

To: Tim Parker [GRO] Tim Franklin [GRO] Carla Stent [GRO] Ken McCall [GRO] Cooper, Tom - UKGI [GRO]  
 Nick Read [GRO] Alisdair Cameron [GRO] Watts, Alan [GRO] Emanuel,  
 Cc: Veronica Branton [GRO] Andrew Parsons [GRO] Rodric Williams [GRO] Patrick Bourke [GRO]  
 From: Ben Foat [GRO]  
 Sent: Mon 09/12/2019 10:44:28 PM (UTC)  
 Subject: GLO - High Level Review Embargoed Horizon Judgment - Section M - DO NOT FORWARD - LEGALLY PRIVILEGED AND STRICTLY CONFIDENTIAL

All

Further to my email below, Justice Fraser produced his further final section (M) of his Horizon Issues Judgment on Friday afternoon. Please note that this is still embargoed until it will be handed down at 2pm on 16 December.

In short:

1. The Judge repeats his earlier comments that Legacy Horizon and HNG-X are not robust, but that HNG-A is relatively robust.
2. In relation to Legacy Horizon and HNG-X, there was a "material risk" that bugs in Horizon could be the cause of shortfalls in branches. Consequently, Post Office should prepare to receive new/future claims in respect of historic shortfalls separate to the GLO action. We have also taken advice from a leading criminal QC about the approach that we should take following the handing down of the HIJ in respect of convicted claimants.
3. Fujitsu (but not Post Office) has wide abilities to edit branch data using remote access (Post Office accepted this pre-trial) but those abilities were subject to "inadequate" controls.
4. Post Office could inject transactions into a branch's accounts if physically present in a branch, but could not do this remotely (Post Office accepted this pre-trial).

We have, as required, notified his Honour of over 70 typographical errors in his judgment.

#### **Next Steps**

A board subcommittee is being convened tomorrow where we will discuss the implications of this judgment. As previously mentioned, we have stood up our contingency and comms plans. We will advise on the steps that we should take in respect of the convicted claimants and how best to manage potential future claims [REDACTED]

We are still in the process of the mediation. The parties have made significant progress which we will update the sub-committee and the board in due course.

#### **Further summarised details of the 15 HIJ questions and answers are set out below:**

**what extent was it possible or likely for bugs to have the potential (a) to cause shortfalls in Subpostmasters' branch accounts or transactions, or (b) undermine the reliability of Horizon accurately to process and record transactions?**

It was possible for bugs to have the potential both (a) to cause shortfalls in to Subpostmasters' branch accounts or transactions, and also (b) to undermine the reliability of Horizon accurately to process and record transactions. There was a significant and material risk of branch accounts being affected by bugs in Horizon.

The sheer scale of the number of TCs issued by the Post Office each year – which is over one hundred thousand for many of the years the subject of the group litigation – supports the conclusion that there was a significant and material risk of inaccuracy in branch accounts as a result of bugs in the Horizon System (both Legacy Horizon and HNG-X).

**Issue (2): Did the Horizon IT system itself alert Subpostmasters of such bugs, errors or defects as described in (1) above and if so how?**

The Horizon system did not alert SPMs to bugs. Although the experts were agreed that the extent to which any IT system can automatically alert its users to bugs within the system itself is necessarily limited, and although Horizon has automated checks which would detect certain bugs, they were also agreed that there are types of bugs which would not be detected by such checks. Indeed, the evidence showed that some bugs lay undiscovered in the Horizon system for years.

**Issue (3): To what extent and in what respects is the Horizon System “robust” and extremely unlikely to be the cause of shortfalls in branches?**

Legacy Horizon was not remotely robust.

HNG-X, the first iteration of Horizon Online, was slightly more robust than Legacy Horizon.

HNG-A is far more robust than either of the previous two iterations of the system.

There was a material risk that a shortfall in a branch’s accounts was caused by the Horizon system during the years when both Legacy Horizon and HNG-X were in use, which is 2000 to 2010 and 2010 to 2017 respectively.

**Issue (4): To what extent has there been potential for errors in data recorded within Horizon to arise in (a) data entry, (b) transfer or (c) processing of data in Horizon?**

There was a material risk for errors in data recorded within Horizon to arise in (a) data entry, (b) transfer or (c) processing of data in Horizon in both the Legacy Horizon and HNG-X forms.

**Issue (5): How, if at all, does the Horizon system itself compare transaction data recorded by Horizon against transaction data from sources outside of Horizon?**

The comparison of data is largely automated. The Judge does not go into detail as to how this is done. The evidence did not deal in a comprehensive way with each such method for every one of the Post Office’s many hundreds of clients. Nor did the Judge consider that such evidence was required properly to answer this issue.

**Issue (6): To what extent did measures and/or controls existed in Horizon to prevent, detect, identify, report or reduce to an extremely low level of risk of data and software errors?**

The measures and/or controls that existed on Legacy Horizon and HNG-X did not prevent, detect, identify, report or reduce to an extremely low level the risk of data or software errors. The experts were agreed that there were many measures and controls within Horizon that existed to prevent, detect, identify report or reduce the risk of varying errors. However, the experts were also agreed that whilst Horizon contains measures and controls for detecting system integrity concerns, these automatic mechanisms have been shown to have failed in the past.

