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InvestmentsDepartment for  
Business, Energy  
& Industrial Strategy

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**OFFICIAL SENSITIVE AND SUBJECT TO LEGAL PRIVILEGE  
UPDATE ON POST OFFICE LITIGATION SINCE JUDGMENT IN COMMON ISSUES  
TRIAL**

**Summary**

1. This note summarises developments since Judgment was handed down in the Common Issues trial on Friday 15 March. Following independent legal advice, POL's Board has approved an application to recuse the Judge. We expect this to be tabled today (21 March).

**Timing**

2. We expect the recusal application to become public later today.

**Recommendation**

3. To note the contents.

**Judgment in the Common Issues Trial**

4. On Friday 15 March, the judge handed down judgment in the first Post Office 'Common Issues' litigation trial, which covered the proper interpretation of the contract between Post Office and postmasters.
5. The judgment was considerably more adverse than expected by POL's legal team. The principal legal finding is that the contract is relational and, as a consequence, it contains a number of significant obligations on Post Office which were not apparent until this judgment. A number of terms must therefore be implied into the letter of the contract, including the majority of terms POL contested in the trial, giving rise to significant operational concerns.
6. On the weekend you spoke to the Secretary of State, and separately with POL's Chair Tim Parker and interim CEO-designate Al Cameron. POL informed you that they were taking independent legal advice on whether to seek an application for the judge to recuse himself from hearing the rest of the litigation. At that stage, Tim thought it unlikely that an application would be taken forward. Following these calls, on Monday 18 March, you sent a Dear Colleague letter to update MPs on events.



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### Recusal decision



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7. On 20 March, POL's Board met to hear legal opinion on the recusal application, and to take a decision on whether to proceed. Tom Cooper attended as the shareholder's representative on the Board, but following advice from UKGI Legal, he took no part in the decision-making. This meeting followed a board call on Monday with Lord Neuberger (former President of the Supreme Court) to discuss his written advice on recusal.
8. Like Lord Neuberger, Lord Grabiner QC gave strong advice in favour of seeking recusal which he described as the only option available to the Company to seek redress for the unfairness in the first trial and prevent further unfairness in the second trial. He was clear in his opinion that Post Office isn't receiving a fair trial even if they might (or might not) eventually be found to be at fault.
9. The Board had a full discussion of the reputational consequences and concluded that the risks could be managed. One of the key concerns with the Horizon trial is that the judge might go beyond the joint evidence of the expert witnesses and conclude that the system doesn't work today, something that would be highly damaging for customer and postmaster confidence. In that context a number of the directors felt that the recusal application is necessary in order to try to protect the business today.
10. There are many operational consequences from last week's judgement that the management team are focused on and will come back to POL's next Board meeting on Monday 25 March. So far management have been relieved that the response, particularly from postmasters, has been relatively light. It is still early days and they expect to get a better picture in the next week or so when there is a monthly settlement date.
11. The Board now has additional independent legal support to assist them in dealing with this litigation, which is something that UKGI have been pushing for. This should prove helpful in mapping out a path to resolving this case.
12. POL's Board approved seeking the recusal which will be lodged in Court today (21 March) and is likely to become public shortly afterwards. The Board is separately considering whether to appeal the judge's findings.

### Start of the second ('Horizon Issues') trial

13. The second "Horizon Issues" trial started on 11 March to look at 15 issues in relation to the integrity of Post Office's Horizon system, most significantly the reliability of Horizon and the extent to which it was the root cause of shortfalls in postmaster branches. This trial is ongoing and we are receiving updates from POL's legal team (Annex A).

### Contributors

14. UKGI Legal (Richard Watson) have been consulted and agreed the content of this advice.
15. We consider there are no additional communications, financial and parliamentary handling considerations to those covered in previous updates.

