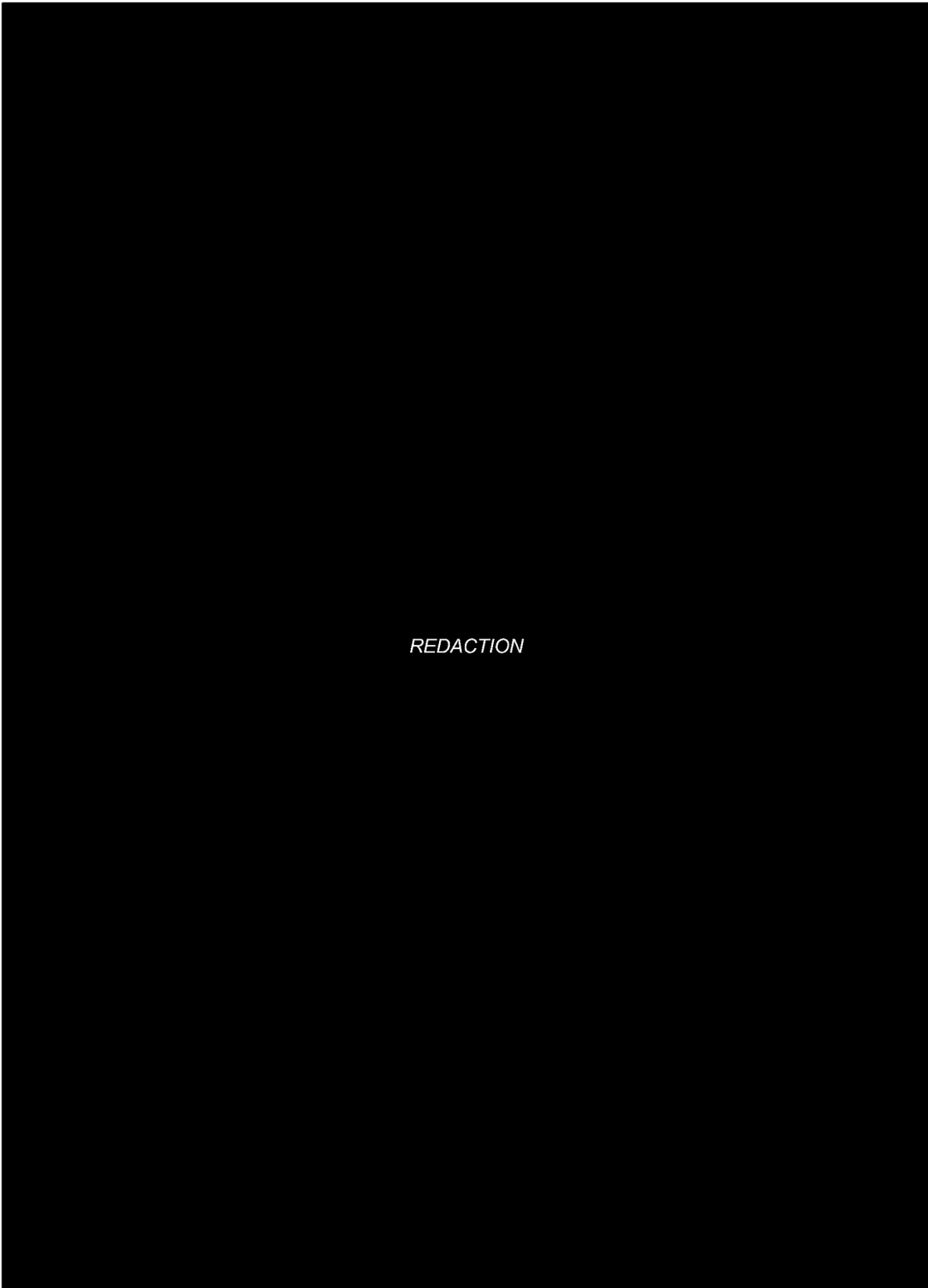
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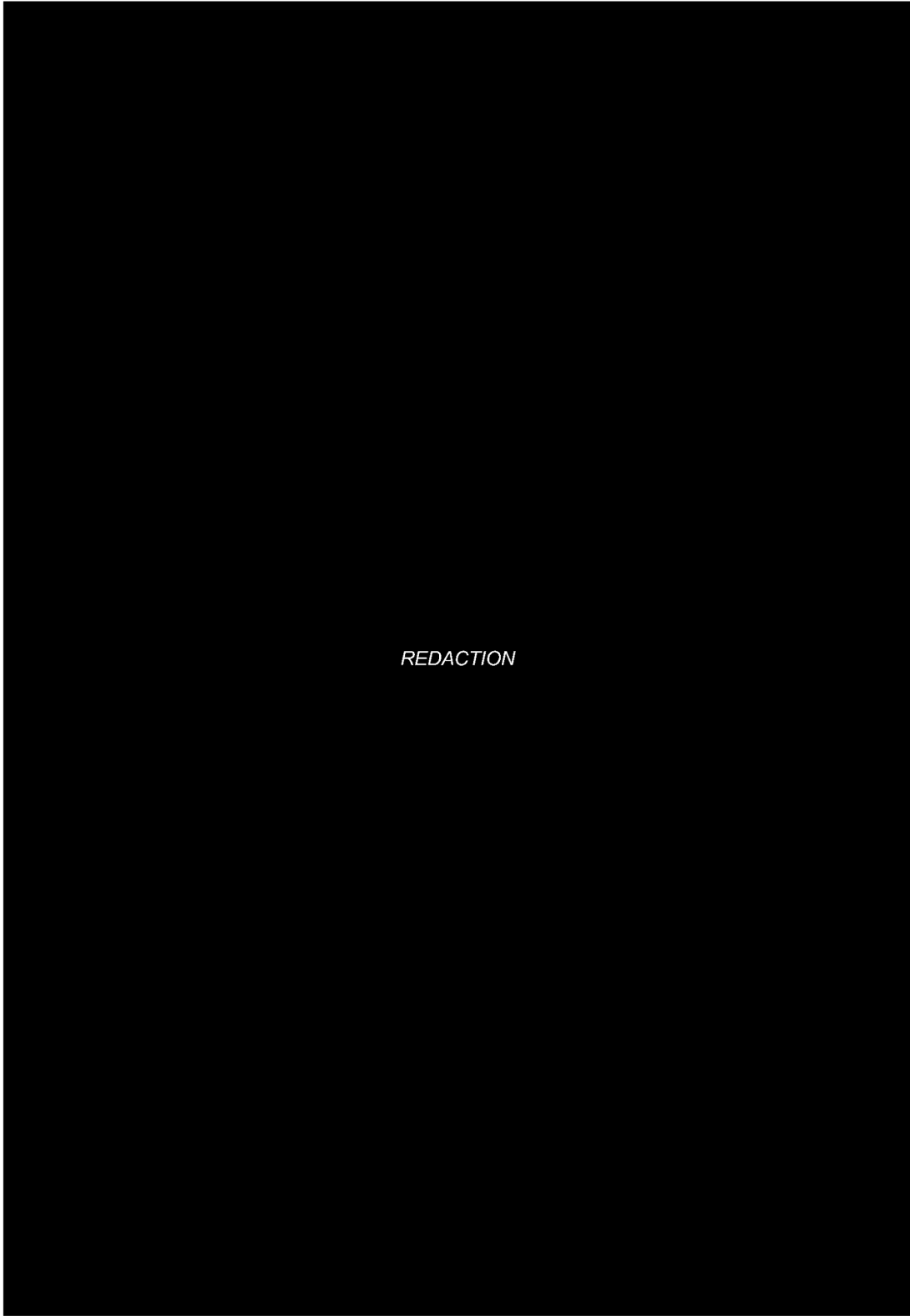
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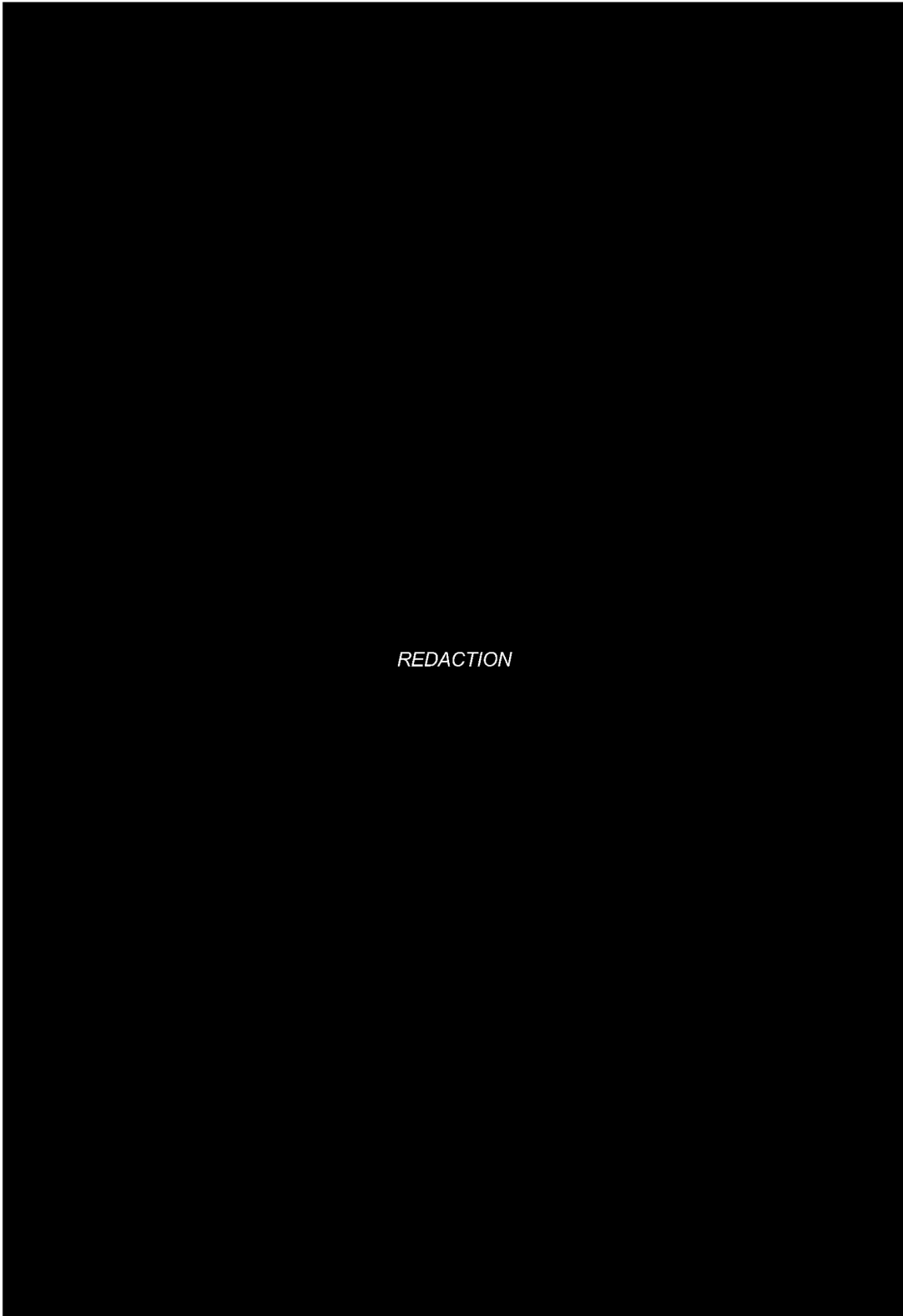
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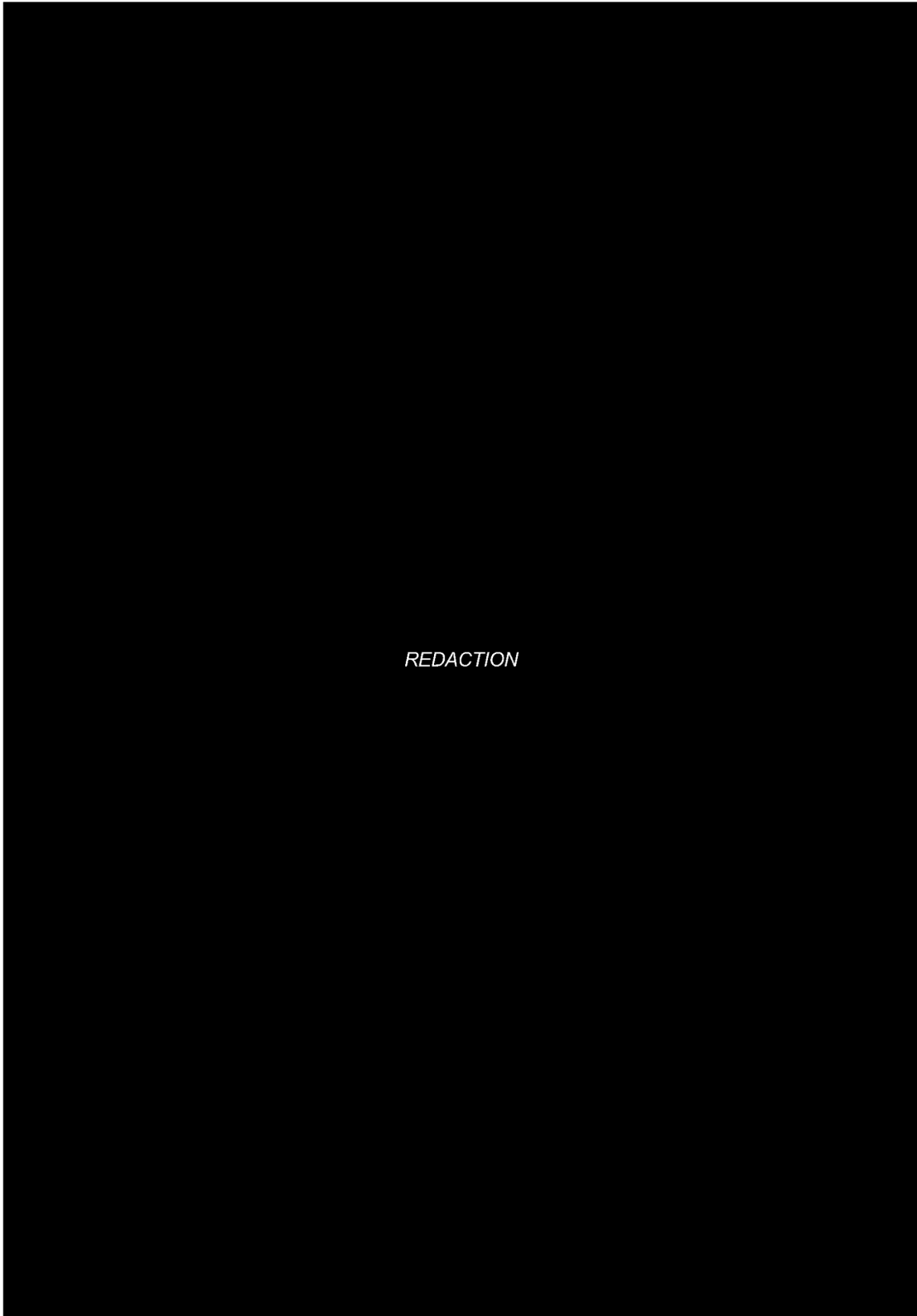
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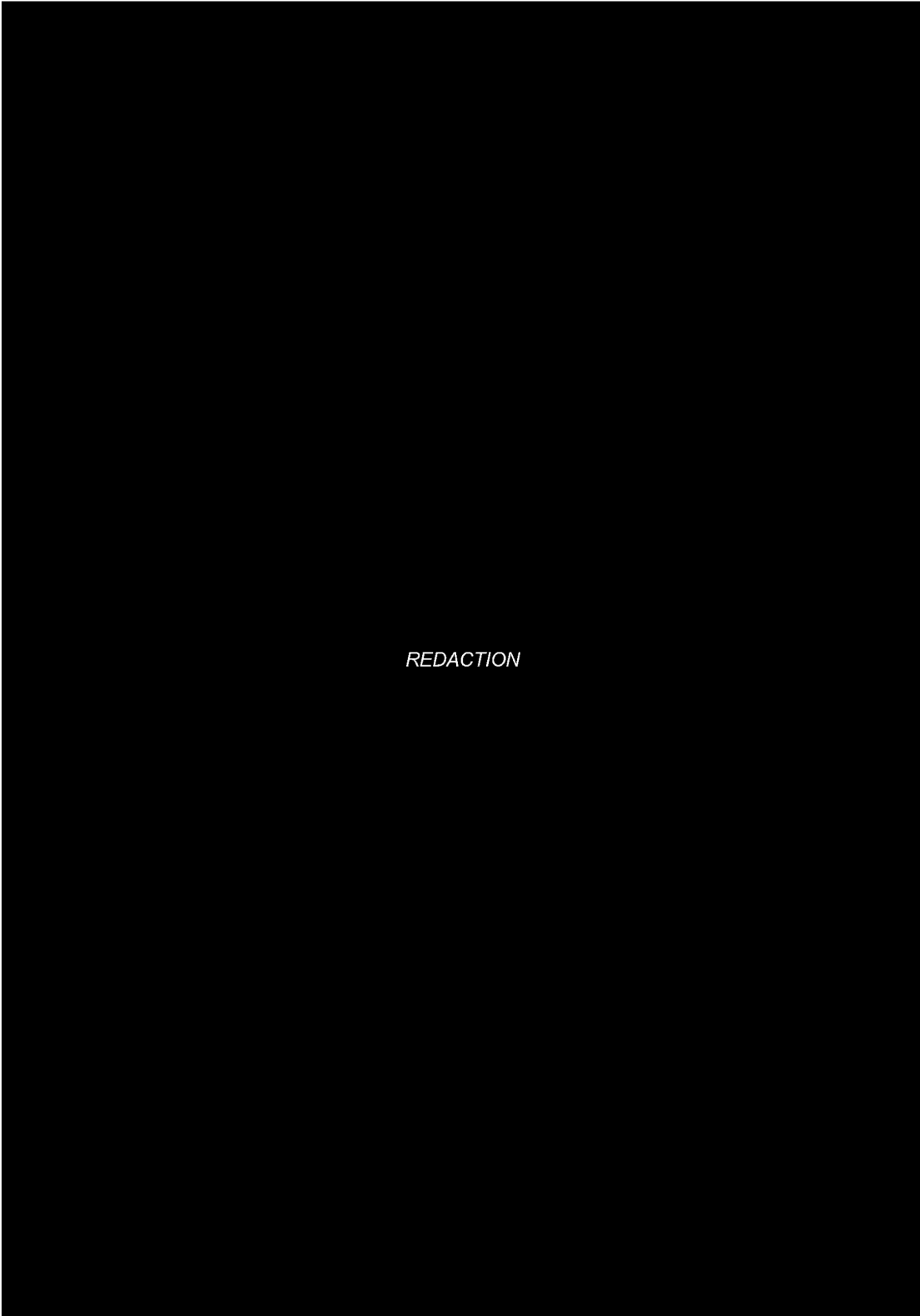
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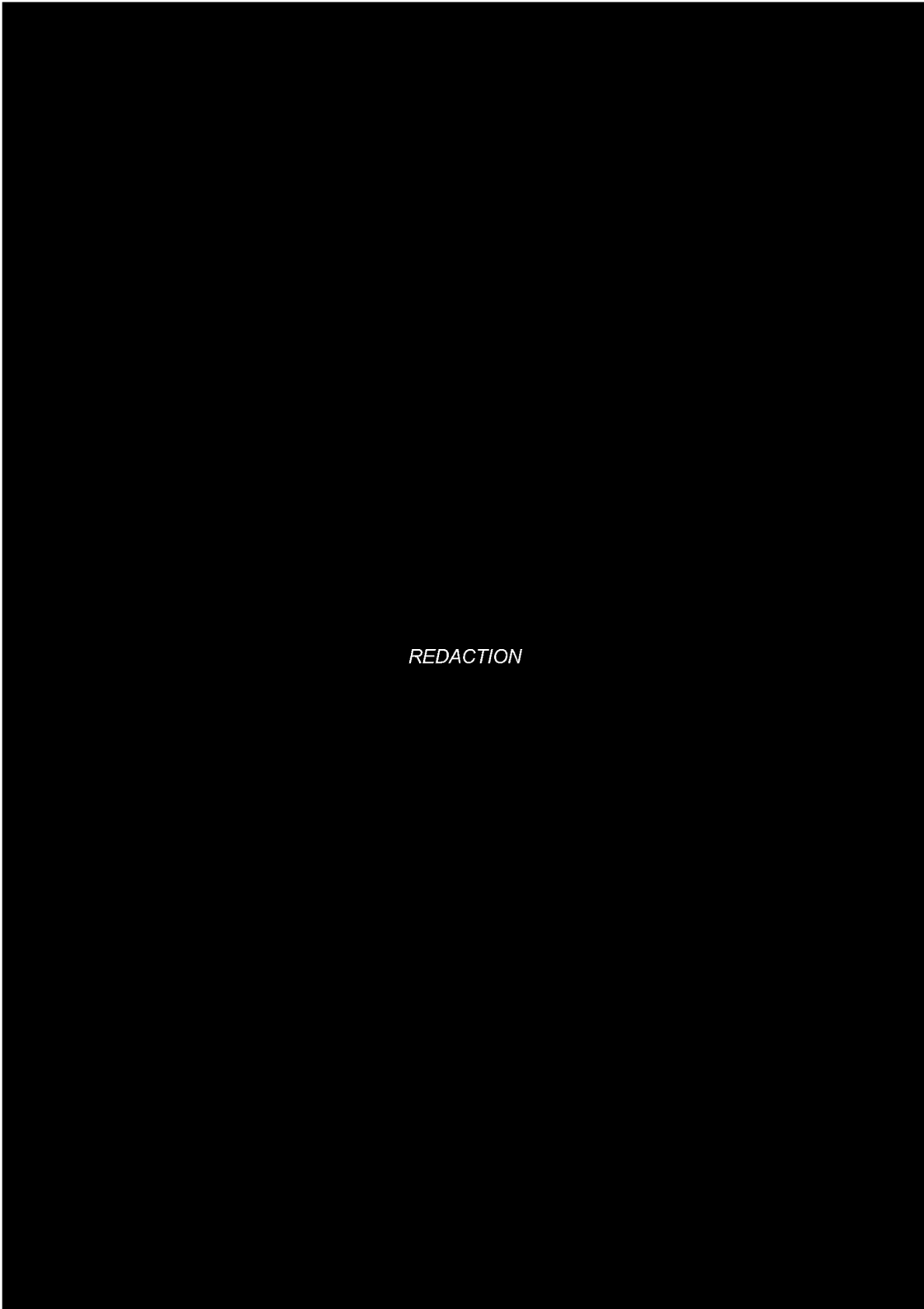
