

Group Litigation Update

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Meeting date: 10 December 2019

Executive Summary

Context

Post Office has received the court's decision on the Horizon Issues trial (Trial 2), and on the application for Permission to Appeal the March 2019 Common Issues judgment (Trial 1).

Mediation with the Claimant group commenced on 27 November 2019 and is continuing given the progress the parties have made towards settlement.

Post Office has filed its Defence for the "Further Issues" trial (Trial 3) scheduled to commence on 2 March 2020, which will determine the types of financial loss the Claimants can recover in principle and how those losses should be quantified.

Questions addressed in this report

1. What is the status of the mediation/settlement discussions?
2. What is the status of the litigation?
3. How is Post Office responding to the Horizon Issues judgment and the refusal of Permission to Appeal the Common Issues judgment (Operations, Communications, and with respect to convicted postmasters)?
4. What are the next steps in the Group Litigation?

Conclusion

1. Settlement negotiations (via the mediators) are continuing in the week commencing 9 December 2019. The parties will either reach a settlement at this stage, or conclude the mediation such that the litigation will continue.
2. The Horizon Issues judgment has been received in draft and will be made public at 2pm on 16 December 2019. Permission to Appeal the Common Issues judgment was refused on 22 November 2019. The "Further Issues" trial will commence on 2 March 2020.
3. The operational changes implemented after the Common Issues judgment are being reviewed following the refusal of Permission to Appeal. That review will now also incorporate any operational changes necessitated by the Horizon Issues judgment. Extensive external and internal communication material has been prepared to respond to the Horizon Issues judgment once it becomes public. Leading criminal law barrister Brian Altman QC has advised Post Office to liaise and ideally agree with the Criminal Cases Review Commission ("CCRC") the steps it takes in light of the Horizon Issues judgment.

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4. The next steps in the litigation are: (1) the “handing down” of the Horizon Issues judgment on 16 December 2019 and the reaction to it once made public; (2) agree the assumed facts for the “Further Issues” trial; (3) identify criteria for selecting test claimants for subsequent trials; and (4) prepare for the court’s Pre-Trial Review and Case Management Conference in late January 2020.

Input Sought

The Subcommittee is asked to NOTE the updates in this paper and the next steps to be taken in the litigation.

The Subcommittee is also asked to APPROVE liaising with the CCRC over the steps to take in light of the Horizon Issues judgment.

Input Received

This paper has been prepared with the assistance of external legal counsel.

The Board is reminded to exercise caution when communicating about potential levels of settlement. Communications about settlement should therefore only be held orally, but if that is not possible, advice should be sought from Post Office’s lawyers.

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Mediation / Settlement

Mediation with the Claimant group began on 27 November 2019 and settlement talks have continued into the week commencing 9 December 2019. A verbal update on the mediation and the progress made towards settlement will be provided to the Subcommittee at its meeting on 10 December 2019.

Litigation Update

Horizon Issues Judgment

On 28 November 2019 Post Office received Mr Justice Fraser's draft judgment on the Horizon Issues trial (the "HIJ"). The HIJ will be made public at 2pm on 16 December 2019. **The judgment is subject to an "embargo", meaning the content of the judgment (including the information in this report) is strictly confidential and can only be disclosed on a strict 'need to know' basis to Post Office's employees, executives and advisers until it is handed down.** Failure to adhere to this is a criminal offence.

On the core issue of whether Horizon is a "robust system", the Court found:

- the Horizon system in use today (HNG-A) is "*relatively robust*" (a helpful finding which substantially mitigates the immediate operational risks to the network);
BUT
- the robustness of previous versions of Horizon was "*questionable, and did not justify the confidence placed in it by Post Office in terms of its accuracy*" (Horizon Online/HNG-X; 2010 to 2018), and "*not robust*" (Legacy Horizon; 2000 to 2010).

Appendix [4] has a summary of the answers to each of the 15 Horizon Issues. The key findings, in addition to the above, are:

- In relation to Legacy Horizon and HNG-X, there was a "material risk" that bugs in Horizon could be the cause of shortfalls in branches.
- Fujitsu (but not Post Office) has wide abilities to edit branch data using remote access (Post Office accepted this pre-trial) but those abilities were subject to "inadequate" controls.
- Post Office could inject transactions into a branch's accounts if physically present in a branch, but could not do this remotely (Post Office accepted this pre-trial).

