

# Postmaster Litigation - Update

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## Executive Summary

CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

### Context

As part of the Postmaster Litigation, the claimants are seeking to have a number of additional terms implied into the contracts between them. Regular updates on progress and issues are provided to the Board Litigation Sub-Committee, as well as to the Board.

There are no decisions required, however I propose to provide verbal updates on the following:

- Status update on the Court process
- Disclosure in the Accounts
- Contingency planning
- Review of Settlement Options

### Conclusion

#### **Court Process**

1. We are currently involved in:
  - finalising witness statements that will be used in the November Common Issues trial;
  - progressing the application for security for costs; and
  - working with our IT expert to develop the matters that will be the subject matter of the March 'Horizon' hearing.

#### **Disclosure in the Accounts**

2. There is significant work underway with Ernst & Young regarding the scope of the disclosure regarding the Postmaster Litigation as a contingent liability in the 2017-18 Accounts. There is a risk that EY may seek to include a 'Matter of Emphasis' regarding the litigation in their Audit Report. We have not yet seen any suggested drafting, so are currently unable to comment on the impact such a approach might have

#### **Contingency Planning**

3. We have prepared a short table (attached) which applies a fairly simplistic 'RAG' status to the various outcomes and which will assist the update on contingency planning. This was discussed at the Board Litigation Sub-Committee in early July and work is underway to develop the responses to all items that are 'red' rated for either Likelihood or Impact. A further update will be provided to the Board in September. We are also due to provide an update on the litigation, and in particular, the contingency planning to Alex Chisolm, Permanent Secretary of BEIS, on 10 September.

4. The CCRC has recently advised POL that it is nearing completion of its reviews. However, given that the CCRC's reviews touch on issues similar to those in the Postmaster Litigation (in particular with respect to Horizon), delivery of the CCRC's findings is likely to be delayed by that litigation.

#### **Settlement Options**

5. The Court expects both parties to engage in mediation between the conclusion of the Common Issues trial and the Horizon trial with a view to seeing whether, in light of the decision, some or all of the issues between the parties could be resolved. While it is too early to be able to set the content for those discussions, we are looking at options for mediators that we can propose to Freeths, as we need to ensure availability of appropriate mediators and get them pre-briefed as to the likely nature of the areas of discussion.
6. As previously flagged, we have instructed our Counsel to prepare a Merits Opinion following receipt of the Claimants' Witness evidence; this is likely to be available in late September. Following receipt of that opinion, we will consider whether there are options for settlement of some or all of the issues as between Post Office and some or all of the Claimants.

#### **Input Sought**

The Board is requested to Note the Update

Board 31<sup>st</sup> July 2018

*- Backup Notes*

## CONTINGENCY PLANNING

### First phase

- assess likelihood and impact of implied terms
- 'Likelihood' is legal advice on prospect of winning/losing each issue
- 'Impact' is business impact of that decision
- RAG rated
- No items that are both red for L & I; high L = low I

### 2nd phase

#### 4 'buckets of remediation activity:

- Contract changes
  - Not recommended before decision
  - Activity in train - we are working up the end to end approach to make any necessary changes to the contract or to serve notice on the existing contract and re-contract on a new version. This will ensure we are ready to respond quickly to the judgement.
- IT system changes
  - Some in train now – others TBC
  - Activity in train - we have identified some potential changes to Horizon that should reduce errors and losses in branch; improve the in-branch customer experience; and in turn reduce Post Office support costs. We are assessing the system and operational feasibility and associated costs of these changes.
- Operational changes
  - Some in train now
  - Reviewing recommendations made post Sparrow (mediation & complaints scheme)
  - Phased implementation
  - We made a number of enhancements to our training offer post Sparrow and more recently we been reviewing to ensure that these are still fit for purpose. In parallel we have been trialling new methods of error and loss detection, investigation and having more direct and transparent dialogue with postmasters on these.
- Communications
  - Preparing for changes – both pre & post decision
  - Regardless of the judgement how we communicate internally and externally will be critical. We are therefore preparing our reactive and proactive messages so that we are as best placed as possible to manage the stakeholder and media landscape.

Briefing to UKGI on 10 September (Alex Chisolm & potentially new minister) - 'rehearsal' this Thursday

