

CONFIDENTIAL AND LEGALLY PRIVILEGED
POST OFFICE GROUP LITIGATION
Steering Group Meeting: By email only

Update: First Round of Evidence for the Horizon Trial

1. BACKGROUND

- 1.1 The Horizon Issues Trial will take place in March 2019. As part of the trial, the Court will determine 15 issues relating to the Horizon system. Due to the technical nature of the issues in dispute, the vast majority of these issues will be the subject of expert opinion evidence. However, some of these issues require factual evidence in order for the experts to opine and others are purely factual.
- 1.2 Post Office needs to submit witness evidence in relation to those factual points. The first opportunity to submit witness statements is 28 September 2018.
- 1.3 The Claimants have served a provisional outline document setting out the nature of their allegations in relation to the Horizon issues, but this is lacking in detail and the Claimants have not articulated their case on Horizon adequately. We have asked them to clarify this case and they have refused. This lack of clarity makes it difficult for us to know what evidence will be needed to respond to the Claimants' arguments until we see their expert report.
- 1.4 We foresaw this problem many months back and raised it with the Court. In response the Court has ordered a sequential exchange of evidence and reports. After the first round of evidence, the Claimants' expert report is due on 16 October 2018. Post Office will then have an opportunity to file by 30 October additional witness statements in response. Post Office's expert report is then due on 30 November.

2. APPROACH TO EVIDENCE

- 2.1 The lack of detail about what the Claimants will allege in their expert report combined with the opportunity to submit further evidence at the end of October, lead us to believe that Post Office should serve minimal evidence in the first round. This evidence would cover basic background information only and will provide Robert Worden with the evidence that he requires to produce his report.
- 2.2 In line with this approach, the proposed evidence would be as follows:
 - 2.2.1 Torstein Godeseth, Chief Architect at Fujitsu - basic introduction to Horizon, including the ways in which Fujitsu can alter transaction data and the controls around audit data. To a large extent, this statement will cover the same ground that Torstein covered early in 2018 when he gave a face to face briefing to each side's expert
 - 2.2.2 Bill Membrey, Fujitsu Quality and Compliance Manager – overview of Fujitsu's approach to development, testing and audit of Horizon;
 - 2.2.3 Dave Johnson, Post Office Trainer and Auditor – basic user operations of Horizon and the reports that Postmasters can produce (being essentially a witness statement version of the demonstration he has already given to the experts and the Claimants' legal team in the model office); and
 - 2.2.4 Dawn Phillips from FSC – a short description of what happens at the point that a discrepancy is disputed by a Subpostmaster.
- 2.3 It should be noted that these statements will be entirely factual. They will not be offering an opinion on the efficacy or accuracy of Horizon – that is the role of Dr Worden's report.
- 2.4 Post Office is reliant on Fujitsu for some of this evidence. There is no one at Post Office who could cover this material. Fujitsu (including Fujitsu legal) are aware of this proposed approach – they are supportive and have cleared all their internal governance to support this activity. Fujitsu

have obvious reasons for ensuring that their evidence is accurate, and we know that their own legal team is closely monitoring the position. Nevertheless, there is a residual risk that Fujitsu could (inadvertently) put forward inaccurate evidence. Given that this evidence is of a technical nature (about Horizon) or regarding Fujitsu's internal practices, it is difficult for us to validate this evidence other than asking probing questions in the usual course of taking evidence. To be clear, we have no reason to believe the evidence will be inaccurate, but given that it is coming from a third party it is important that this risk is understood.

2.5 The alternatives to above minimal approach are:

2.5.1 Submit no evidence. We believe that this would lead to criticism from the Judge who is clearly expecting Post Office to submit some evidence.

2.5.2 Submit full evidence. This would require a degree of guesswork on the topics to be covered which is not attractive at all.

3. CONCLUSION

3.1 We strongly recommend that Post Office only submits minimal evidence in first round. The other options are so fraught with risk they are not worth any real consideration. We have discussed this matter with Rodric Williams and he agrees with this assessment. Given this, we have drafted this as an "update paper" for the Steering Group's information rather than seeking a formal decision. If however any members of the Steering Group have concerns we would be happy to address them.