It appears that the tone of the HIJ is generally better than the Common Issues Judgment ("CIJ"), but there is repeated and, in places stringent, criticism of Post Office and Fujitsu for not properly and diligently investigating possible IT problems and being too quick to assume that fault rested with the postmaster. This echoes Fraser J's comments in the CIJ about a lack of investigative support and transparency from Post Office.

Post Office is obtaining advice from leading Counsel on the prospects of appealing the HIJ. Advice is also being obtained on the costs consequences that flow from the judgment. A verbal update on these issues will be provided to the Subcommittee at its meeting on 10 December 2019.

HIJ Impact on Criminal Convictions

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Brian Altman QC has been instructed to advise Post Office on the impact the HIJ may have on postmasters convicted in connection with branch losses, and the steps Post Office should now take with respect to those convictions in light of the judgment.

Brian's preliminary views are that:

- the HIJ may not provide convicted postmasters or the CCRC with immediate grounds to appeal a conviction because it largely deals with the potential for branch accounts to be affected by Horizon errors generally, rather than whether Horizon had any actual effect on an individual's specific case;
- In the absence of specific findings on individual cases, the important question is likely to be whether there was any material non-disclosure which makes the convictions unsafe. That would require a complete review of each case on its facts in light of the alleged material non-disclosure, including the impact any bug, error or defect or alleged remote access actually had on the facts on which the conviction was based; and
- Post Office may (as a prosecutor) need to give disclosure to convicted postmasters on the existence of bugs and errors in Horizon, the reliability of a Branch Trading Statement, and/or Post Office and Fujitsu's ability to access remotely a branch's accounts;
- However Post Office should liaise and ideally agree with the CCRC the approach to take to the disclosure issue so that any action best assists their reviews and is taken with their sanction.

Common Issues Appeal

On 22 November 2019, Lord Justice Coulson in the Court of Appeal refused Post Office's application for Permission to Appeal the CIJ. The key points to note are:

- Coulson LJ considered that Fraser J's conclusions were too difficult to disentangle from the findings of fact he made at trial (which findings should not be the subject of an appeal);
- He also considered that some points taken on the application could and should have been taken at trial;
- He emphasised that the good faith duty is not a demanding obligation, and only requires the parties to "refrain from conduct which in the relevant context would be regarded as commercially unacceptable by reasonable and honest people"; and
- There is again some criticism of Post Office, but not about the way the permission application was pursued.

The effect of this decision is that the findings made in the CIJ will govern Post Office's relationship with postmasters (discussed further below). Post Office has been advised that it has no prospect of successfully reopening this decision.

Further Issues Trial

On 25 November 2019 Post Office filed its Defence for the March 2020 Further Issues trial, which will determine whether the losses the Claimants are claiming are recoverable

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in principle and, if so, how they should be quantified. The Claimants can file a Reply to the Defence by 16 December 2019. Post Office can then file a Rejoinder by 10 January 2020 if so advised.

The parties will now produce a list of the assumed facts against which the Claimants' claims can be assessed by 16 January 2020. There will then be a court Pre-Trial Review with Fraser J on 23 January 2020 to address any outstanding issues which need to be resolved before the trial on 2 March 2020.

Future Trials

The parties have also asked the Court to convene a Case Management Conference on 23 January 2020 (the same date as the Further Issues Pre-Trial Review) or shortly after to agree the further procedural steps and timetable for the Group Litigation.

If the litigation is not settled, the most effective way to conclude it comprehensively will be through a further trial of all the issues raised in around 5-15 test cases, the findings of which can be extrapolated across the Claimant group to resolve the cases individually. We also consider that putting the full story of the Claimants' cases, including some of their improper conduct, before Fraser J may be the only way to change his perception of Post Office. This would result in a trial in possibly late 2020, but more likely 2021. The Claimants may however argue (and the Court may prefer) to continue to break the litigation down into phases.

The parties are required to file on 23 January 2020 their criteria for selecting test cases, which are to be representative of cases in the wider Claimant group. Significant preparatory work has been undertaken to identify the high-level features of the claims which should be reflected in the test cases. Post Office's proposed criteria will allow it to select Claimants most favourable to its case.

