

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

**Steering Group Meeting: 11 September 2017**

***DECISION: Should Post Office preserve the data on Horizon terminals in Claimant branches?***

**1. BACKGROUND**

- 1.1 The question of whether Horizon terminals should be preserved is being discussed through a number of different avenues in the Group Action.
- 1.2 First, Freeths have informed the Claimants that when their equipment is being switched out under the Branch Technology Programme they should ask the engineer to image the hard-drives of the removed Horizon terminals.
- 1.3 The field teams have been informed that if a postmaster requests an image of their terminal that they should contact their contract advisor with this request. The contract advisors have also been made aware that these requests will be directed to them and that they should be escalated to Bond Dickinson.
- 1.4 Secondly, there is an ongoing line of correspondence with Freeths regarding the preservation of the physical Horizon equipment in relation to those Claimants whose contracts have been terminated and whose terminals are being re-distributed. Freeths requests have been highly generalised and difficult to follow. We have however explained to Freeths that:
  - 1.4.1 the Claimants' claims do not appear to relate to Horizon hardware; and
  - 1.4.2 transaction data is not stored on the branch terminals but in the data centres so we cannot see the need to image the terminals.
- 1.5 Fujitsu have told us that there are a number of log files kept on the Horizon terminal itself. For example, there is a counter log file which contains a very detailed log of interactions at the device – every access to the PIN pad and other peripherals is logged. This information is not provided to Post Office and is stored on the terminal for a 30-day rolling period before being over-written. Freeths have not yet been informed of the counter log files.
- 1.6 Post Office needs to consider whether the Horizon terminals should be preserved and how to handle the data which is stored on those terminals. This decision should be made in light of:
  - 1.6.1 Post Office's general duty to preserve relevant information, whilst noting that failing to do so can lead to inferences being drawn against Post Office;
  - 1.6.2 the fact that the Managing Judge overseeing the GLO has recently given a judgment criticising a party for failing to preserve relevant evidence and is therefore a Judge who will focus on this issue; and
  - 1.6.3 there is a power under the Court rules for Freeths to obtain a Court Order forcing Post Office to preserve terminals.
- 1.7 Counsel has advised that adopting a hard-line and refusing to preserve any terminals is a risk. The Court is likely to adopt a precautionary outlook, favouring preservation over the possible loss of evidence. Counsel has advised that it would be better to offer some form of compromise to Freeths as this (i) reduces the risk of an application being issued by Freeths with the Court; and (ii) if an application is made, it reduces the risk of an onerous preservation Order being made.

**2. PRESERVATION OF TERMINALS**

- 2.1 Freeths are yet to confirm the aspects of the Claimants' claim which relates to Horizon hardware, but the Generic Particulars of Claim does raise issues of data error and error repency which

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may be sufficiently broad to mean that the Horizons terminals may be relevant to the matters in dispute.

- 2.2 141 of the Claimants are believed to be current postmasters (operating a total of 153 branches). To consider whether it is reasonable and proportionate to place the terminals which are removed from these branches into storage, Computer Centre will, in due course, be providing indicative figures for:

- 2.2.1 retaining recovered units in secure storage on a monthly basis per a branch; and.
- 2.2.2 retaining recovered units in non-secured storage and providing managed/supervised access to Freeths to inspect for a set period before disposal, again on a monthly basis per a branch.

- 2.3 We anticipate that the above figures will show that the storage costs are disproportionately high. Fujitsu has also said that taking a significant number of terminals out of circulation will put strain on the availability of terminals in general across the network.

- 2.4 At this stage, we do not believe that the mass storage of terminals is necessary. There may however be specific circumstances where a particular terminal should be preserved and a process is already in place to securely store a small number of terminals if needed.

### 3. COUNTER LOGS

- 3.1 The transaction counter logs are normally used by the Horizon Service Desk, ATOS, and Fujitsu to understand the cause of technical issues in a branch. When a postmaster contacts HSD with a technical issue, it may be that diagnostics would be run to understand the problem and, if necessary, FJ will access the transaction counter logs to assist with this process. Post Office does not have access to these logs.

- 3.2 We therefore believe that Freeths would have a fair argument to ask for the logs to be preserved, given that Fujitsu are using these logs for the very same purpose as Freeths want them – error investigation.

- 3.3 The difficulty is that this could lead to Freeths asking for the logs to be preserved in 153 branches (where a Claimant is still in post as a postmaster) every 30 days. Copying the logs is not an automated process but requires manual action by a Fujitsu engineer. Fujitsu estimate that it would take an engineer about 2 hours to download one set of logs from one terminal. This route would be massively arduous and costly (as we expect Fujitsu would charge Post Office for this work).

- 3.4 It is therefore proposed that a process is put in place with NBSC / HSD / Fujitsu to manage access to the logs. In summary, a Claimant will need to show that he / she has followed the normal procedure of reporting technical issues to HSD. Only once HSD has closed its investigations will the logs be provided to Freeths. We envisage the process will work as follows:

- 3.4.1 Claimant raises with NBSC that they have suffered a loss that they believe is due to Horizon.
- 3.4.2 NBSC investigates the possibility of an operational error and, if none found, passes the issue to HSD.
- 3.4.3 HSD try to resolve the issue.
- 3.4.4 If there is no resolution, Freeths may make a request to BD for preservation of the logs covering the period where the loss occurred.
- 3.4.5 BD instruct Fujitsu to extract the logs. The logs are sent to Freeths for preservation.

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**4. RECOMMENDATION**

- 4.1 Subject to the costs of the above process being reasonable, we recommend that Freeths are informed about the counter logs and the above preservation process is proposed as a reasonable compromise.