

# Group Litigation Update

Author: Ben Foat/Rodric Williams

Sponsor: Ben Foat

Meeting date: 26 November 2019

## Executive Summary

### Context

Post Office is awaiting decisions from the courts on the Horizon Issues trial (which is now imminent), and on Post Office's application for permission to appeal the March 2019 Common Issues judgment (which should be received on Friday 22 November 2019).

As reported to the Board on 8 November 2019, the "KEL Disclosure Issue" identified in October 2019 has been resolved with the Court and the Claimants, and should not impact delivery of the Horizon judgment.

On 25 October 2019 we received the Claimants' individual Particulars of Claim ("IPOCs") for the third, Further Issues trial scheduled for March 2020. Post Office's Defences replying to the IPOCs must be filed by 25 November 2019.

Mediation to explore settlement with the Claimant group remains scheduled for 27-28 November 2019. On 29 October 2019 the Post Office Board authorised the Group Litigation Subcommittee to delegate to the General Counsel authority to make settlement offers at mediation, on terms determined by the Subcommittee.

### Questions addressed in this report

1. What is the update on the Group Litigation (Horizon judgment; Common Issues trial; Further Issues trial; future trials)?
2. What settlement authority has been provided for the mediation on 27-28 November 2019?
3. What are the next steps in the Group Litigation?

### Conclusion

1. The Horizon judgment is now imminent. We expect to receive on 22 November 2019 the Court of Appeal's decision on whether to grant Post Office permission to appeal the Common Issues judgment. Post Office must file its Defences for the March 2020 "Further Issues" trial by 25 November 2019. The parties aim to exchange criteria for selecting "Test Claimants" for future trials on 12 December 2019.

3. The next key steps in the litigation are: attending to the courts' decisions on the Horizon trial and Post Office's application for permission to appeal the Common

PRIVILEGED &amp; CONFIDENTIAL – DO NOT FORWARD OR SHARE

Issues judgment once received; filing Post Office's Defences for the Further Issues trial by 25 November 2019; and attending mediation on 27-28 November 2019.

### Input Sought

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

### 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.

### Litigation Update

#### *Horizon Judgment*

We have still not received the draft Judgment on the Horizon Issues trial, which is now imminent. On 6 November 2019 the Managing Judge emailed the parties advising that "intended dates for distribution of the draft will be circulated in due course". The Board will be updated on the judgment's content and outcomes once it has been received.

The Claimants may seek to postpone the mediation scheduled for 27-28 November 2019 if they do not feel they have sufficient time to consider the judgment ahead of the mediation. However they have not yet asked for this.

#### *KEL Disclosure Issue*

As separately reported on 8 November 2019, we have resolved with the Claimants and the Court the issue which came to light in October 2019 concerning disclosure of the Horizon "Known Error Logs" (KELs) for the Horizon trial:

- the Claimants have informed us and the Court that they do not want to take any further steps on this issue; and
- the audit we commissioned on the completeness of Fujitsu's KEL disclosure did not identify any further KELs which need to be disclosed or require Post Office to change the submissions we made about Horizon during the trial.<sup>1</sup>

The KEL issue should not therefore have any direct impact on the Horizon trial or delay delivery of the judgment.

#### *Common Issues Appeal*

The oral hearing of Post Office's application for permission to appeal the Common Issues judgment handed down in March 2019 took place on Tuesday 12 November 2019. We should receive on Friday 22 November 2019 the Court of Appeal's decision on whether permission to appeal has been granted or refused. The Board will be updated on the outcomes from the application once we have received that decision.

<sup>1</sup> The written report on the audit is due to be delivered during the week commencing 18 November 2019.

PRIVILEGED &amp; CONFIDENTIAL – DO NOT FORWARD OR SHARE

### *Third / Further Issues Trial*

On 25 October 2019 we received from the Claimants individual particulars of claim (IPOCs) for four test cases (Abdulla, Bates, Stubbs and Stockdale, each a "Lead Claimant" in the November 2018 Common Issues trial). The IPOCs set out the types of loss each Claimant is claiming for the purposes of the March 2020 Further Issues trial, which trial will determine whether those losses are recoverable in principle and, if so, how they should be quantified.

The Claimants are seeking recovery of a very wide range of loss and damage, but have not put any values on these claims in the IPOCs. The legal principles behind many of the claims are not contentious, although the way which the Claimants seek to apply them can be. The two claims we see as being most contentious are:



7

Post Office must file its Defences to the IPOCs by 25 November 2019. Helen Davies QC and Tony Robinson QC have been retained to lead this work. The Board Subcommittee noted the approach being taken to the Defences at its 13 November 2019 meeting.

### *Future Trials*

The parties have agreed to exchange on 12 December 2019 proposed criteria for selecting "Test Claimants", whose cases could be used as representative of the wider Claimant group in a future trial on breach (i.e. whether Post Office acted wrongly), causation (i.e. did that breach cause the Claimant's harm), and limitation (i.e. is a Claimant's claim time-barred).