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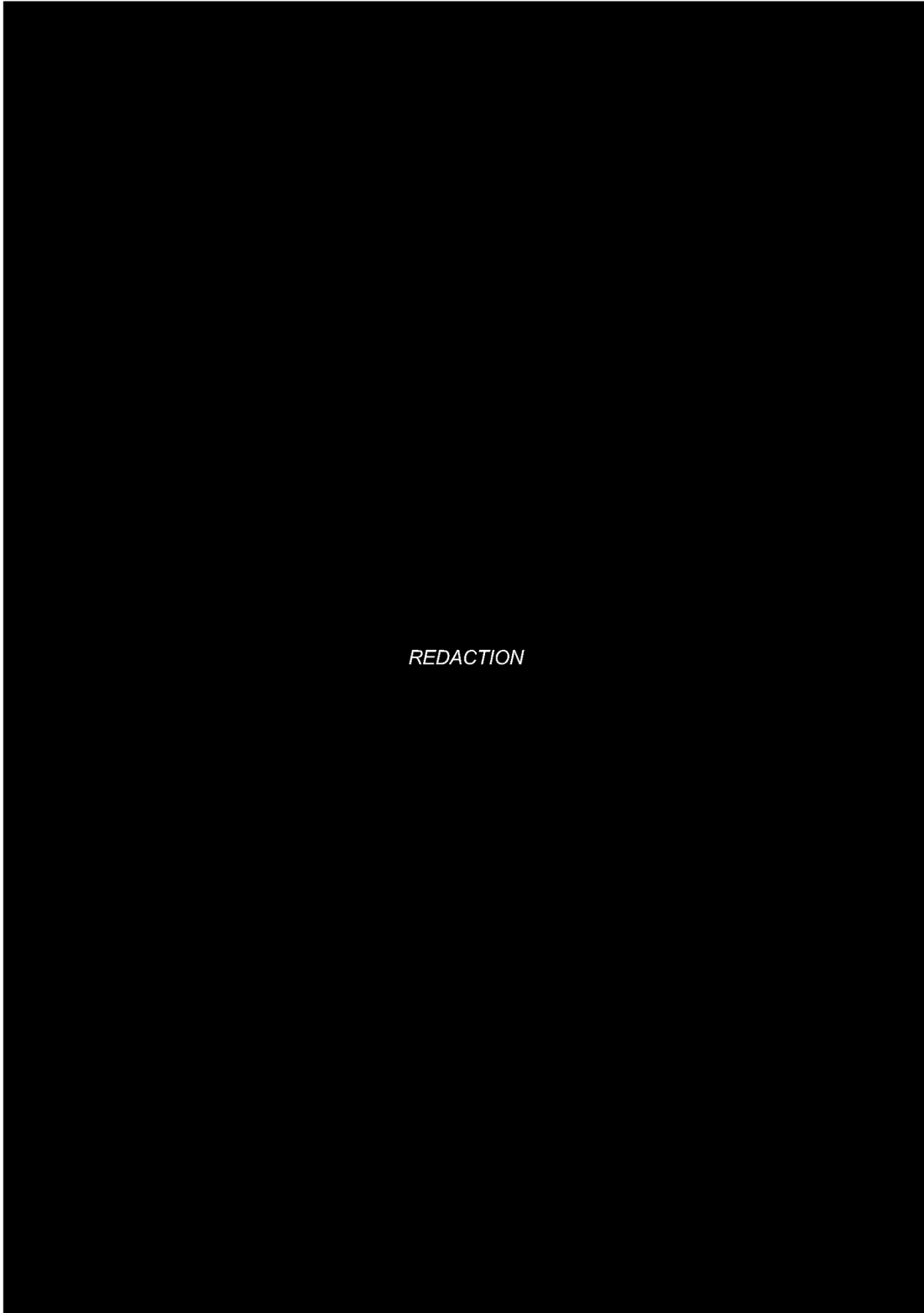
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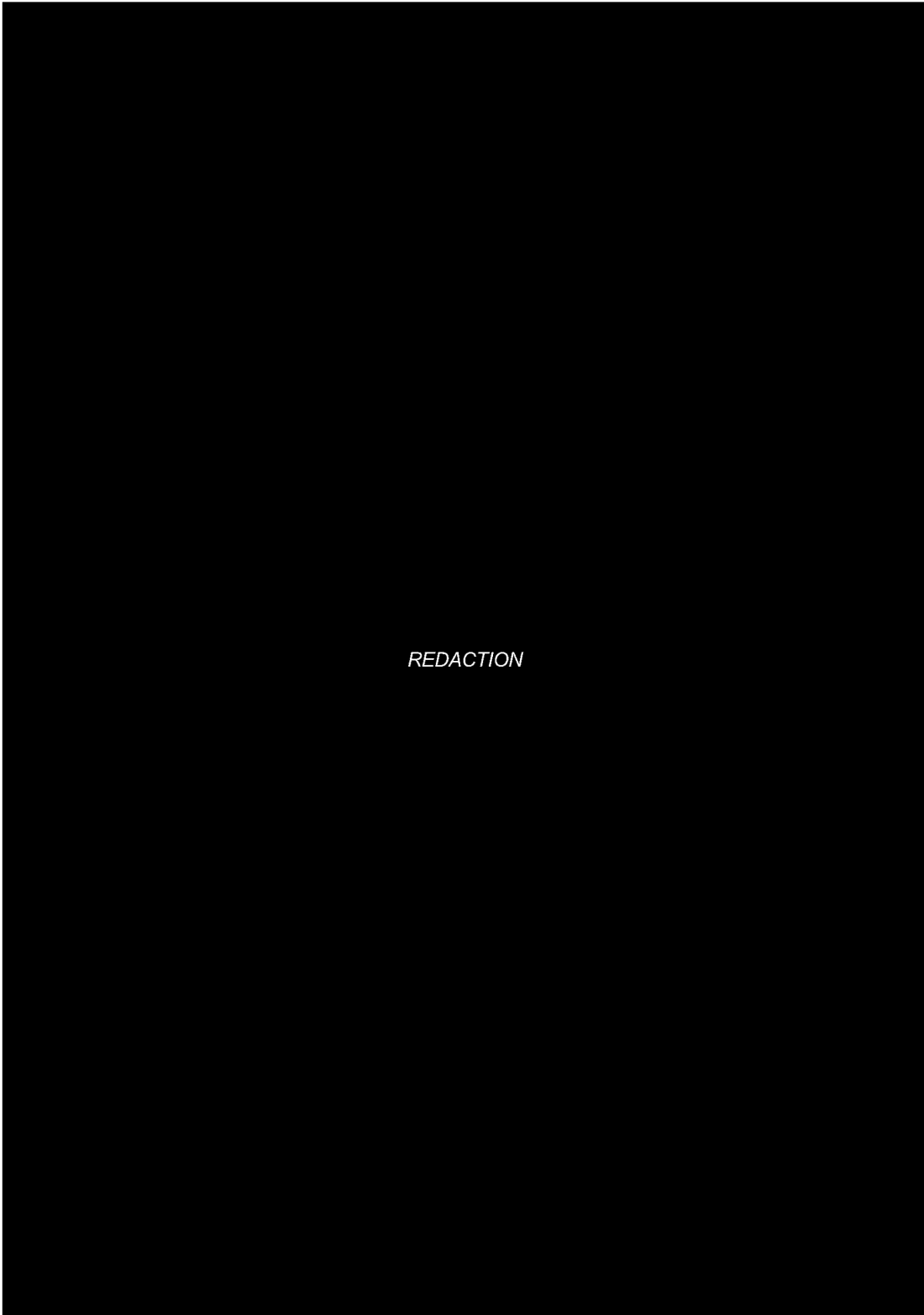
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	May 2019	November 2019	May 2020	December 2020
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Subtotal	£69.8m – £81.5m	£80.9m – £95.9m	£95.9m – £113.9m	£115.9m – £137.9m
Less £5m costs paid	£64.8m - £76.5m	£75.9m – £90.9m	£90.9m – £108.9m	£110.9m - £132.9m