Costs

As presented to the Board on 30 April 2019, £8m was initially included in the 19/20 Budget for the cost of the litigation. Since then, and as included in the October 2019 Quarterly Delivery Board Paper, this allocation in the 19/20 Budget has been increased to £15m and as at P7, £7.7m has been spent. P8 figures are to be confirmed but a revised forecast for the rest of 19/20 will be provided at the January 2020 Board.

By the January 2020 Board meeting, the first mediation will have concluded and assuming settlement has not been reached, Post Office may have directions from the Court for the next phase of the litigation which will determine the costs to be incurred in 20/21. For example, if the litigation is to continue through small trials on discrete issues (e.g. limitation), then the costs should be substantially less than for a full trial of 5-15 test cases (the preliminary forecasts for which could be as high as c£20m).

Operational Impacts

Horizon Issues Judgment

As a result of our contingency planning, we are ready to identify and respond to the anticipated reactions (of postmasters, customers and clients) to the HIJ and any

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subsequent operational impacts. Our external and internal communication material is extensive and able to be tailored quickly to suit the need (see further below).

Having assessed the HIJ, we expect the network to continue to operate normally. However, some postmasters may raise some of the findings in the HIJ, turn to Post Office for confirmation that the system they are using is fit for purpose, and then question the validity of previously settled discrepancies and TCs whilst using older versions of Horizon (pre-HNG-A).

We therefore anticipate 'historic claims' to flow from the HIJ once handed down on 16 December 2019. We expect these claims will come either in a piecemeal fashion, or as part of a secondary group, from current and former postmasters who have repaid/are repaying shortfalls, were suspended without remuneration, and/or question whether they received adequate notice of contract termination.

The agreed view across Legal and Operations is that we apply the same distinction to resolving historic claims that Fraser J has made between the Horizon systems, and distinguish claims that arise out of events post HNG-A going live in a branch ("new claims") from those that arise out of truly "historic" events.

New claims will be assessed through the recently introduced Operations investigation processes, and historic claims will be resolved by the Post Office's Case Review Team within LCG. We are currently developing the scope and design of the 'historic claims' approach with the aim of including this in our public response to the HIJ, and as part of any agreement to settle the litigation as a whole.

Horizon Issues Communications

The overarching communications approach to the HIJ is to:

- note the length and complexity of the judgment which will take time to understand in detail;
- accept and absorb criticism for past behaviours;
- apologise for falling short of standards we expect and to those affected;
- draw a very clear line between the past and the present, pointing to the findings relating to process and systems no longer in use and to improvements we have and continue to make in our relationship with postmasters;
- stress that the current system has been found to be robust; and
- drive confidence in the network to limit operational disruption.

If the matter settles prior to the judgment's release on 16 December, we will further underscore the change in mindset and approach to the litigation which made this possible, which should go some way to attenuate the criticism we can expect.

We are hopeful that, as part of the settlement agreement, some positive recognition of Post Office's new approach will be made by the Claimants. Should that be achieved, this will clearly hold much greater sway than anything we can generate ourselves. Self-

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evidently, no matter how many lengths we go to in seeking to mitigate against negative comment, we will not be 100% successful.

We should also acknowledge to ourselves that, bluntly, there is also a measure of criticism which is legitimate and we should avoid inadvertently giving the story greater prominence or currency by feeling pressured to say more than we need.

Common Issues Judgment / No Permission to Appeal

The Court of Appeal's refusal to grant Post Office Permission to Appeal the CIJ means that Post Office's legal relationships with postmasters must be managed in accordance with the findings made in that judgment.

Since the CIJ was handed down, a number of operational changes have been introduced to reflect its findings. An overview of the revised Operational position is set out at **Appendix 3**.

In light of the refusal, and the HIJ, Legal and Operations are revisiting Post Office's policies, processes and ways of working to discharge its legal obligations consistently with the court's findings. The intention is to have one plan that addresses both judgments. Internal and external assurance will be built into this plan.

