

CONFIDENTIAL AND LEGALLY PRIVILEGED
POST OFFICE GROUP LITIGATION
Steering Group: 26 September 2019



UPDATE PAPER

1. FEEDBACK FROM BOARD MEETING ON 23 SEPTEMBER 2019

- 1.1 The focus of the Board meeting was to understand the preliminary settlement ranges recommended by HSF (recognising that these may be impacted by developments in the litigation, in particular the Horizon Issues Judgment and the Common Issues application for permission to appeal). A final decision on the numbers will be taken at a later stage, possibly driven by the timing of the Horizon Issues Judgment.

2. COMMON ISSUES APPEAL

- 2.1 The Court of Appeal has scheduled the permission to appeal hearing for 12 November 2019. The hearing will be based on legal submissions only, with no witnesses or evidence. Work is underway with Helen Davies QC to prepare for the hearing. We anticipate reporting back to the Steering Group with the suggested strategy for the hearing at the meeting on 24 October 2019.

3. HORIZON ISSUES

Further disclosure

- 3.1 Post Office is implementing various operational changes to comply with the Common Issues judgment. One change is to provide transparency around issues affecting Horizon. It is providing its front line helpline staff with information on live issues affecting the system. This operational change has generated new documents about bugs in the system. Post Office has an ongoing duty to disclose adverse documents. The legal advice is that these new documents must therefore be disclosed as soon as possible.
- 3.2 The risks with this further disclosure are (1) this brings more bugs to the attention of the Claimants and (2) the Claimants may seek to argue that the operational change reflects Post Office's poor existing practices. It will then be up to the Claimants to decide whether to try to communicate this new information to the Court.
- 3.3 Given previous complaints from the Judge about disclosure, these risks are best mitigated by giving the mandatory disclosure quickly to ensure that there is no allegation of matters being concealed. Accordingly, this disclosure has now been given.

Bug 16

- 3.4 In its closing submissions, Post Office gave submissions on each of the 29 bugs identified by the experts. Three pages (out of 545) from those submissions were accidentally missed out. The Claimants have asked that Post Office make an application to the Court if it wants to rely on those missing pages.
- 3.5 The Claimants' position is unreasonable, but the path of least resistance is to make the application. Thought has been given to just sending the missing pages to the Court, but that is likely to generate an unattractive procedural fight before the Judge.

- 3.6 There is a possibility that the Judge refuses permission for the missing pages and is critical of Post Office. Also, these pages are not central to the litigation and the litigation could continue without them. Nevertheless, the decision was made to make the application (that will be done on paper without a hearing) because this gives the best chance of putting forward Post Office's strongest case on Horizon, in circumstances where the Judgment could be delivered any time now.

4. FURTHER ISSUES TRIAL

- 4.1 Work continues in preparation for the Further Issues trial.
- 4.2 The Board sub-committee has expressed an interest in deciding who is the chosen Counsel to represent Post Office in Court. We are discussing this with Counsel and will revert with recommendations by the next meeting.
- 4.3 Disclosure of documents was given on 30 August. There was one outstanding category of disclosure, being the late discovery of an archive of 33 "Branch Focus" newsletters. These have now been disclosed and the latest stage of disclosure is complete. We have received no comments on Post Office's disclosure from the Claimants.
- 4.4 We are considering whether Post Office should make any further disclosure requests. We are also preparing responses to a series of questions from the Claimants about where Post Office may hold certain categories of documents.
- 4.5 The next Court deadline is to file updated costs budgets on 2 October 2019. We are liaising with the Claimants' costs lawyers to try to ensure that the parties use the same working assumptions and templates for their budgets. This was a point of contention during the last round of cost budgeting. Once the budget is prepared, we will ensure that it is shared with the Post Office comms team as there may be some comments around the level of costs incurred.
- 4.6 As per instructions at the last Steering Group meeting, we have written to Freeths about security for costs and await their response.

5. SETTLEMENT

- 5.1 Due to the appeal hearing falling on 12 November, the mediation is being moved back and looks likely to happen on 27-28 November 2019. This may move again if the Horizon judgment and / or permission to appeal outcome are not known by then, in which case the next available slot looks likely to be mid-January 2020. A lawyers only preparatory meeting is being arranged with Freeths for 10 October 2019.
- 5.2 The review is underway into the 551 cases so to feed information into the lead case selection process and settlement decisions. The review process is expected to be complete by 31 October 2019 but the Steering Group will be kept advised of progress.