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TOTAL	£70.3m – £104.3m	£81.4m – £118.7m	£96.4m - £136.7m	£116.4m – £160.7m

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Subtotal	£57.6m	£57.6m	£17.6m	£15.4m	£13.8m	£17m	£11.2m
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Total # 5	£205.6m	£63m- £109m	£26.5m - £72.5m	£22.1m- £57.3m	£21.5m- £61.1m	£25.6m- £69.8m	£16.1m- £42.5m
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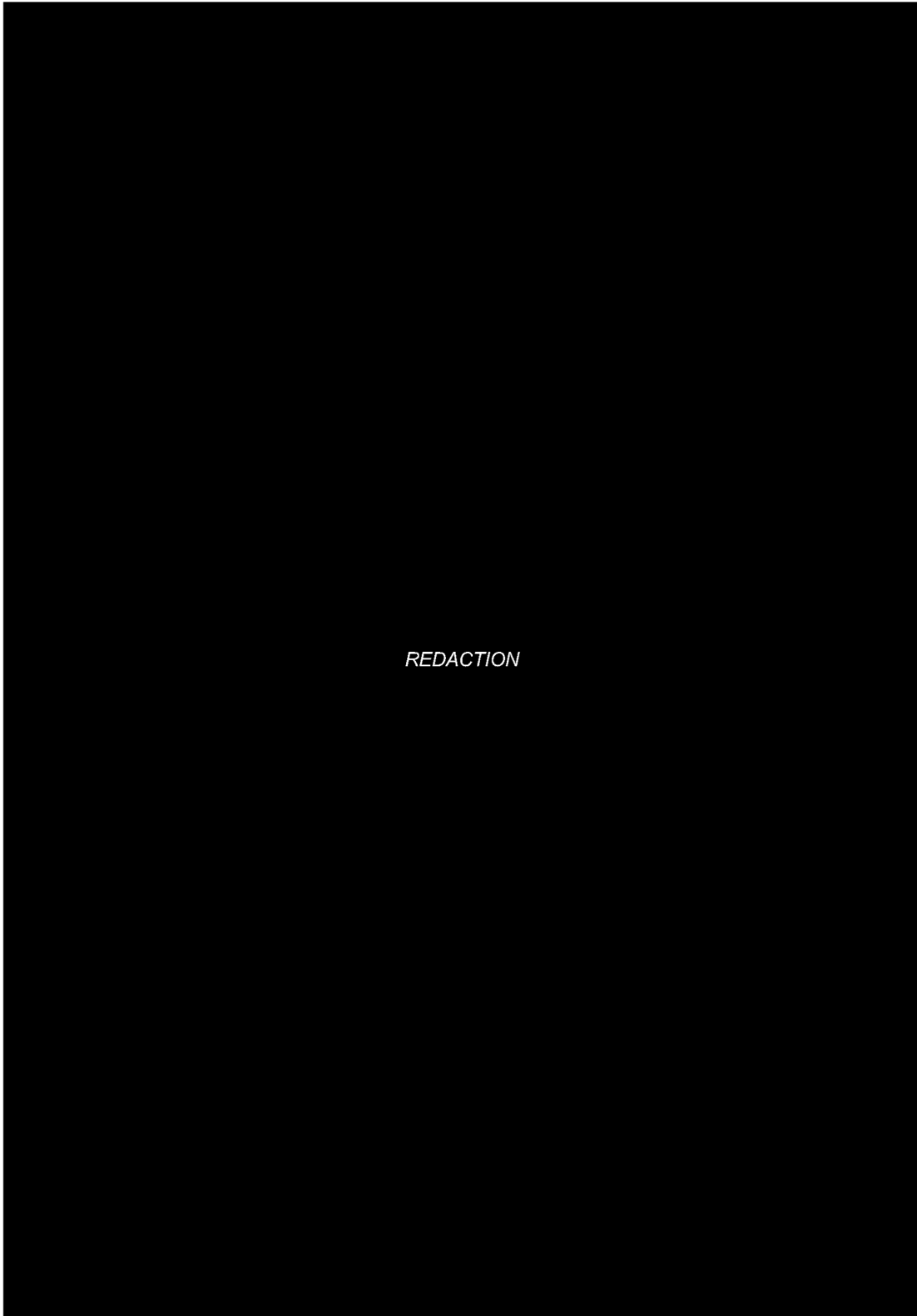
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- 27. **AUTHORISATIONS FOR THE PURPOSE OF MEDIATION**
- 27.1 If settlement at this level were contemplated, Post Office may need authority to proceed from its shareholder.
- 27.2 Under Post Office's Articles of Association, Post Office would need the approval of its shareholder to commit to transactions in the following circumstances:
 - 27.2.1 Transactions - Under Article 11.1(O) approval is required to enable Post Office to enter into a relevant transaction which (individually or as part of a series of related transactions) involves making a payment or incurring a liability in excess of £50m.
 - 27.2.2 Individual Borrowings - Under Article 11.1(S)(a)(i) Post Office requires approval to incur any borrowing which either (a) individually; or (b) taken with existing unapproved borrowings incurred in the same accounting period; or (c) as part of a series of borrowings to fund a single transaction in excess of £75m.
 - 27.2.3 Aggregate Borrowings - Under Article 11.1(S)(a)(iii) Post Office requires approval to incur any borrowing which, taken together with the aggregate principal amount outstanding of all money borrowed by the group from any source, exceeds the lesser of £2bn or 2.5 x the aggregate of the amount paid up on the issued share capital of the company and the total of the capital and revenue reserves of the group.

