

STRICTLY CONFIDENTIAL – SUBJECT TO LEGAL PRIVILEGE

**Postmaster Group Litigation – Meeting with Tom Cooper – 24 April 2018**

**Speaking Notes**

**1. Genesis**

Short recap (including HMG involvement)

- a. Last update to BEIS Legal – 30 October 2017
- b. Significant work done by POL Chairman at Minister's request between September 2015 and early 2016 "to see what more could be done". Work stopped (on advice) when litigation formally began in April 2016.

Horizon Investigations

- c. Pre-2010, some PMRs start question whether Horizon is responsible for branch losses (e.g. Lee Castleton – 2007)
- d. 2011 – Shoosmiths claims
- e. Early 2012 James Arbuthnot MP asks POL to look into it - Second Sight instructed
- f. First SS report in July 2013 - "no evidence of system wide (systemic) problems with the Horizon software", but issues identified with the way we dealt with individual PMRs, i.e. branch operation practices, processes and support.
- g. Investigation and Mediation Scheme – Autumn 2013 to Autumn 2015:
  - i. Set up to investigate individual complaints, many of which were vague
  - ii. 150 applicants; process fell apart when it did not start delivering large settlements
  - iii. Process attracted criticism in Parliamentary debate (Westminster Hall 17.12.14; Commons 29.06.18), Select Committee hearing (13.02.15) law firm press release (Edwin Coe 14.12.17) and media (in partic. Panorama 17.08.15).
  - iv. Still managed to settle c.20 through mediation.

**2. Litigation Overview**

Legal teams

- a. Claimants' solicitors are Freeths LLP (small to mid-sized national firm; Leeds office)
- b. Claimants' Lead Counsel is Patrick Green QC of Henderson Chambers
- c. Funding provided by Therium (significant UK litigation funder, recently recapitalised, operating in this case through a Jersey-based entity)
- d. Defendant's solicitors are Womble Bond Dickinson
- e. Defendant's Lead Counsel is Anthony de Garr Robinson QC and David Cavender QC
- f. Both sides have expert witnesses: Jason Coyne and Robert Worden

Claim Details

- g. First Claim Form filed 18.04.16 (served 05.08.16) on behalf of 198 claimants. Further Claim Forms filed on 24.07.16 and 23.11.17, bringing the claimants to 561.
- h. Claimants allege Post Office acted in breach of contractual and/or tortious and/or fiduciary duties, and is also liable for deceit, negligent misstatement, misrepresentation, harassment, malicious prosecution and/or unjust enrichment.
- i. Claims for misfeasance in public office have been removed. Claims for conspiracy and contravention of the ECHR have been withdrawn but could be restated.

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- j. Claim does not assert employment law claims.
- k. Allegations are essentially that Post Office acted against PMRs to recover losses, terminate contracts etc. without first properly investigating the source of those losses (including as to whether Horizon had caused them).
- l. Post Office is defending the claim relying on the express terms of the PMR contract and established principles of agency law, and asserts a generic counterclaim.
- m. Claimants' approach is to invert the contract by implying lots of extra terms.
- n. The Group Litigation makes complex pursuing other court proceedings (civil or criminal) which concern the same issues.

### 3. Approach to Litigation

- a. Very wide ranging, “generic” allegations, rather than individual claims.
- b. Two trials ordered:
  - i. Common Issues, 5 November 2018
    - Concerns the construction of the PMR contract
    - 6 Lead Cases selected to test legal principles.
    - Wide ranging, “fishing” disclosure sought, but not awarded.
    - “Factual Matrix” evidence for trial should be limited to only that information known to both parties at the time the contract was formed. Key point of dispute going into the trial.
  - ii. Horizon Issues, 11 March 2019
    - 
    - Focused exclusively on the Horizon system, essentially asking whether Horizon has defects that cause losses in branches.
    - Principally focused on evidence from IT experts.
    - Full directions not yet set and still under discussion – will likely involve further request for documents and information from Post Office.
- c. [POL USE ONLY – NOT TO BE DISCLOSED] No directions to determine issues of breach and causation - *claim values are therefore entirely speculative*:
  - i. Total repaid by Claimants to Post Office (data from SOIs) £12,689,110.82
  - ii. Total claim value £224,343,776.53
- d. [POL USE ONLY – NOT TO BE DISCLOSED] Deeper dive undertaken on first 198 Claimants for Lead Claimant selection:
  - i. Total claim value £102,276,636.94
  - ii. Total repaid by Claimants to Post Office (data from SOIs) £4,457,572.78
  - iii. Shortfalls which have not been repaid by Claimants (data provided by FSC) £1,096,674.20

### 4. Litigation indicative timetable

- **CIT 18 May 2018:** POL defences to Lead Claims to be served
- **CIT 29 June 2018:** Agree Statement of Facts with Freeths
- **CIT 13 August 2018:** Serve Witness Statements
- **HIT 14 September 2018:** C's Expert Report on Horizon

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- **HIT 2 November 2018:** POL's expert report
- **CIT begins 5 November 2018**
- **HIT 18 January 2019:** Supplemental Reports
- **HIT begins 11 March 2019**

**5. Merits Assessments**

- a. Merits kept under continuous review.
- b. Claimants' approach makes settlement difficult (no hard number; wide ranging issues; very different individual cases etc). No settlement offer so far from the Claimants.
- c. Potential for mediation after judgment on Common Issues trial.
- d. David Cavender QC onboarding involved a fresh assessment of the case.
- e. Merits opinions – due beginning of May (having received IPOCs). To be refreshed shortly before trial and then at key stages thereafter.
- f.

**6. Media**

- a. Some media activity at the outset of the Claim – created by Freeths to drum up Claimants – standard activity in Group Litigation.
- b. First Court hearing (October 2016) where GLO was ordered attracted a small amount of coverage.
- c. Since then relatively little media attention.

**7. Judicial Comments (ONLY TO BE USED IF ASKED)**

- a. Managing Judge gave a judgment following the first CMC that the parties were not cooperating. Comment was unfair and materially inaccurate. In substance, the Judge largely ordered what we asked for.
- b. Reported only in the Solicitors Gazette as gossip reporting
- c. As the Big Corporate, we need to expect some judicial pressure in an attempt to even the playing field.
- d. Since then, no further comments from the Judge – indeed he has thanked the parties for their cooperative approach (but of course this doesn't get media attention).

**8. CCRC**

- a. 80 Claimants were subject to criminal proceedings.
- b. 30 Claimants have asked the CCRC to review their prosecutions.
- c. CCRC reviewing 32 Post Office prosecutions in total.
- d. First contact in July 2013 following Second Sight Review.
- e. Resumed January 2015, i.e. at the same time as the Parliamentary criticism arose (cf. 1.g.iii above).
- f. No indication as to when investigations will complete.

**9. Agreeing protocol for information share with UKGI and BEIS**

- a. Who

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- b. When
- c. How

**10. AOB**