

**POSTMASTER GROUP ACTION
CONFIDENTIAL AND LEGALLY PRIVILEGED****Steering Group Meeting: 6 December 2016**

DISCUSSION POINT: *Should Post Office set out its concerns with Fujitsu's past conduct to persuade Fujitsu to reduce its ongoing support charges?*

BACKGROUND:

Post Office has commissioned Deloitte to investigate "remote access" issues within Horizon. Deloitte's work currently includes further analytics on the transaction data to resolve potential anomalies and reviewing audit logs on super user access. Deloitte needs input from Fujitsu, including its engagement at various workshops. However Fujitsu is refusing to cooperate unless it is paid for its services.

Fujitsu has arguably contributed to the need for Deloitte's investigations:

- *Statements about remote access*

During the course of Second Sight's investigations, Post Office asked Fujitsu for various assurances and confirmations about the scope of remote access to Horizon and whether it was possible for branch data to be edited. Post Office relied on the information it received from Fujitsu and made public statements using that information, including to the Parliamentary Select Committee. It has now transpired through an earlier stage of Deloitte's review that the information supplied by Fujitsu was incorrect or, at least, not as complete as it could have been. Not only is this embarrassing for Post Office and could create commercial issues across the network, but it has contributed to the allegation that Post Office has concealed an ability to change transaction data.

- *Gareth Jenkins*

Fujitsu put forward Gareth Jenkins, one of the key engineers of Horizon, to give evidence in Post Office's criminal prosecutions. Following a review by Brian Altman QC, Post Office was advised that Mr Jenkins' evidence was incomplete because his statements led the Court to believe there were no issues with Horizon when Mr Jenkins knew there were. This has damaged Mr Jenkins' credibility and means Post Office cannot use him to give evidence in future.

In a more general sense, the fortunes of Post Office and Fujitsu are also entwined. If the Claimants are able to show that there have been errors in Horizon that have contributed to branch shortfalls, this will reflect badly on Fujitsu. There is also the outside possibility that the Claimants may seek to join Fujitsu to the proceedings as a co-defendant in relation to some of their fraud and conspiracy claims.

There would therefore seem to be good, albeit self-interested, reasons for why Fujitsu may wish to assist Post Office.

ISSUE:

The immediate issue is that Fujitsu are not currently supporting Deloitte due to an impasse between Post Office and Fujitsu around commercial terms. This is delaying access to key information needed to prepare Post Office's case.

There is also a longer term issue in that Fujitsu's costs to date and going forward will likely be significant unless put in check now.

Post Office may therefore wish to consider whether it is best to either:

- (a) Pay Fujitsu for its time in assisting Deloitte and not raise the above matters; or
- (b) Use the above points so to persuade Fujitsu to provide its support in relation to the Group Litigation at reduced / zero cost.

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RISKS:

If Post Office highlights to Fujitsu its concerns about Fujitsu's past conduct and how it has contributed to the current situation in the Group Action, the following are potential outcomes:

- Fujitsu could agree to be more responsive and work with Deloitte and withdraw its request for further payment.
- Fujitsu could agree that it will be more responsive but maintain that it needs paying for its time.
- Fujitsu could ignore Post Office's concerns and maintain its request for further payment.
- Fujitsu could retreat to a more defensive position, declining to assist Deloitte unless compelled to through a Court Order or simply responding much more slowly and tentatively having involved its legal team in all decisions.

RECOMMENDATION:

It is clear that stating Post Office's concerns to Fujitsu could have ramifications for the relationship and cause Fujitsu to decline to give any further assistance Post Office may need during the Group Action. We are however unaware of the current state of the commercial relationship with Fujitsu and therefore do not feel properly placed to offer a full recommendation on how to proceed.

We can say that a clear strategy on the commercial approach to Fujitsu (whatever that may be) would be of benefit to those involved in dealing with Fujitsu and would assist in unlocking the current impasse.