Central to this plan will be revising Post Office's standard postmaster contracts to address the two judgments. A preliminary legal workshop was held on 4 December 2019 to identify contract reform objectives and strategy options, the contractual amendments that could be made, and the means by which any variations could be implemented. The discussion paper prepared for this workshop has been placed in the Reading Room.

Next Steps

An overview of the main court and settlement-related activity in the Group Litigation through to October 2020 is set out in the "Group Litigation Timetable" at **Appendix 1**.

Between now and January 2020 Post Office will:

- continue to mediate and pursue settlement discussions with the Claimant Group;
- attend to the HIJ "handing down" on 16 December 2019, the reaction the judgment receives once made public, and operationalising the outcomes of the HIJ and refusal of permission to appeal the CIJ decisions; and
- continue to prepare for future trials, including agreeing the assumed facts to be used for the March 2020 Further Issues Trial, identifying criteria for test claimant selection for subsequent trials, and preparing for the court's PreTrial Review and Case Management Conference in late January 2020.

A timeline of the key milestones through January 2020 is set out at **Appendix 2**.

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Appendices

1. Group Litigation Timetable

	Oct 2019	Nov 2019	Dec 2019	Jan 2020	Feb 2020	March 2020	April 2020	May 2020	June 2020	July 2020	Aug 2020	Sept 2020	Oct 2020
Common Issues Appeal		Oral Hearing (12 Nov) Permission refused (22 Nov)	Permission to Appeal Refused – no further action										
Horizon Issues Trial		Horizon Issues Judgment handed down (16 Dec)		Hearing on costs of Horizon Issues trial									
Further Issues Trial	Costs Budgeting (2-23 Oct) Particulars of Claim (25 Oct)	Defences (25 Nov)	Replies (16 Dec)	Rejoinder (10 Jan) Statement of Assumed Facts (16 Jan) PreTrial Review (23 Jan)		Further Issues Trial (2-20 Mar)		Likely window for Further Issues Judgment		Hearing on costs of Further Issues Trial			
Trial 4				Test case selection criteria (23 Jan) CMC (first available date on or after 23 Jan)						Likely window for Trial 4			
Settlement	Lawyers meeting (10 Oct)	Mediation (27-28 Nov and ongoing)		Window for possible second mediation									

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2. Group Litigation Timetable

<u>No.</u>	<u>Date</u>	<u>Milestone</u>
1.	27 – 28 November 2019	Mediation (ongoing): UKGI/BEIS authority to be obtained if required.
2.	10 December 2019	Post Office Board Subcommittee Meeting
3.	16 December 2019	Horizon Issues Trial: Handing down of trial judgment (2pm)
4.	16 December 2019	Further Issues Trial: Deadline for Claimants to serve Replies to Post Office's Defences
5.	10 January 2020	Further Issues Trial: Deadline for Post Office to serve Rejoinders to Claimants' Replies (if advised)
6.	16 January 2020	Further Issues: Parties to set out assumed facts and issues to be decided at Further Issues Trial
7.	22 January 2020	Post Office Board Subcommittee Meeting
8.	23 January 2020	Further Issues Trial: PreTrial Review
9.	23 January 2020	Further Issues: Proposed date for parties to serve and file their proposed Selection Criteria for Test Claimants
10.	23 January 2020	Overall GLO: Case Management Conference (first available date on or after 23 January 2020)
11.	28 January 2020	Post Office Board Meeting

3. Operations planning post appeal outcome

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Summary

The refusal of permission means that the Common Issues Judgment (**CIJ**) has radically reshaped the relationship with SPMs. It will now be more difficult to make commercial decisions about the network without legal challenge, recover shortfalls and suspend or terminate SPMs where there is improper conduct. Beyond the legal issues, the CIJ calls for a new relationship with SPMs grounded in good faith, trust and confidence and transparency. In light of the CIJ, many operational changes have already been implemented and further changes will be required.

