

**CONFIDENTIAL AND LEGALLY PRIVILEGED  
POST OFFICE GROUP LITIGATION**

Steering Group Meeting: 3 November 2017

**DISCUSSION PAPER: Should Post Office change the way it deals with Active Claimants?****1. BACKGROUND**

- 1.1 Of the 510 Claimants, there are around 120 that are still engaged as postmasters actively working in branches (**Active Claimants**). Like all postmasters, these Active Claimants encounter day to day issues such as losses in branches. However, by their very nature, this particular group has a higher incidence of these issues.
- 1.2 Around 40 Active Claimants are currently in some form of live dispute with Post Office in which Womble Bond Dickinson has at least a supervisory role. These disputes are typically regarding losses in branches and consequent suspensions and terminations. Where this happens, Freeths often step in and start writing to WBD on behalf of the Active Claimants. This then necessarily causes WBD to have to reply so to ensure that the answers provided align with Post Office's wider legal position in the litigation. Since the start of the litigation over 200 letters have been exchanged between WBD and Freeths. We estimate that WBD's role in this costs Post Office around £20k - £30k per month.
- 1.3 Where possible, we have sought to manage the Active Claimants within existing BAU processes, such that Post Office communicates directly to the Active Claimants. This mainly means advising the Contract Advisors on how to handle conduct cases, but it also touches on the debt teams, security, parts of FSC, SSRT and sometimes field support.
- 1.4 The challenge is that the decisions made in relation to Active Claimants are subject to much greater scrutiny than usual. Freeths regularly demand access to lots of documents, ask awkward (if unnecessary) questions and criticise Post Office's responses.
- 1.5 The current way of working is satisfactory but puts strain both on the litigation process and Post Office's teams. From the litigation perspective, we are not necessarily getting all the information we need as quickly as we need it. This is not a criticism of Post Office's teams but a reflection on the often demanding deadlines set by Freeths. From Post Office's perspective, we suspect that the internal teams are slightly frustrated with lawyers pouring over their decisions and disrupting their usual workflows. It is also difficult to keep all people in all these teams fully apprised of developments in the litigation, which can change quickly but also subtly. This has, we believe, led to some suggestion that the teams are not being kept in the loop.
- 1.6 Overall, everyone is working together well and we wish to express our thanks for all the support (and patience!) we get from Post Office, but we would like to explore whether there is a way of doing things better. In this context, we note comments made to us by senior management that it would consider requests for extra internal support / staff if needed.
- 1.7 Our aim is to be able to respond faster to Freeths so to keep the pressure on them and respond more comprehensively so that there can be no complaint that they do not have sufficient information, whilst minimising the extra work needed from Post Office's BAU teams.
- 1.8 We do not yet have a firm view on how this might be achieved but set out below some points for discussion.

**2. OPTIONS**Communication with Freeths

- 2.1 The current line of communication is, wherever possible, from Post Office (often Contract Advisors) direct to Active Claimants. We are resisting getting drawn into long correspondence with Freeths about substantive issues and encourage Active Claimants to speak directly to Post

Office. As Freeths' arguments are becoming more sophisticated (they are now laying traps in correspondence hoping that Post Office will confirm or deny something that will be used against it later in Court) this is becoming more difficult to police at arm's length. One way to address this is for WBD to be the principal voice for Post Office in these cases, with us taking instructions from Post Office (rather than Post Office speaking to Active Claimants with us advising behind the scenes).

#### Internal Reporting

- 2.2 We see a need for increased flow of information into internal teams about progress in the litigation in general. This could be by the way of further briefings from the lawyers, but suspect that this is better done through line management who can tailor the message to a particular business area.
- 2.3 There is a tension here in that we need to carefully control the dissemination of information in order to protect legal privilege.

#### Support structure

- 2.4 One challenge is that each person in an internal team may only occasionally have to deal with an Active Claimant. Because they are not regularly involved, it is difficult for them to keep up to speed with what is going on in the litigation, and then when an Active Claimant comes across their desk it suddenly requires urgent attention. One solution may be to form a smaller group of people who manage all the Active Claimants. We can see a couple of ways of doing this.
- 2.5 First, one or two people in each team could take responsibility for the Active Claimants. For example, rather than spreading the Active Claimants across all the Contract Advisors, they could all be handled by one or two Contract Advisors who are dedicated to this. This would then need to be replicated in all other teams (eg. security, debt, etc.)
- 2.6 Second, a separate standalone team could be setup to manage all the Active Claimants entirely outside of BAU processes.
- 2.7 We note that addressing this structural point, and ring-fencing the Active Claimants under the management of a small number of dedicated people, may also help with internal reporting and the protection of privileged material.

### **3. RECOMMEDATION**

- 3.1 Our very tentative recommendation is to create a standalone team to manage the Active Claimants, potentially as an extension of the SSRT / litigation support team run by Kath and Shirley who by their very nature are much closer to the litigation. This team can then liaise with the business where necessary, providing WBD with instructions and allowing us to go back to Freeths more effectively.
- 3.2 We recognise however that this matter is some way outside our area of expertise and would therefore welcome views from the Steering Group.