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- 27.2.4 Amendments to Strategic Plan - Under Article 11.1(K), approval is required if Post Office would need to make any amendments to an existing Strategic Plan to allow for settlement.
- 27.3 The upshot of the above provisions is that:
- 27.3.1 Shareholder approval would be required to approve the terms of any settlement which involves a commitment to pay over £50m. That is regardless of how the settlement is financed.
- 27.3.2 Whether Post Office would need shareholder approval to fund a settlement (at any level) will depend on whether Post Office can do so without incurring new borrowings.
- 27.4 As regards the latter, Mark Dixon has informed us that:
- 27.4.1 If Post Office could fund a settlement by utilising its existing borrowing facilities - principally the headroom under Post Office's £950m working capital facility - no borrowing approval would be required (we understand there is also a £50m short-term committed facility provided by BEIS (presently undrawn) which could potentially be used to bridge into other financing but use of this facility for the purpose of funding a settlement would need to be explored further).
- 27.4.2 Whether Post Office will be able to access sufficient funding from its existing facilities is something that would need to be judged at the time. In its budgeted figures, Post Office projected the security headroom under its working capital facility (the true constraining factor) to be £149m at the end of P7. This improves slightly through to the end of the year but does not go above £200m.
- 27.4.3 If Post Office would need to enter into new borrowings to fund a settlement (at any level), shareholder approval would be required under Article 11.1(S)(a)(iii). Any such borrowings would likely take the form of a market-rate loan from BEIS. As such, in addition to the approval required under the Articles, time would need to be factored in for putting any such facility in place.
- 27.5 The Articles make provision for a formal approvals process which requires the hand delivery of a written notice containing sufficient information for the shareholder to evaluate the matter being proposed. In the case of most approvals, the shareholder is required to respond within 10 days (but may ask for another 10 days). In respect of approvals sought under Article 11.1(S), the shareholder must respond within 28 days and no provision is made for an extension of that period. If no response from the shareholder is received, consent is deemed to have been given.
- 27.6 The Articles would, however, permit a streamlined process to be put in place by agreement (which would enable Post Office to receive the necessary approval at short notice and by email from a designated shareholder representative). Based on our preliminary discussions with Tom Cooper and Richard Watson, we understand that this may be a feasible way of proceeding.
28. **MEDIATION STRATEGY**
- 28.1 At mediation, it is very likely that the Claimants' settlement expectations will be driven by the size of their funding commitments and therefore be inflated. It will therefore be important to

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approach settlement negotiations strategically to ensure that Post Office is not driven to negotiating at levels which will later become unmanageable.