Operational changes to date

Changes have been made to the Branch Support model applying the requirements of the CIJ:

1. **Transaction Correction** wording changed and under strict quality control to ensure these are plain English and correct
2. **Transaction Correction Disputes Team** mobilised to help SPMs if they do not agree with a Transaction Correction
3. **Tier 2 Branch Support** implemented with dedicated Case Handlers helping Postmasters by investigating discrepancies if Tier 1 call is unable to identify the cause (this is currently running at 99% success rate)
4. **Horizon Knowledge Based Faults (KBFs)** formerly known as KELs – joint work with IT and Fujitsu completed to separate known faults from Knowledge Based Articles (KBA) and Knowledge Based Information (KBI)
5. **KBF Process** – the process for identifying faults has been formalised and the (current) 11 known faults have been documented and uploaded to Dynamics and the Branch Insights Tool for reference by the Branch Support, Loss Prevention and Area Manager teams if a Postmaster reports a discrepancy
6. **Branch Insight Tool** – developed and launched to all Area Managers and branch support teams and is designed to be shared with SPMs to give detailed Operational performance information to enable supportive discussions around Operations conformance.

Changes have also been made to the approach to losses, suspensions, terminations applying requirements of the CIJ:

7. **New Loss Prevention** function has been established to minimise loss whilst supporting branches against the threat of internal and external losses
8. **End to end process review** – all data, decisions, letters, processes involved in supporting branches, identifying losses, supporting recovery of discrepancies, moving into loss dispute, recovery, suspensions and terminations have been reviewed and adjusted to address the requirements of the CIJ

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9. **Loss Prevention Case Workers** - new team mobilised to administer the end to end audit process ensuring accurate, consolidated information is maintained at an individual case level
10. **Audit Rationale Document** – produced for every audit and shared with the branch operator at the start of each audit to improve the transparency of the rationale for the audit
11. **Audit opening and closing scripts** – have been produced to ensure a consistent conversations the branch operator at the start and end of each audit
12. **Audit attendance** - all audits now have a minimum of two auditors to ensure consistency and cross check
13. **New telephone quality assurance** process to gain feedback from branch operators on their audit experience
14. **Weekly management of suspension cases** introduced to improve visibility and speed of resolutions
15. Contract management restructured to create **one point of decision making** for all suspension, termination and reinstatement decisions to improve consistency and speed.
16. **Correspondence** review and amended ensuring legal compliance, but supportive tone of voice (including remedy letters sent by Contract Advisors and discrepancy letters sent by Loss Recovery)
17. **Loss Recovery call monitoring** introduced to ensure quality and consistency of telephone calls
18. **PACE interviews** – no longer carried out by Security given that prosecution processes are on hold
19. **Increased support and Operation Torch visits** – are being carried out by the Security teams to focus on helping operators prevent their exposure to increasing retail crime and to drive security compliance
20. **Culpability reviews** – processes for operator culpability (e.g. sleight of hand) have been reviewed to ensure consistency and a focus on support for the branch operator

Next Steps

In light of the refusal of permission, some key Operational issues require further review and amendment. Work is underway between Legal and Operations to review and focus on the four areas outlined below to ensure Post Office has fully embedded the outcomes of the CIJ:

21. **Loss recovery and Branch Trading Statement (Grounds of Appeal 21-24):**
The BTS is a high level end-of-month summary showing cash and stock movements over the period. It shows whether there was a net surplus or shortfall at the end of the month. Currently, Post Office relied on an undisputed BTS as a basis to recover shortfalls from Postmasters on the basis of it being a "stated account" as a matter of agency law. The CIJ questioned whether the BTS could ever be a "stated account", pointing to the lack of a mechanism to dispute entries in the branch accounts within Horizon and the BTS not showing that sums may be disputed. Consequently, Post Office can no longer rely solely on an undisputed BTS to recover shortfalls. The possibility of delivering improvements to the BTS should now be considered to improve the clarity of the information shown on the BTS. This

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will increase the evidential weight of the document, as part of a new loss recovery framework.

