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Third Letter

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By email only

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Dear Sirs

**The Post Office Group Litigation  
Mediation**

We refer to paragraph 14 of the Second CMC Order which requires the parties to use their reasonable endeavours to attend a mediation as soon as practicable after receipt and consideration of the Judgment on the Common Issues. We have been considering how the parties might implement the above Order. We set out below our initial thoughts and proposals for your consideration.

**1. Timing**

- 1.1 In relation to the timing of mediation, this is very much dependent on the timing of the Common Issues Judgment. Our understanding of the Managing Judge's comments at the end of the Common Issues Trial is that this may be handed down around the end of January 2019. There is also sense in any mediation taking place, if possible, a good time before the Horizon Issues trial so as not to disrupt preparation for that trial. In light of this, we consider that a mediation in mid-February 2019 would be viable. Please let us know if you agree.

**2. Mediator**

- 2.1 The parties will need to select (at least) one mediator. There is a significant dispute between the parties; many components of which have not yet been considered by the Court. In our view, a deeply experienced mediator, accustomed to mediating complex disputes, is required. Ideally, the mediator will have experience of multi-party or group litigation. Mediators of this calibre and experience are rare and their diaries tend to be booked up 1- 2 months in advance. If the parties wish to appoint the best mediator possible, it would be useful to select a mediator soon so that time can be reserved in their diary. The selection of the mediator(s) is therefore dependent upon timing.

**3. Issues**

- 3.1 It is fair to say that this matter is more complex than most disputes that go to mediation. It may take a mediator some time to read in to the background. The parties' respective positions on many aspects of this litigation have not yet been fully explored and so it may also be that the mediator needs to meet with the parties to gather more information before the mediation is convened. Ultimately this will be a decision for the mediator to take in consultation with the

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parties. This however leads us to believe that appointing a mediator now, before the Common Issues Judgment is handed down, would be beneficial.

#### **4. Proposals**

4.1 Against this background, our proposals for your consideration are as follows:

- 4.1.1 The parties seek to provisionally agree a date for mediation during mid-February 2019. This will ensure that there is one day held in everyone's diaries in what is an otherwise very busy trial timetable. This date can of course be changed depending on the timing of the Common Issues Judgment.
- 4.1.2 The parties appoint a mediator now, with the instruction that the mediator is to read into the dispute and asked formulate initial views on (i) further information that he or she might need and (ii) how the mediation process might work in this matter.
- 4.1.3 We have made some initial enquiries into possible mediators. Independent Mediators have proposed Bill Marsh and Phillip Howell-Richardson as both having experience of dealing with group litigation. We have worked with Mr Marsh before, albeit many years ago, and can recommend him but we have no experience of Mr Howell-Richardson. We would welcome your views on these two mediators, or any others you would like us to consider.

We should be grateful for your comments on this letter and the above proposals by **14 December 2018**.

Yours faithfully

*Womble Bond Dickinson (UK) LLP*

**Womble Bond Dickinson (UK) LLP**