28.2 As we see it, there are both legal and practical considerations in play.

28.3 **Legal Considerations**

28.4 The Claimants' expectations will have been buoyed by their success in the Common Issues trial. They may also enter the mediation process off the back of success in the Horizon Issues trial. In those circumstances, we consider it will be key for Post Office to put forward a case and quantum theory that will genuinely cause the Claimants (and the mediator) to think twice about the viability of the claims.

28.5 One important way of doing so will be to demonstrate that, regardless of the success the Claimants have had in the trial(s), the claims cannot be worth the values that have been suggested. The recoverability analysis and interactive spreadsheet we have developed (as outlined in this note) already go a substantial way towards achieving this.

28.6 Post Office will also need to develop a thesis on why the Claimants are at risk that individual claims will fail. This must necessarily await the outcomes of the application for permission to appeal and the Horizon Issues trial. However, in the meantime, work is being done to analyse the merits of the individual claims with a view to:

28.6.1 identifying obviously bogus, factually flawed or exaggerated claims;

28.6.2 developing a thesis as to whether (and if so when) scenarios (arguably independent of alleged shortfalls (such as false accounting) may justify the summary termination of SPM contracts; and

28.6.3 exploring whether, in certain cases, Post Office is able to eliminate bug issues as the cause of shortfalls.

28.7 If Post Office knows the Claimant Group better than the Claimants, has identified good test cases which pose a future threat to the Claimants in the context of the court process and is able to raise issues on the individual Claimants at mediation which the Claimant Group does not have the knowledge to answer, its position will be materially improved. If, on the other hand, it is unable to advance a positive case, there is a real risk that the Claimants (and the solicitors and funders who benefit from the continued prosecution of the litigation) may conclude that they have a "free run" at Post Office which would justify the continued pursuit of the claims and the Claimant Group's unreasonable demands.

28.8 **Practical Considerations**

28.9 Practical considerations and negotiating strategy will also need to be managed carefully.

28.10 The Claimants' settlement expectations are likely to increase over time. This is a function of the funding multipliers in play which disproportionately inflate the impact of costs. This might suggest that it is preferable to make rapid strides at an early mediation in order to have the best chance of reaching settlement at an early stage.

28.11 We think this would be a mistake. The early offers made in settlement negotiations are almost always calculated to gauge the settlement expectations of the other side. Once Post Office has made an offer, that number will for practical purposes set the floor for further negotiations. If settlement is not then achieved at the first mediation, Post Office may find itself in an untenable position at a later stage by which time funding costs will have increased.

28.12 Notwithstanding that we consider settlement could be justified at a higher level, we would recommend that Post Office enter the mediation process with settlement authority at a relatively low upper limit – specifically one that is within the power of Post Office's Board to

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approve without shareholder support. We would recommend **£40m-45m**. That is for the following principal strategic reasons:

- 28.12.1 The Claimants will be aware of the £50m shareholder approval threshold to which Post Office is subject (because Post Office's Articles of Association are publicly available);
- 28.12.2 If the Claimants are aware that Post Office's figures have government support, they will (a) infer that Post Office is willing to spend in excess of £50m; and (b) likely proceed on the basis that a route exists for tapping into (potentially unlimited) government resources. That will set expectations that settlement is available at a value in excess of £50m, without any hard upper limit. In those circumstances, the Claimants will have no incentive to be realistic but, rather, a tangible incentive to explore how far they can get with attempts to drive settlement values upwards.
- 28.12.3 However, if Post Office can put forward a compelling case that the Claimants' claims are not worth more than (for example) £20m-£30m and is able to communicate, as a matter of fact, that it has no authority to negotiate at the Claimants' (likely inflated) numbers, it has a credible practical reason for declining to engage at unrealistic levels which might otherwise set the floor for any future discussions.
- 28.12.4 On this approach, a gulf may well develop between the parties. In these circumstances, it would be open to Post Office to indicate (perhaps quasi-confidentially to the mediator) that if a firm deal is available at acceptable levels, scope would exist for seeking to obtain government approval. However, because obtaining approval is a practical step involving government processes and senior people, the mediator is likely to be sympathetic to Post Office's position that any such request would need to be for a number that would close a deal (rather than as part of an incremental process as part of which the number could be driven upwards). By positioning things in this way, we would hope to force the Claimants' better numbers out onto the table at the first mediation.
- 28.12.5 Determining the point in the process at which it may be appropriate to make a (likely significant) financial jump in order to close a deal is a delicate matter. It will require an exercise of judgment and, probably, help from the mediator on the day.
- 28.12.6 If the Claimants' best proposal is not sufficiently realistic to warrant making a significant financial jump to close a deal, it will hopefully at least set more realistic parameters for future discussions.
- 28.13 A further reason for not seeking shareholder approval in advance of the mediation is the risk that the request (or even the numbers) could leak. A request for authorisation to commit to a transaction above a specified amount may not, of itself, be privileged. We note further that, under the Information-Sharing Protocol, Post Office's shareholder is entitled to reveal even privileged information in response to a Freedom of Information Act request (of which Alan Bates has made several) and this might place the government in an awkward position if a prior, formal request for authorisation is made. If the number for which authorisation is sought becomes known, that will effectively set the floor for any settlement discussions (and indeed the mere fact that a request for approval has been made will suggest that Post Office has access to government funding.¹¹⁶ If that happens, Claimants may seek to exert unwelcome pressure on government through a public lobbying campaign.
- 28.14 If, however, Post Office's shareholder is briefed in detail in advance of the mediation (but without formal authorisation being sought) and it becomes evident on the day that an

¹¹⁶ We understand that Jo Hamilton (claimant 69) has asked her MP in forthright terms whether the government will be supporting Post Office in the settlement of the GLO. Freeths has also asked in

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acceptable deal at a level requiring authorisation is available, then it is hoped that a structure could be put in place which would allow approval to be given in relatively short order.

28.15 Potential Issues

28.16 One cannot predict all the issues and sticking points which might emerge in the course of mediation or settlement, but a number of possibilities have occurred to us:

28.16.1 A settlement that does not include substantial payments for convicted Claimants may be considered a deal-breaker. That is not just because of the likely strength of feeling associated with convicted Claimants but also because carving this cohort out for settlement purposes may leave its members vulnerable from a funding perspective - continuing the litigation with a smaller group of Claimants is less economical because costs would then need to be spread across a smaller group. Our suggested approach for this cohort is set out above.

28.16.2 There may also be a group of Claimants who demand a public apology. Post Office will need to consider how far it is willing and able to go without risking fresh claims or undermining its current operational strategy. Care would also need to be taken that any statement made would not, of itself, materially influence the CCRC's or Criminal Appeal Courts' assessment of the criminal cases.

28.16.3 Post Office might also wish to consider making different settlement offers to different cohorts of Claimants to reflect the relative merits of their respective claims. If those offers are good for some but poor for others, a conflict within the Claimant Group might emerge. Creating difficulties for the Claimant Group might, of itself, be considered an attractive strategy. However, Post Office should also bear in mind that being divisive may not be in its interests if doing so would ultimately make settlement more difficult to achieve.

