POL00278283

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Initial Complaint Review and Mediation Scheme

Harm to a retail business following summary termination

In some SPMR's applications to the Scheme they raise a claim for harm to the value of their retail business following the allegedly wrongful summary termination of their SPMR contract. The obvious point is that a retail business is likely to be more valuable with a Post Office counter than without one and, as a result, the complaint is typically that the termination of an SPMR's contract has devalued their associated retail business.

The starting point for this claim is to show that the termination of the SPMR's contract was wrongful – for which see the advice for Linklaters. However, even if this is proven, a SPMR has further hurdles to overcome.

SPMRs cannot sell branches

A Post Office branch in a retail business is not an "asset" that the SPMR can sell. The branch only exists as a contract for services between POL and a SPMR. The contract cannot be assigned and any new SPMR taking over a retail business needs to be appointed by POL if they wish to continue operating a Post Office branch from that retail business. Therefore an SPMR never has the unilateral power to sell their retail business and the Post Office branch as a going concern.

Further, the loss of the Post Office branch was always a risk to the SPMR as POL can always terminate on 3 months' notice.[1] The SPMR would need to produce evidence of trying to sell his business within 3 months of summary termination. Many SPMRs are not in a position to sell their businesses that quickly as they are their livelihoods. If a SPMR could not sell their business within 3 months of being summarily terminated, then the SPMR's position with or without 3 months' notice would be no different and a claim for losses resulting from wrongful termination would appear to be very difficult.

In light of the above, a perhaps more accurate formulation of this complaint is that a wrongful summary termination deprived a SPMR of the opportunity to try to sell their retail business during a 3 month notice period when there would have been a live Post Office branch in their premises. This argument runs into the further challenges set out below.

Contractual status of the SPMR

For a buyer of a retail business to also "acquire" the associated Post Office branch, they need to be appointed by Post Office as the new SPMR. When appointing a new SPMR, we understand that Post Office considers two principal factors:

- **Suitability of the candidate**. The suitability of the candidate to take on the role of SPMR.
- **Commercial need**. Whether Post Office needs to retain a branch at the location in question.

We understand from POL that the contractual status of the incumbent or previous SPMR has no influence on the outcome of this decision. The ability of the incumbent SPMR to sell their retail business with an associated Post Office branch is therefore unaffected by whether the previous SPMR's contract was terminated by the SPMR's resignation, terminated summarily or terminated on 3 months' notice.

Put another way, the fact that the SPMR's contract has been terminated does not make it more difficult for a potential buyer of the SPMR's retail business to appointed as a replacement SPMR. The lack of a causative link between the SPMR's contractual position and any devaluation of an SPMR's retail business means that a claim on this ground faces substantial difficulty.

[1] Save where a SPMR has moved to a new Local or Mains contract where the notice periods are 6 and 12 months respectively. There is only one live case in the Scheme on a Local contract – M102, who was terminated for a failure to prevent extensive false accounting by one of his assistants so the risk of a wrongful termination in this case is probably low.

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Closure of a branch following termination

Although the incumbent SPMR's contractual position has little, if any, bearing on whether a buyer of a retail business is appointed as the new SPMR, what may be relevant is whether there is an in situ Post Office branch physically located in a retail business.

It is possible that following summary termination of a SPMR's contract, the physical Post Office branch (eg. the counter, Horizon terminal, safe, cash, stock, manuals, etc.) could be immediately removed from the SPMR's retail premises. Although, it is of course possible to close a branch and then re-open it on the appointment of a new SPMR, there is presumably a fit out cost to re-installing that branch and a level of associated disruption.

It may be that a prospective buyer of a retail business is dissuaded by the fit out costs / disruption or seeks to reduce the price for the retail business to reflect the cost and disruption of having the Post Office branch re-installed. An SPMR could argue that their wrongful summary termination has deprived them of a 3 month window in which the Post Office branch would have remained in situ in their retail business, making that business more attractive.

However, we understand that in the vast majority of cases, POL arranges for a temporary SPMR to take over the Post Office branch of a terminated SPMR until a permanent replacement SPMR can be found. In that circumstance, the physical Post Office branch will not be removed and there will be no loss of opportunity for the ex-SPMR to sell their retail business with an in situ Post Office branch.

Some SPMRs have asserted that due to their contract termination, the Post Office branch was moved to a different retail premises in the local area. The argument here is presumably that if the SPMR had been given 3 months' notice they could have found a buyer for their retail business who was also prepared to take over the Post Office branch. The difficulty with this argument is that on termination of an SPMR's contract (for any reason including resignation by the SPMR), Post Office's standard practice is to advertise for new SPMRs at new locations in the local area. The existence of an installed Post Office at a branch is, we understand, a very minor factor in deciding where to locate a replacement branch and who to appoint as the replacement SPMR. Therefore even if the SPMR was given 3 months' notice, he would still face competition from others to move the branch to another location.

Valuation

Even if the above hurdles could be overcome, it is a reasonable assumption that the fit out cost / financial value of the disruption due to fitting out a branch is only likely to be a fraction of the total business value. In our view, it is this figure that is the likely starting point for any claim valuation rather than a larger figure connected to a wider diminution in business value.

This figure will then be further discounted when calculating the amount of compensation to award (assuming the above challenges are met) in order to reflect the fact that there could be a number of factors in play that could make it difficult to sell a retail business, of which an aversion to fitting out a branch is perhaps only one.

Disrupting the sale of a retail business

A number of SPMRs have said that POL has intentionally disrupted the sale of their retail business. In the event that Post Office has acted in bad faith this may give rise to some form of tortious interference claim. Generally, POL has a wide discretion on whether to appoint someone as a new SPMR. Against that context, this type of claim would appear difficult save in exceptional circumstances.

Bond Dickinson LLP

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