

**POSTMASTER GROUP ACTION  
CONFIDENTIAL AND LEGALLY PRIVILEGED**

**Steering Group Meeting: 21 November 2016**

**DECISION: *Should Post Office push for a 3 month GLO window?***

**SUMMARY:**

**Background**

The hearing for the Group Litigation Order (**GLO**) has been listed for 26 January 2017. The GLO includes details of how the GLO is to be advertised and a window within which Claimants can be added to the Action. Although it is technically possible for Claimants to be added to the Action outside of this window, permission from the Court would be required to do so.

Once the GLO has been made (in January 2017), Freeths are required to advertise it so as to ensure that all potential Claimants have been included within the Action. The advertisement provides information on the types of individuals whose claims would fall within the Action (i.e. were a SPMR, assistant or crown employee who used Horizon and suffered loss due to short falls in branch accounts) and how they can join the Action.

**Current position**

The current draft of the GLO provides that Freeths are allowed to advertise the GLO via their website, the Law Society Gazette, on social media and in national and regional newspapers. The exact parameters of the advertisement are currently being agreed with Freeths.

Freeths have proposed a cut-off date for Claimants to be added to the Action of July 2017 (6 months after the January hearing). Whilst there is no longstop date for Freeths' advertisement of the GLO, we would expect the advertisement to end at the same time as the cut-off date for new Claimants.

Post Office could argue that the GLO window should only be 3 months, with a cut-off date for new Claimants in April 2017. We have attempted to agree this with Freeths already and they have refused.

Although the GLO hearing is not until January 2017, we now need to make our final position clear in correspondence with Freeths.

**ADVANTAGES OF PUSHING FOR A 3 MONTH WINDOW:**

- Earlier certainty as to the number of Claimants can be achieved/
- The timeline for the Action would be brought forward by 3 months thereby reducing disruption to the business.
- The Action is already highly publicised (i.e. there is a micro-site which has been set up Freeths and the JFSA website). As such, the last three months of advertisement could be seen by the Court as unnecessary, since within this period there are unlikely to be many new Claimants to whom the Action been brought to the attention of.
- Any impact of any media attention generated by the advertisement should quieten down by April 2017. This would limit any negative impact on Post Office's brand, reputation and recruitment.

**DISADVANTAGES OF PUSHING FOR A 3 MONTH WINDOW:**

- Post Office could be viewed as acting in an obstructive and unreasonable manner and would have less bargaining power in respect of other terms within the GLO. It could also been seen as attempting to limit the number of Claimants.

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- Counsel's opinion is that the Court would more likely opt for 6 months (as this is the usual period for most GLOs). However, it would not be unreasonable for Post Office to press for 3 months.
- To achieve this objective, Post Office may need to concede Freeths' request that a list of all subpostmasters against whom Post Office has taken civil or criminal action in respect of shortfalls is provided. If so, a large number of potential Claimants would already have been brought to Freeths' attention and 3 months of advertisement would be more.
- If not all of the potential Claimants are identified during the three month period then these individuals may try to start their own separate proceedings at a later date.

**RECOMMENDATION:**

Post Office holds its position that the window within which Claimants can be added to the Group Action (and consequently the advertisement of the GLO) is 3 months.

However, in the event that it appears the Court may view Post Office's behaviour as unreasonable or oppressive, or it becomes apparent during negotiations that other key provisions of the GLO could be agreed in Post Office's favour if a 6 month window was accepted, then Bond Dickinson and Counsel are provided with a mandate to agree to a 6 month window if they consider it appropriate to do so.