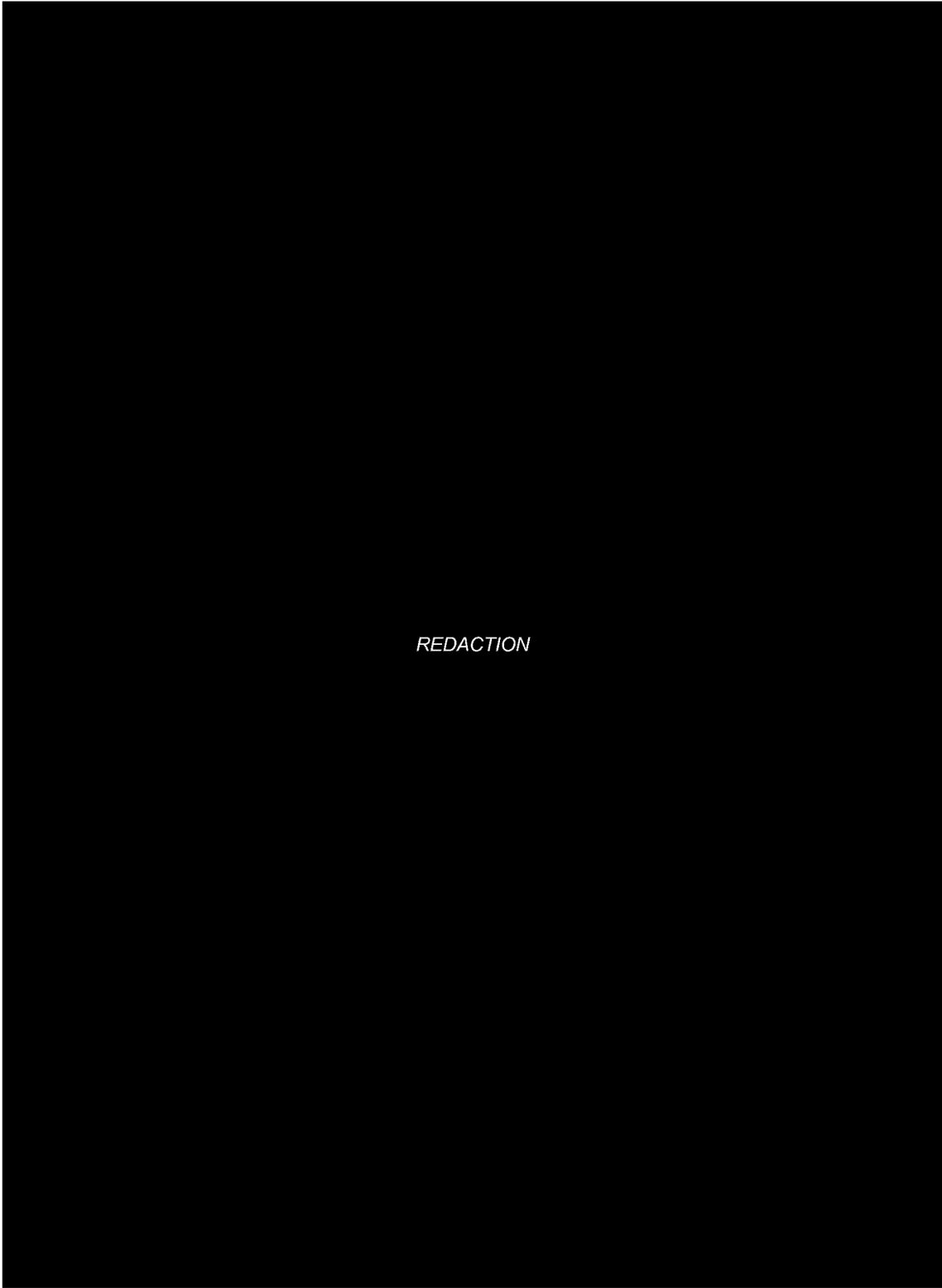
28.16.4 If a settlement is available with the majority of the class, but a "hard core" group remains, Post Office will need to consider whether a settlement with the majority alone would advance its interests. To continue the proceedings with a small group would be disadvantageous for the remaining Claimants as they will incur disproportionately larger funding costs per Claimant. There is, however, a possible risk that this might encourage those who remain in the litigation to co-opt further Claimants in order to spread the costs (and do so before the expiry of any running limitation period). In that regard, we are conscious of the rumours that Freeths has other Claimants waiting in the wings. Post Office would also need to bear in mind that, if the litigation proceeds - even with a small group of Claimants - it will need to continue defending the litigation at essentially the same cost, and possibly greater reputational risk if the Claimants who remain are those with the better claims. One way to mitigate these risks would be to make any settlement offer conditional upon it being accepted by the entire GLO class (convicted Claimants excepted).

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correspondence for WBD to identify the government representatives who will be attending the proposed mediation.

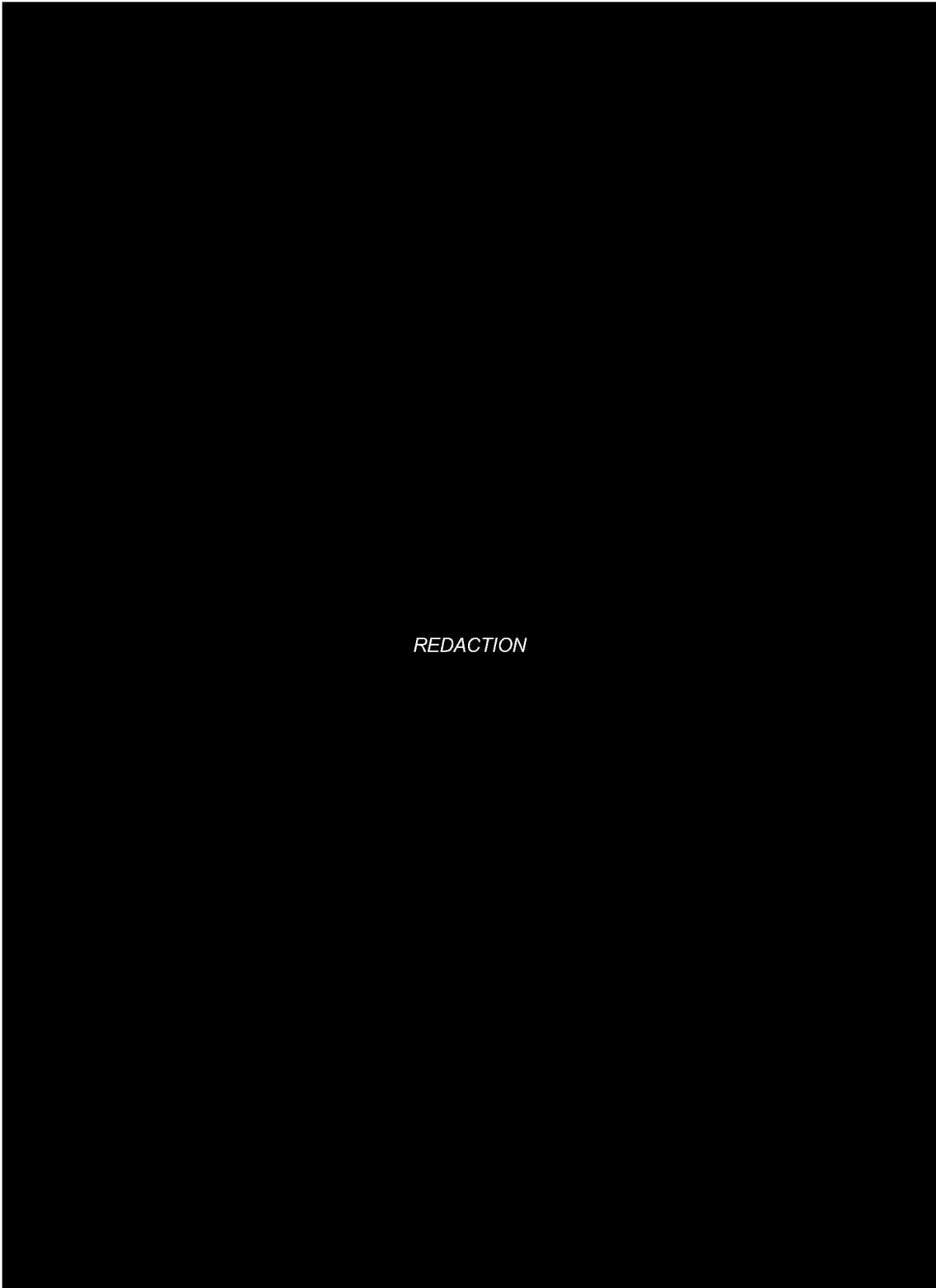
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30. **SETTLEMENT POST-MEDIATION**

- 30.1 It is usual for the mediator to keep in touch with the parties following an unsuccessful mediation and continue his efforts to achieve a settlement further down the line. There is a strong possibility that this is how any settlement will ultimately be achieved in this case.
- 30.2 It would be helpful if the litigation strategy could be made to work to maximise pressure on the Claimant Group at these times. If, in the litigation, the Claimants were facing a trial on "difficult" individual test cases (rather than a series of issues in principle which will not help to change the narrative or which the Claimants are likely to win) that may encourage settlement. It will also improve Post Office's negotiating position if it has some costs protection in place.



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ANNEXURE 1

Criminal case summaries¹²⁵

<u>Tahir Mahmood (claimant 559)</u> ¹²⁶
<p>Convicted of theft (1 offence) following a guilty plea prior to trial. Received a suspended prison sentence (126 days) and an unpaid work requirement (150 hours). Mr Mahmood was sentenced on 16 November 2011.</p> <p>In interview, Mr Mahmood admitted to taking Post Office funds and fraudulently covering up losses. It does not appear that Mr Mahmood raised issues relating to the Horizon system.</p>
<u>Damian Owen (claimant 128)</u> ¹²⁷
<p>Convicted of theft (1 offence) following a trial. Received an immediate prison sentence (8 months). He was sentenced on 7 December 2011.</p> <p>Mr Owen made vague and generalised attacks on the Horizon system at various stages.</p> <p>Mr Owen is a CCRC applicant.</p>
<u>Della Robinson (claimant 154)</u> ¹²⁸
<p>Convicted of false accounting (1 offence) following a guilty plea prior to trial. Received an unpaid work requirement (180 hours). She was sentenced on 18 January 2013.</p> <p>During an initial interview, Ms Robinson admitted to false accounting to hide unexplained losses. She could not explain these losses but suggested error or theft by staff. During the Committal Hearing, however, Ms Robinson's counsel raised issues relating to the reliability of Horizon Online. This matter was not pursued. Ms Robinson did not advance a Basis of Plea when she pleaded guilty to false accounting.</p> <p>Ms Robinson is a CCRC applicant.</p>
<u>Seema Misra (claimant 119)</u> ¹²⁹
<p>Convicted of theft (1 offence) and false accounting (6 offences) following a trial. Ms Misra pleaded not guilty to theft but guilty to false accounting. Received an immediate prison sentence (15 months for theft and 6 terms of 6 months for the 6 offences of false accounting. These terms were served concurrently, however). She was sentenced on 11 November 2010.</p> <p>In her first Defence statement, she stated the entire losses were caused by employees stealing from her in 2006. In the statement, Ms Misra did not raise any issues relating to the Horizon system. Following a change of Ms Misra's solicitors, she partially resiled from the allegations made in her first Defence statement and instead asserted that the Horizon system was at fault. She also stated her training was deficient. Similarly, during the trial, issues of Horizon's fallibility and issues</p>

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¹²⁵ The summaries are intended to give a high level overview. The information where indicated is drawn from Sift reviews conducted by Cartwright King and Brian Altman QC's advices. The underlying case files have not been reviewed.

