

UK Government
InvestmentsDepartment for
Business, Energy
& Industrial Strategy

Date: 29 July 2019
 Director General: Mark Russell
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OFFICIAL SENSITIVE AND SUBJECT TO LEGAL PRIVILEGE**POST OFFICE GROUP LITIGATION UPDATE****Summary**

1. POL is continuing to develop their litigation and settlement strategy. This will be considered by Nigel Boardman (BEIS ARAC Chair) when he meets POL which we are expecting to take place in late August.

Timing

2. Routine. We will continue to work with POL to finalise their litigation/mediation strategy and arrange a briefing from them once the BEIS ARAC Chair Nigel Boardman has considered it.

Recommendation

3. We recommend that you note the contents of this submission.

Background

4. Following your meeting with Tim Parker and Al Cameron on 24th June we met with the POL Legal team and Al Cameron on 18th July to discuss their litigation and settlement strategy. A detailed note from Herbert Smith Freehills (HSF) is annexed to this submission.
5. The headlines are that POL are hoping for an initial mediation in September/October to gauge expectations but don't expect to make meaningful progress towards settlement until April/May 2020. This depends on the claimants' willingness to participate as mediation is a consensual process. At the moment the claimants don't want to start mediation until the Horizon judgment is received and the result of POL's application for permission to appeal the common issues judgment is known. This may delay the start of any mediation until October/November.
6. HSF are structuring their preparations for a mediation to start in September/October and are continuing work on the following key workstreams –
 - Quantum Verification – the primary focus is verifying claimants' remuneration details which will enable their claims for loss of earnings in respect of (a) suspension pay; (b) notice pay; and (c) post-termination losses to be tested.



UK Government Investments



Department for Business, Energy & Industrial Strategy

- Recoverability Analysis – this includes consideration of claims for post termination loss of earnings, loss of investment/diminution in capital value of branch and other losses (e.g. in connection with bankruptcy and/or prosecution).
 - Development of case theory – the objective of this workstream is to set up a basis for applying a percentage discount to the claim value for liability risk.
 - Strategy for dealing with particular categories of claimants - particular strategies will be needed for dealing with (a) convicted Claimants; (b) Claimants who have already entered into settlement agreements; and (c) time-barred Claimants.
7. HSF are also considering potential settlement structures and a strategy for dealing with remaining sub-postmasters who did not join the group litigation but may seek to bring claims.
8. There is still substantial work to be done before any decisions can be reached and any strategy will need to consider how the return that the litigation funders will expect on their investment is dealt with. The current estimate for this is £37m.

Next steps in the litigation

9. A case management conference took place on 22 July and it has been decided that the trial in March 2020 will consider "measure of loss" questions only, based on assumed facts. In brief terms, this means the Court will be asked to consider whether certain heads of loss are recoverable in principle, subject to proof of breach and causation in due course. The court has set a timetable for the steps the parties must complete to be ready for this trial. Any agreed mediation can take place in parallel with this timetable.
10. The court also acceded to POL's request that the test claimant selection process begin, with the provision of proposed draft selection criteria for the test claimants on 4 December. This takes Post Office one step closer to a trial of test cases which is helpful from Post Office's perspective.

Next steps

11. POL is continuing to develop their litigation and settlement strategy and we shall arrange a further briefing once Nigel Boardman has met POL. We are having an internal briefing for Nigel Boardman on 14th August and expect his meeting with POL to take place shortly afterwards.
12. We have also established a BEIS, UKGI and HMT working group to manage potential settlement.

Contributors

13. This advice does not have parliamentary handling implications.

Annexes

- A. Herbert Smith note of 16th July 2019