22. **Establishing losses:** The current processes for establishing losses cannot always distinguish between the total level of loss and level of loss caused by 'negligence, carelessness or error' of the agent or their assistants. (Grounds of Appeal 25-26). This impacts all investigations into disputed losses as losses are currently considered on the balance of probability to be caused by 'negligence, carelessness or error' where other potential causes have been ruled out, rather than through positive establishment of a direct cause. Losses can be proven via a Tier 2 investigation (implemented after the CIJ), and this will show specifically where the error occurred if there was one. Where losses are disputed, e.g. where the Tier 2 investigation outcome is inconclusive, it is unclear how a direct cause can be established unless there is an admission by the agent or their assistant.
23. **Suspension:** Suspension periods are currently used for investigation purposes, where the CIJ states that Post Office needs to have first complied with all its other implied duties (which would include investigation of a discrepancy) prior to suspension (Grounds of Appeal 11-13). This is currently not possible in all cases and in the most extreme circumstance where Post Office believes there are significant sums at risk, or where there is a clear breach of contract (akin to Gross Misconduct). Post Office is currently suspending on full remuneration in line with the requirements of the CIJ.
24. **Repudiatory breach:** Operationally, there is not currently an exhaustive list of what constitutes a repudiatory breach of contract. This is required to ensure compliance for terminations (Grounds of Appeal 8, 14-20). This accelerates the need to re-write SPMs contracts and work is underway to confirm approach.

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4. Horizon Issues Outcomes

Issue (1): To what extent was it possible or likely for bugs to have the potential (a) to cause shortfalls in Subpostmasters' branch accounts or transactions, or (b) undermine the reliability of Horizon accurately to process and record transactions?

It was possible for bugs to have the potential both (a) to cause shortfalls in to Subpostmasters' branch accounts or transactions, and also (b) to undermine the reliability of Horizon accurately to process and record transactions. There was a significant and material risk of branch accounts being affected by bugs in Horizon.

The sheer scale of the number of TCs issued by the Post Office each year – which is over one hundred thousand for many of the years the subject of the group litigation – supports the conclusion that there was a significant and material risk of inaccuracy in branch accounts as a result of bugs in the Horizon System (both Legacy Horizon and HNG-X).

Issue (2): Did the Horizon IT system itself alert Subpostmasters of such bugs, errors or defects as described in (1) above and if so how?

The Horizon system did not alert SPMs to bugs. Although the experts were agreed that the extent to which any IT system can automatically alert its users to bugs within the system itself is necessarily limited, and although Horizon has automated checks which would detect certain bugs, they were also agreed that there are types of bugs which would not be detected by such checks. Indeed, the evidence showed that some bugs lay undiscovered in the Horizon system for years.

Issue (3): To what extent and in what respects is the Horizon System "robust" and extremely unlikely to be the cause of shortfalls in branches?

Legacy Horizon was not remotely robust.

HNG-X, the first iteration of Horizon Online, was slightly more robust than Legacy Horizon.

HNG-A is far more robust than either of the previous two iterations of the system.

There was a material risk that a shortfall in a branch's accounts was caused by the Horizon system during the years when both Legacy Horizon and HNG-X were in use, which is 2000 to 2010 and 2010 to 2017 respectively.

Issue (4): To what extent has there been potential for errors in data recorded within Horizon to arise in (a) data entry, (b) transfer or (c) processing of data in Horizon?

There was a material risk for errors in data recorded within Horizon to arise in (a) data entry, (b) transfer or (c) processing of data in Horizon in both the Legacy Horizon and HNG-X forms.

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Issue (5): How, if at all, does the Horizon system itself compare transaction data recorded by Horizon against transaction data from sources outside of Horizon?

The comparison of data is largely automated. The Judge does not go into detail as to how this is done. The evidence did not deal in a comprehensive way with each such method for every one of the Post Office's many hundreds of clients. Nor did the Judge consider that such evidence was required properly to answer this issue.

Issue (6): To what extent did measures and/or controls existed in Horizon to prevent, detect, identify, report or reduce to an extremely low level of risk of data and software errors?

The measures and/or controls that existed on Legacy Horizon and HNG-X did not prevent, detect, identify, report or reduce to an extremely low level the risk of data or software errors. The experts were agreed that there were many measures and controls within Horizon that existed to prevent, detect, identify report or reduce the risk of varying errors. However, the experts were also agreed that whilst Horizon contains measures and controls for detecting system integrity concerns, these automatic mechanisms have been shown to have failed in the past.

Issue (7): Were Post Office and/or Fujitsu able to access transaction data recorded by Horizon remotely (i.e. not from within a branch)?

This answer was substantially agreed by the parties. Both Post Office and Fujitsu could read data remotely. Fujitsu could access and edit all transaction data recorded by Horizon.