¹²⁶ Source: Sift report (24 September 2013)

¹²⁷ Source: Sift report (19 November 2013)

¹²⁸ Source: Sift report (27 September 2013)

¹²⁹ Source: Sift review (22 January 2014) and Brian Altman QC's advice of 26 July 2016

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<p>relating to training and support were fully aired. She accepted that she had changed her position after seeing press articles concerning alleged Horizon failures.</p> <p>Ms Misra is a CCRC applicant.</p>
<p><u>Grant Allen (claimant 205)</u>¹³⁰</p> <p>Convicted of fraud by misrepresentation (1 offence) following a guilty plea. Received an unpaid work requirement (200 hours). He was sentenced on 24 January 2013.</p> <p>Throughout, Mr Allen sought to rely in his defence on alleged failings of the Horizon system (specifically a non-polling incident) coupled with a lack of business support. His solicitors also sought disclosure of "the independent review of the Horizon system".</p>
<p><u>Lynette Hutchings (claimant 80)</u>¹³¹</p> <p>Convicted of false accounting (1 offence) following a guilty plea. Received an unpaid work requirement (120 hours). She was sentenced on 24 August 2012.</p> <p>Ms Hutchings pleaded guilty on the basis of <i>R v Eden</i> (i.e. putting off the day when she had to deal with the muddle) rather than that she took/intended to take the money. Ms Hutchings also stated that ever since her branch migrated to the Horizon system balances were wrong. She also made reference to some difficulties potentially linked to Horizon (e.g. the cursor sticking and unit recalibration issues).</p> <p>Ms Hutchings is a CCRC applicant.</p>
<p><u>GRO</u></p> <p>Convicted of fraud by abuse of her position (1 offence) following a trial. <u>GRO</u> pleaded not guilty. Received a suspended sentence (12 months) and an unpaid work requirement (300 hours). She was convicted on 26 June 2013. It is not clear if she was sentenced immediately following the jury's guilty verdict.</p> <p>It does not appear she suggested that the Horizon system was at fault.</p>
<p><u>Kanagasundaram Prince (claimant 143)</u>¹³³</p> <p>Convicted of fraud by false representation (1 offence) following a guilty plea. Received <i>inter alia</i> a suspended sentence (12 months) and an unpaid work requirement (200 hours). He was sentenced on 15 June 2012. It does not appear he suggested that the Horizon system was at fault.</p> <p>Mr Prince is a CCRC applicant.</p>
<p><u>Julie Cleife (claimant 249)</u>¹³⁴</p>

¹³⁰ Source: Sift review (16 July 2013)

¹³¹ Source: Sift review (19 July 2013)

¹³² **GRO**

¹³³ Source: Sift review (27 November 2013)

¹³⁴ Source: Sift review (19 November 2013)

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<p>Convicted of fraud by false representation (1 offence). Received a suspended sentence (12 months) and an unpaid work requirement (100 hours) following a guilty plea. It does not appear she suggested that the Horizon system was at fault. Ms Cleife admitted to allowing her children to withdraw money from her branch till and to forgetting to process transactions.</p>
<p><u>Jo Hamilton (claimant 69)</u>¹³⁵</p>
<p>Convicted of false accounting (14 offences) following a guilty plea on all counts. Ms Hamilton was also charged with theft (1 count) which was dropped on condition of the repayment of the monies. Received a supervision order (12 months). Ms Hamilton was sentenced on 4 February 2008.</p> <p>Ms Hamilton presented a statement during interview stating she had received inadequate training, had made calls to the Helpline and that Post Office's systems were "shambolic". It is unclear whether she specifically blamed Horizon for the losses. The Prosecution, however, suspected that Ms Hamilton would raise a defence that the Post Office's system/lack of training caused her to become muddled which in turn resulted in the false accounting. The Prosecution appear to have been of the view that any such claims should be refuted.</p> <p>Ms Hamilton is a CCRC applicant.</p>
<p><u>Julian Wilson (claimant 195)</u>¹³⁶</p>
<p>Convicted of fraud by abuse of position (2 offences) following a guilty plea. Mr Wilson was also charged with false accounting (3 counts) which were not pursued but ordered to lie on file. Received an unpaid work requirement (200 hours). He was sentenced on 3 August 2009.</p> <p>It does not appear that he suggested that the Horizon system was at fault.</p> <p>Mr Wilson is a CCRC applicant.</p>
<p><u>Allison Henderson (claimant 73)</u>¹³⁷</p>
<p>Convicted of false accounting (1 offence) on the basis of a guilty plea. Ms Henderson was also charged with theft (1 count) but a not guilty verdict was entered as the Prosecution offered no evidence on this count. Received an unpaid work requirement (200 hours). She was sentenced on 15 December 2010.</p> <p>An amended Defence statement pointed to a malfunction of the Horizon system as being a possible cause of the deficit. Ms Henderson did not admit to false accounting or any dishonesty during her interview nor in her Defence statement. The guilty plea only came after a Goodyear indication that she would not receive a custodial sentence (Cartwright King note that it is difficult to rule out a pragmatic decision to avoid an immediate custodial sentence).</p> <p>Ms Henderson is a CCRC applicant.</p>

¹³⁵ Source: Brian Altman QC's Advice of 14 April 2019 at paras [51] to [52] and Brian Altman QC's Advice of 26 July 2016 at paras [57] to [108].

¹³⁶ Source: Brian Altman QC's Advice of 14 April 2019 at paras [55] to [56] and Brian Altman QC's Advice of 26 July 2016 at paras [138] to [150].

¹³⁷ Source: Sift report (2 September 2014), Brian Altman QC's Advice of 14 April 2019 at paras [62] to [64] and Brian Altman QC's Advice of 26 July 2016 at paras [183] to [202]. Advice of 26 July 2016 at paras [183] to [202].

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<p>Jacqueline McDonald (claimant 377)¹³⁸</p> <p>Convicted of theft (1 offence) and false accounting (6 offences) on the basis of guilty pleas. Received 18 months imprisonment on each count to be served concurrently. She was sentenced on 21 January 2010.</p> <p>In interview, Ms McDonald admitted to entering false amounts into the Horizon system to cover up losses that she could not explain. Ms McDonald also raised issues relating to the reliability of the Horizon system in interview and the Defence commissioned an expert to investigate the case. There was a direct attack on the figures produced from the audit, a direct challenge to the Horizon system and criticism of the help available.</p> <p>Ms McDonald is a CCRC applicant.</p>
<p>Peter Holmes (personal representative is claimant 550)¹³⁹</p> <p>Initially charged with theft (1 count) and later charged with false accounting (1 count). No evidence was offered for the charge of theft. Convicted of false accounting (1 offence) on the basis of a guilty plea. Received a home detention curfew order (3 months). He was sentenced in January 2010.</p> <p>Mr Holmes claimed that he had no idea as to how the shortage in the audit occurred and that Horizon had let him down/had been faulty in 2008. He did accept that he had falsified documents to cover up discrepancies but said this was only because he thought that error notices would be generated and that the money was not actually missing.</p> <p>Mr Holmes's case is being reviewed by the CCRC.</p>
<p>Nicholas Clark (claimant 248)¹⁴⁰</p> <p>Convicted of false accounting (7 offences). Mr Clark was also charged with theft (1 count) but this was not pursued following his guilty pleas to false accounting. Received a suspended sentence (6 months) and an unpaid work requirement (220 hours). He was sentenced on 24 February 2010.</p> <p>It does not appear he suggested that the Horizon system was at fault (there may be an implied suggestion that the Horizon system itself generated the losses). However, there is ample material independent of Horizon to suggest that Mr Clark had taken the funds for his own use. There is an admission in interview, for example, that Mr Clark used the funds to pay employees.</p>
<p>Kashmir Kaur Gill (claimant 351)¹⁴¹</p> <p>Convicted of false accounting (2 offences). Ms Gill was also charged with theft (1 count). Ms Gill pleaded guilty to false accounting. She was sentenced on 12 April 2010. Her sentence is not stated.</p> <p>In interview, she stated that she had mistakenly placed a remittance pouch into a mail bag, thereby losing the cash, and falsely declared more money to ensure the accounts balanced. It does not appear she suggested that the Horizon system was at fault (there is reference to an ill-defined ATM problem but Cartwright King suggests that this is not an Horizon issue).</p>

¹³⁸ Source: Sift review (29 April 2014) and Brian Altman QC's Advice of 26 July 2016 at paras [30] to [56].
¹³⁹ Source: Sift review (3 September 2014) and Brian Altman QC's Advice of 26 July 2016 at paras [151] to [165].
¹⁴⁰ Source: Sift report (18 March 2014)
¹⁴¹ Source: Sift report (5 June 2014)

