

**CONFIDENTIAL AND LEGALLY PRIVILEGED
POST OFFICE GROUP LITIGATION**

Bond Dickinson

Steering Group Meeting: 24 May 2017

DECISION: Branch Technology Programme

1. SUMMARY

The Branch Technology Programme (**BTP**) will roll-out a new operating system and hardware to c8,900 branches in 2017/18. In addition to the standard Computacenter engineer(s) on site at every installation, Post Office will provide field support at each branch to oversee and confirm a 'balance check' before and after the installations. The purpose is to provide evidence to disprove any subsequent attempt to claim that the installations have caused an accounting issue.

A more detailed background on the BTP can be found in the noting paper provided to the Steering Group on 6 April 2017 (attached).

The BTP will not be covered by privilege and may be disclosable during the Group Action litigation. As such, Bond Dickinson was asked to review the BTP for any risks which may arise in light of the Group Action.

In general, the additional control steps proposed by Post Office adequately mitigate the risks to the Group Action. However, since Horizon is the central theme of the Group Action, there are nevertheless three areas on which Freeths may raise issues with the BTP:

(a) Issues arising during installation

Given the scale of the BTP, it is likely that some issues / problems will arise. For example, the balances before and after an installation do not match; or the installation is delayed which leads to disruption or interference with the postmasters' business.

In the event that an issue arises in a Claimant's branch, the documents which evidence the issue (particular where a mismatch in the balance check arises) will likely be passed onto Freeths by the Claimant and could be used as evidence that the terminals / Horizon can cause accounting errors. Further, when Post Office reaches the disclosure stage of the litigation, Post Office may be required to disclose these documents to the Claimants.

(b) Preservation of terminals

Freeths have previously asked Post Office to preserve a Horizon terminal that was being removed from a branch. It can therefore be assumed that Freeths will request for terminals which are removed as part of the BTP to be preserved.

The Claimants' claims do not appear to relate to the Horizon hardware. Post Office is not under any duty to preserve evidence which does not relate to the issues in dispute or where it would be unreasonable or disproportionate to do so. Since Freeths have not yet explained why the terminals should be retained and also due to potentially large associated costs of preserving the terminals, it would be unreasonable and disproportionate for Post Office to preserve them. If Freeths wished to force Post Office to preserve the terminals, it would be open to them to seek an injunction from the Court, however this is unlikely.

(c) Communications

One of the issues raised in the Group Action is that Post Office sought to conceal matters from the Claimants.

As such, consideration has been given as to whether Freeths should be informed in advance of the BTP so as to prevent further allegations of concealment. Informing Freeths may create the impression that the BTP is a material risk to the branches and that Freeths have influence over Post Office's operating decisions. As such, the issue of terminal swap out (without expressly mentioning BTP) has been raised in the ongoing correspondence relating to disclosure and preservation. Freeths have therefore been given the opportunity to comment upon the preservation of terminals.

To minimise the risk of Claimants raising complaints about lack of notice and/or the opportunity to put forward their case that terminals should be preserved, clear communications should be provided to all postmasters in advance of the BTP. This will provide the Claimants with an opportunity to raise their concerns with Freeths.

2. RECOMMENDATION

There are no objections to the BTP from the perspective of the Group Action. However, it is recommended that:

- a process should be built into the BTP to gather information on why an issue arose, the consequence of the issue and how it was resolved; and
- Bond Dickinson should review the key communication materials to be sent to the postmasters.