Issue (8): What transaction data and reporting functions were available through Horizon to Post Office for identifying shortfalls, including whether they were caused by bugs, errors and/or defects in the Horizon system?

This issue was substantially agreed by the parties. The Judgment lists out a series of systems and data sources available to Post Office that are not controversial. The Judge also notes that Post Office had access to data and systems that were not available to SPMs (again this is not controversial).

Issue (9): At all material times, what transaction data and reporting functions (if any) were available through Horizon to Subpostmasters for (a) identifying shortfalls and their causes; and (b) accessing and identifying transactions recorded on Horizon?

This issue was substantially agreed by the parties. The experts agreed that the causes of some types of shortfalls may be identified from reports or transaction data available to SPMs. Other causes of shortfalls may be more difficult, or impossible, to identify from reports or transaction data available to the SPMs, because of their limited knowledge of the complex back-end systems.

The Judge also found that because the reports and data available to SPMs were so limited, their ability to investigate was itself similarly limited. He went on to find that SPMs simply could not identify discrepancies and shortfalls, nor their causes, nor access or properly identify transactions recorded on Horizon, without cooperation from Post

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Office. This finding was not however required as there was no question to this effect asked by any of the Horizon Issues and the Judge has gone out of scope here.

Issue (10): Whether the Defendant and/or Fujitsu have had the ability to remotely access and change branch data without the knowledge or consent of SPMs.

Fujitsu had many facilities for doing this and some of these could have been done without the knowledge or consent of SPMs (as accepted by Post Office before trial, but only following Fujitsu initially giving incorrect evidence on this point).

Post Office could only change branch data utilising its Global User role. This permitted Post Office to inject transactions without the knowledge or consent of the SPM. However, it could only be done by someone who was physically present in a branch, as that is the only way Global User could be used by the Post Office. This would therefore be likely to mean that a SPM or their assistant would at least know someone was in their branch doing something in terms of access to their branch accounts.

Issue (11): Did the Horizon system have any permission controls around remote access and did the system maintain a log of such actions and such permission controls?

There were permission controls, but the remote access facilities were very wide and they were not effectively controlled. The permission controls and logs were "inadequate" and "deficient".

Issue (12): If the Defendant and/or Fujitsu did have such ability, how often was that used, if at all?

Due to Fujitsu's poor record keeping, the experts could not provide any confident evidence on this subject of frequency. On the evidence from the two experts, the answer should be in approximate terms only and would be about once a day over the whole life of the system.

Issue (13): To what extent did use of any such facility have the potential to affect the reliability of the Branches' accounting positions?

The remote access facilities were very wide. These facilities therefore had the potential to affect the reliability of a SPM's branch accounts to a material extent.

Further, the evidence shows clearly that there were instances when this in fact occurred, which goes wider than the issue posed (which asks about potential) but which the Judge held was also relevant to the Horizon Issues as a whole.

Issue (14): How (if at all) does the Horizon system allow a SPM to render accounts and dispute shortfalls?

This was substantially agreed by the experts. The Horizon system can compare cash and stock figures, but it has no facility to record a dispute. The comparison is done by the system comparing its electronic records of what cash and stock is held in a branch, with the corresponding figures inputted by the SPM at the end of a trading period.

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Note: Without naming Post Office but clearly aiming the comment at Post Office, the Judge criticises the parties for raising this as point of dispute when the answer was clear from the Common Issues. However, Post Office has never claimed that Horizon had the ability to record a dispute. Post Office's case was that disputes are raised through the helpline. This dispute method is acknowledged by the Judge at the end of his answer

Issue (15): How did Horizon process and/or record Transaction Corrections?

This was substantially agreed by the parties. TCs are largely created and processed outside of Horizon through manual actions, save for when a SPM accepts the TC in branch on the Horizon terminal. Disputes to TCs are done by the SPM contacting the Helpline and again this is outside the Horizon system, which does not record that dispute. If the dispute is upheld (as in, the original TC is accepted by the Post Office as having been wrongly issued) then another TC will be issued to correct it. That subsequent TC will correct the effect of the first TC in the branch accounts when it is accepted by the SPM. The issuing of the subsequent TC is also done outside the Horizon system.