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Susan Rudkin (claimant 444)¹⁴²	
<p>Convicted of theft (1 offence) following a guilty plea. She pleaded guilty on 23 March 2009. It is unclear when she was sentenced.</p> <p>She admitted in interview that she had inflated cash figures and falsified branch trading statements; that she had "borrowed" money from Post Office but had not been able to pay it back; and she had taken cash from Post Office to pay it into a business account (the money was used to pay for shop, wage and household bills). The case predates Horizon online.</p> <p>Ms Rudkin is a CCRC applicant.</p>	
GRO	
<p>Convicted of theft (4 offences) following a full trial where the jury delivered an unanimous guilty verdict. He had pleaded not guilty to all counts. GRO was sentenced to 3 years imprisonment on 3 February 2009.</p> <p>He made a written admission to auditors during the audit that he had stolen the money (he unsuccessfully sought to argue against the admissibility of his written admissions to the auditors at trial). His first Defence statement directly questioned the branch's electricity system. He also instructed a forensic accountant to examine the financial paperwork. In trial GRO gave evidence that he was following Post Office's instructions that the money in the pouches should be "reversed back" for insurance purposes (Cartwright King note that these comments appear absurd).</p>	
GRO	
<p>Convicted of defalcation (1 offence) following an admission of guilt. He was sentenced on 27 November 2009.</p> <p>GRO alleges that intruders stole the bulk of the deficiency. This is not an Horizon case.</p>	
Gillian Howard (claimant 77)¹⁴⁵	
<p>Convicted of fraud (1 offence) following a guilty plea. Ms Howard received a community order (6 months) and a supervision requirement (6 months). She was sentenced on 26 May 2011.</p> <p>She admitted to falsifying branch trading accounts on Horizon. She was aware that the discrepancies were increasing so started to use personal funds to balance her accounts. In interview, Ms Howard cited an article relating to glitches in the Horizon system and complained about a lack of support from Post Office.</p> <p>She took over managing the branch GRO. GRO She stated that she felt unable to manage the branch. After Ms Howard was suspended GRO the losses in the branch continued to occur GRO GRO which likely explains some of the discrepancies (although it is unclear from the Sift report which precise amounts).</p>	

¹⁴² Source: Initial sift result sheet (9 June 2014)

GRO

¹⁴⁵ Source: Sift report (26 July 2014)

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<u>Siobhan Sayer (claimant 161)</u>¹⁴⁶
<p>Convicted of fraud (1 offence) following a guilty plea. Ms Sayer received a suspended prison sentence (40 weeks) and an unpaid work requirement (200 hours). She was sentenced on 15 February 2010.</p> <p>In interview, she admitted to falsifying accounts to cover up losses. This was a pre-Horizon Online case. There was no outright attack on the Horizon system but an attack may be implied on the basis that Ms Sayer was unable to account for the source of the losses. In a statement she stated that she did not take the money and denied having any dishonest intent. She also criticised Post Office's training.</p>
<u>Pauline Thomson (claimant 178)</u>¹⁴⁷
<p>Ms Thomson was initially only charged with theft (1 count). On the day of trial, false accounting (3 counts) was added to the indictment. Convicted of false accounting (3 offences) following a guilty plea. The theft charge was not pursued. Ms Thomson received a community order and an unpaid work requirement (120 hours). She was sentenced on 18 March 2010.</p> <p>During an interview, Ms Thomson stated that she had experienced a number of "bad balances" with Horizon. She consequently falsified her branch trading statements. She did not report any losses as she was aware she would have "to make it good" and did not have the funds to do so. The Defence statement sought details of problems with Horizon (the extent of the subsequent disclosure is unclear as the Prosecution file was not reviewed as part of the initial Sift report).</p> <p>It appears that Cartwright King requested further files relating to this case from Royal Mail Group. We have not reviewed any subsequent analysis.</p>
<u>Margery Williams (claimant 194)</u>¹⁴⁸
<p>Convicted of fraud by false representation (4 offences) following a guilty plea. Ms Williams received a concurrent, suspended prison sentence (52 weeks) and an unpaid work requirement. She was sentenced on 3 May 2012.</p> <p>During an interview, Ms Williams admitted to inflating her cash and the number of stamp books on hand. She stated that the losses were linked to the Horizon system and concluded that the stamp books had been remmed into Horizon incorrectly. In the pre-sentence report, Ms Williams admitted she used some of the money to support her underperforming shop and also to "cooking the books" deliberately. The case did not rest solely on Horizon data. There is evidence (independent of Horizon data) to suggest that Ms Williams was guilty of fraud by false representation.</p> <p>Ms Williams is a CCRC applicant.</p>
<u>Barry Capon (claimant 237)</u>¹⁴⁹
<p>Convicted of false accounting (1 offence) following a guilty plea on the basis that he wanted to cover up inexplicable losses. He denied stealing any funds. We are not aware of the sentence but know that he was sentenced on 14 October 2009.</p>

¹⁴⁶ Source: Sift report (27 March 2014)
¹⁴⁷ Source: Initial Sift Result Sheet (26 March 2014)
¹⁴⁸ Source: Initial Sift Result Sheet (10 March 2014)
¹⁴⁹ Source: Initial Sift Result Sheet (7 June 2014)

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<u>John Dickson (claimant 53)</u> ¹⁵⁰
<p>Convicted of fraud by false representation (1 offence) following a guilty plea. Mr Dickson received a suspended prison sentence (8 months) and an unpaid work requirement (180 hours). He was sentenced on 26 July 2012.</p> <p>Mr Dickson admitted to falsifying branch trading statements and to inflating the cash on hand on repeated occasions to hide unexplained shortages. He did not seek to rely on any failings on the part of the Horizon system.</p>
<u>Timothy Brentnall (claimant 30)</u> ¹⁵¹
<p>Convicted of fraud (1 offence) following a guilty plea. Mr Brentnall received a suspended prison sentence (20 weeks) and an unpaid work requirement (200 hours). He was sentenced on 29 June 2010.</p> <p>In an interview, he denied taking Post Office funds but admitted to entering false figures into the Horizon system. In sentencing remarks, the Judge noted that this was a case of somebody who had run into difficulties due to "sloppy accounting practices".</p>
<u>Wendy Buffrey (claimant 34)</u> ¹⁵²
<p>Convicted of fraud (2 offences) following a guilty plea. Ms Buffrey received a community order (12 months) and an unpaid work requirement (150 hours). She was sentenced on 18 October 2010.</p> <p>Ms Buffrey argued that she did not obtain any benefit from the funds. Her Defence statement inferred that the "losses" may have been caused by defects in the Horizon system. She also she specifically requested information as to whether there had been accounting problems experienced by other SPMs using the Horizon system.</p> <p>Ms Buffrey is a CCRC applicant.</p>
<u>Scott Darlington (claimant 51)</u> ¹⁵³
<p>Convicted of false accounting (5 offences) following a guilty plea. Mr Darlington received a suspended prison sentence (3 months) and an unpaid work requirement (120 hours). He was sentenced on 23 February 2010.</p> <p>In an interview, he admitted to falsifying branch trading statements and that his accounting systems did not follow proper procedures. Mr Darlington raised a point relating to an "error" in the workings of the Horizon system and made reference to an unexplained "disappearance" of money. There was ample evidence from employees coupled with unexplained/badly explained deposits into his personal bank accounts to suggest that Mr Darlington had in fact been stealing Post Office funds.</p> <p>Mr Darlington is a CCRC applicant.</p>

¹⁵⁰ Source: Sift Report (25 July 2013)

¹⁵¹ Source: Sift Report (9 April 2014)

¹⁵² Source: Sift Report (3 September 2014)

¹⁵³ Source: Sift Report (8 September 2014)

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<p><u>Stanley Fell (claimant 59)</u>¹⁵⁴</p> <p>Convicted of false accounting (1 offence) following a guilty plea. He had initially been charged with theft (1 count) but pleaded guilty to false accounting as an alternative offence. Mr Fell received a suspended prison sentence (50 weeks) and a supervision order (12 months). He was sentenced on 27 July 2007.</p> <p>In an informal interview, Mr Fell admitted that he had taken money "to keep the shop afloat".</p> <p>Mr Fell is a CCRC applicant.</p>
<p><u>David Hedges (claimant 72)</u>¹⁵⁵</p> <p>Convicted of theft (1 offence) and fraud (3 offences) following a guilty plea. Mr Hedges received a suspended prison sentence (7 months) and an unpaid work requirement (125 hours). He was sentenced on 4 February 2011.</p> <p>In an interview, he admitted to entering false figures into the Horizon system but denied taking money from Post Office. He implied that there must be a problem with the Horizon system causing it to generate losses. Following his guilty plea, his counsel argued in mitigation that he had in effect "borrowed" money from Post Office to prop up his struggling business and that he intended to repay the money to Post Office when he sold the business.</p> <p>Mr Hedges is a CCRC applicant.</p>
<p><u>Timothy Burgess (claimant 36)</u>¹⁵⁶</p> <p>Convicted of false accounting (1 offence) following a guilty plea. Mr Burgess received a community order (12 months) and an unpaid work requirement (150 hours). He was sentenced on 1 September 2011.</p> <p>He admitted to altering figures deliberately as he could not afford to repay losses accrued through cheque fraud. He did not make any criticisms of Post Office's training or the Helpline.</p>

¹⁵⁴ Source: Sift Report (3 June 2014). Cartwright King completed the review of Mr Fell's case following a request in Mr Fell's Mediation Scheme Application.

¹⁵⁵ Source: Sift Report (8 April 2014)

¹⁵⁶ Source: Sift Report (23 September 2013)