### Annexes

- A. POL's summary of second ('Horizon Issues') trial



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## **Annex A: POL updates on second 'Horizon Issues' Trial**

*These updates are provided by Post Office Limited legal team, and do not represent the views of UKGI and BEIS*

### Update 1: 18 March 2019

Last week the Horizon Issues trial concerned the Claimants' witnesses of fact, when Post Office's counsel team cross-examined seven witnesses:

- The majority of the cross-examination was spent on Mr Richard Roll, who alleged Fujitsu routinely accessed and changed branch data when he was a Fujitsu employee between 2001 and 2004.
- In his cross-examination, Mr Roll gave evidence that:
  - o He could not recall much about his time at Fujitsu given how long it had been since he had worked there or in the IT industry;
  - o A very small proportion of the matters that he would have dealt with while at Fujitsu would have concerned software bugs, an even smaller proportion would have been bugs affecting branch accounts, and he would not have dealt with them in any event given his relatively junior position;
  - o Fujitsu nevertheless would have taken very seriously and resolved any issue with the Horizon software; and
  - o Any "remote access" of branch data would have been infrequent, strictly controlled, unlikely to have involved transaction data, and even less likely to have altered that data (to an "infinitesimally small" chance).
- Five former postmasters or assistants also gave evidence about branch losses which they blamed on Horizon. In each case, credible explanations for the losses were put to the witnesses based on Horizon transaction records and support system logs.
- The final witness for the Claimants was Mr Ian Henderson from Second Sight Support Services Ltd, the forensic accountants who reviewed postmaster cases through the Complaint Review and Mediation Scheme in 2013-2015. Given Mr Henderson was not giving expert evidence (which will be provided for the Claimants later in the trial by Mr Jason Coyne), his evidence was limited to the terms of his engagement by Post Office, including that the engagement only concluded once Second Sight had completed reviews of all cases submitted to the Scheme.

Overall, the cross-examination should have supported Post Office's case that Horizon was and is reliable and unlikely to have had any lasting effect on branch accounts. However, the challenges to Post Office's case overall include that:

- Post Office was able to explain the losses because of the resources available to it, supporting the view that Post Office is better placed than postmasters to explain how and why branch losses occurred;





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- In providing explanations for the losses, Post Office may be seen to have to laid improperly blame on the witnesses/postmasters;
- Much will now turn on how the judge views the evidence given by Post Office's witnesses, including those from Fujitsu, given that that evidence laid the foundation for many of the concession made by the Claimants.

Post Office's witnesses of fact will give their evidence this week. That will mostly involve them being cross-examined by the Claimants' counsel team, who will seek to show that Horizon's reliability is overstated.

#### Update 2: 20 March 2019

On Monday and Tuesday the Claimants' counsel team cross-examined Angela van den Bogerd, Dawn Phillips, Tracy Mather and Paul Smith from Post Office, with Angela's cross-examination by the Claimants' QC Patrick Green occupying just over a day and a half of the two days.

The cross-examination was aimed at, and was largely successful at demonstrating:

- a variety of incidents with Horizon, both in its software and the transaction records it generates, which:
  - o impact branch accounts;
  - o paint a picture of a system susceptible to failures, even if they are isolated and ultimately resolved; and
  - o are consistent with the errors experienced by the Claimants.
- Post Office's reliance on Horizon is overstated and blinkered, leading to an improper presumption of postmaster fault and liability for branch losses.
- Post Office has access to far better information from Horizon about branch accounting issues, which it is better placed to use but does not share with, or actively withholds from, postmasters.
- Post Office has overstated the improvements made to Horizon over the years, which it has been slow to roll out and implemented purely to save costs.

Through the cross-examination, the Judge has challenged on a number of occasions the content of the Post Office witnesses' statements (e.g. where the witness has provided information collated with the assistance of other Post Office personnel, or has corrected or clarified the evidence). He has also taken issue with Post Office's document disclosure, in particular where redactions have been made. When considered in the context of the Common Issues Judgment, these challenges suggest he could be equally critical of Post Office's evidence when giving judgment on the Horizon Issues.

The Claimants will today cross-examine the final Post Office employee, Dave Johnson, before starting their cross-examination of the four witnesses Post Office has called from Fujitsu. The Claimants are required to complete their cross-examination by the end of Thursday.