No other dates have been set for selecting Test Claimants, or for completing the procedural steps required for trials on breach, causation and limitation. The parties will be asking the Court to schedule a Case Management Conference in January 2020 for this purpose.

### *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. By the end of November 2019, we will know whether we have permission to appeal the Common Issues judgment, the Horizon judgment will have been received, and the first mediation meeting will have taken place. A revised spend forecast will be provided at the January 2020 Board.

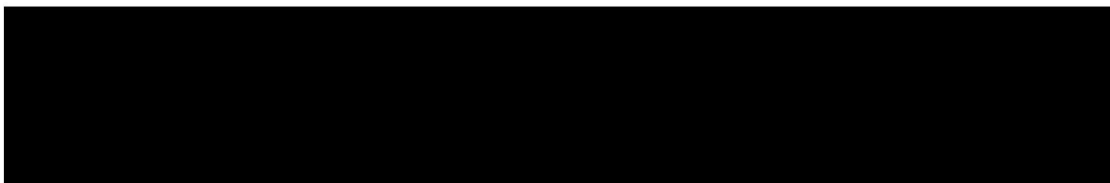
### *Mediation – Settlement Authority*

Mediation with the Claimant group will take place at Herbert Smith Freehills' London offices on 27 and 28 November 2019, with Charles Flint QC and Stephen Ruttle QC acting as mediators (whose profiles are available in the Reading Room). The key Post



PRIVILEGED &amp; CONFIDENTIAL – DO NOT FORWARD OR SHARE

Office representatives at mediation will be General Counsel Ben Foat and Alan Watts from Herbert Smith Freehills, with Post Office CEO Nick Read attending to make introductory commercial remarks. We do not as yet know the make-up of the Claimants' mediation team.



As Shareholder approval is required for any settlement above £50m, the Shareholder is currently working through its approvals process, which it aims to complete prior to the mediation. The Subcommittee has asked the Shareholder to put in place a mechanism through which Post Office can seek its approval on an expedited basis should that facilitate obtaining a settlement at an acceptable level during the mediation.

### 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 December 2019 we will:

- attend to the Horizon judgment and Court of Appeal's decision on our application for permission to appeal the Common Issues Judgment once received;
- file Defences for the Further Issues trial by 25 November 2019;
- attend mediation on 27-28 November 2019; and
- draw up proposed criteria for selecting Test Claimants for later trials.

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

Operational responses to the Common Issues judgment and Contingency Planning for the Horizon judgment are being reported separately.



PRIVILEGED &amp; CONFIDENTIAL – DO NOT FORWARD OR SHARE

# 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
<b>Common Issues Appeal</b>		Oral permission: Hearing (12 Nov)  Decision (22 Nov)	File additional documents with Court as required for appeal if permission is granted.							Likely window for Court to hear appeal if permission is granted.  Note: Court vacation August & September so unlikely appeal will be heard in these months.			
<b>Horizon Issues Trial</b>		Likely window for Horizon Issues Judgment		Hearing on costs of Horizon Issues trial									
<b>Further Issues Trial</b>	Costs Budgeting (2-23 Oct)  Particulars of Claim (25 Oct)	Defences (25 Nov)	Statement of Assumed Facts (2 Dec)  CMC (4 Dec)  Replies (9 Dec)	Pre-trial Review (23 Jan)		Further Issues Trial (2-20 Mar)		Likely window for Further Issues Judgment		Hearing on costs of Further Issues Trial			
<b>Trial 4</b>			Proposed date to agree test case selection criteria (12 Dec)							Likely window for Trial 4			
<b>Settlement</b>	Without Prejudice Lawyers meeting (10 Oct)	Mediation (27-28 Nov)		Window for possible second mediation									

PRIVILEGED &amp; CONFIDENTIAL – DO NOT FORWARD OR SHARE

## 2. Group Litigation Timetable

<u>No.</u>	<u>Date</u>	<u>Milestone</u>
1.	Imminent	Horizon: court to deliver draft judgment to the parties
2.	22 November 2019	Common Issues: Court of Appeal to give reasons for granting or refusing permission to appeal Common Issues judgment
3.	25 November 2019	Further Issues Trial: Deadline for Post Office to serve individual Defences
4.	26 November 2019	<b>Post Office Board Meeting</b>
5.	27 – 28 November 2019	Mediation: UKGI/BEIS authority to be obtained if required.
6.	2 December 2019	Further Issues: Parties to set out assumed facts and issues to be decided at Further Issues Trial
7.	4 December 2019	Case Management: Case Management Conference to resolve any disputes about issues to be dealt with at FIT
8.	9 December 2019	Further Issues Trial: Deadline for Claimants to serve Replies to Post Office's Defences
9.	10 December 2019	<b>Post Office Board Subcommittee Meeting</b>
10.	12 December 2019	Further Issues: Proposed date for parties to serve and file their proposed Selection Criteria for Test Claimants
11.	22 January 2020	<b>Post Office Board Subcommittee Meeting</b>
12.	23 January 2020	Further Issues Trial: Pre-trial Review
13.	28 January 2020	<b>Post Office Board Meeting</b>