**Issue (7): Were Post Office and/or Fujitsu able to access transaction data recorded by Horizon remotely (i.e. not from within a branch)?**

This answer was substantially agreed by the parties. Both Post Office and Fujitsu could read data remotely. Fujitsu could access and edit all transaction data recorded by Horizon.

**Issue (8): What transaction data and reporting functions were available through Horizon to Post Office for identifying shortfalls, including whether they were caused by bugs, errors and/or defects in the Horizon system?**

This issue was substantially agreed by the parties. The Judgment lists out a series of systems and data sources available to Post Office that are not controversial. The Judge also notes that Post Office had access to data and systems that were not available to SPMs (again this is not controversial).

**Issue (9): At all material times, what transaction data and reporting functions (if any) were available through Horizon to Subpostmasters for (a) identifying shortfalls and their causes; and (b) accessing and identifying transactions recorded on Horizon?**

This issue was substantially agreed by the parties. The experts agreed that the causes of some types of shortfalls may be identified from reports or transaction data available to SPMs. Other causes of shortfalls may be more difficult, or impossible, to identify from reports or transaction data available to the SPMs, because of their limited knowledge of the complex back-end systems.

The Judge also found that because the reports and data available to SPMs were so limited, their ability to investigate was itself similarly limited. He went on to find that SPMs simply could not identify discrepancies and shortfalls, nor their causes, nor access or properly identify transactions recorded on Horizon, without cooperation from Post Office. This finding was not however required as there was no question to this effect asked by any of the Horizon Issues and the Judge has gone out of scope here.

**Issue (10): Whether the Defendant and/or Fujitsu have had the ability to remotely access and change branch data without the knowledge or consent of SPMs.**

Fujitsu had many facilities for doing this and some of these could have been done without the knowledge or consent of SPMs (as accepted by Post Office before trial, but only following Fujitsu initially giving incorrect evidence on this point).

Post Office could only change branch data utilising its Global User role. This permitted Post Office to inject transactions without the knowledge or consent of the SPM. However, it could only be done by someone who was physically present in a branch, as that is the only way Global User could be used by the Post Office. This would therefore be likely to mean that a SPM or their assistant would at least know someone was in their branch doing something in terms of access to their branch accounts.

**Issue (11): Did the Horizon system have any permission controls around remote access and did the system maintain a log of such actions and such permission controls?**

There were permission controls, but the remote access facilities were very wide and they were not effectively controlled. The permission controls and logs were "inadequate" and "deficient."

**Issue (12): If the Defendant and/or Fujitsu did have such ability, how often was that used, if at all?**

Due to Fujitsu's poor record keeping, the experts could not provide any confident evidence on this subject of frequency. On the evidence from the two experts, the answer should be in approximate terms only and would be about once a day over the whole life of the system.

**Issue (13): To what extent did use of any such facility have the potential to affect the reliability of the Branches' accounting positions?**

The remote access facilities were very wide. These facilities therefore had the potential to affect the reliability of a SPM's branch accounts to a material extent.

Further, the evidence shows clearly that there were instances when this in fact occurred, which goes wider than the issue posed (which asks about potential) but which the Judge held was also relevant to the Horizon Issues as a whole.

**Issue (14): How (if at all) does the Horizon system allow a SPM to render accounts and dispute shortfalls?**

This was substantially agreed by the experts. The Horizon system can compare cash and stock figures, but it has no facility to record a dispute. The comparison is done by the system comparing its electronic records of what cash and stock is held in a branch, with the corresponding figures inputted by the SPM at the end of a trading period.

Note: Without naming Post Office but clearly aiming the comment at Post Office, the Judge criticises the parties for raising this as point of dispute when the answer was clear from the Common Issues. However, Post Office has never claimed that Horizon had the ability to record a dispute. Post Office's case was that disputes are raised through the helpline. This dispute method is acknowledged by the Judge at the end of his answer

**Issue (15): How did Horizon process and/or record Transaction Corrections?**

This was substantially agreed by the parties. TCs are largely created and processed outside of Horizon through manual actions, save for when a SPM accepts the TC in branch on the Horizon terminal. Disputes to TCs are done by the SPM contacting the Helpline and again this is outside the Horizon system, which does not record that dispute. If the dispute is upheld (as in, the original TC is accepted by the Post Office as having been wrongly issued) then another TC will be issued to correct it. That subsequent TC will correct the effect of the first TC in the branch accounts when it is accepted by the SPM. The issuing of the subsequent TC is also done outside the Horizon system.

Do let me know if you have any queries in the meantime.

Kind regards

Ben



**Ben Foat**

Group General Counsel  
Ground Floor  
20 Finsbury Street  
LONDON  
EC2Y 9AQ

Mobile : **GRO**

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**From:** Ben Foat

**Sent:** 29 November 2019 00:17

**To:** Tim Parker <**GRO**> Tim.Franklin1 <**GRO**>; Carla Stent1  
**GRO**; Ken McCall1 <**GRO**> Cooper, Tom - UKGI <**GRO**>  
 Nick Read <**GRO**> Alisdair Cameron <**GRO**>  
**Cc:** Veronica Branton <**GRO**> Watts, Alan <**GRO**>; Emanuel, Catherine  
 <**GRO**>; andrew.parsons <**GRO**>; Rodric Williams  
 <**GRO**>; Patrick Bourke <**GRO**>

**Subject:** GLO - High Level Review Embargoed Horizon Judgment - DO NOT FORWARD - LEGALLY PRIVILEGED AND STRICTLY CONFIDENTIAL

All

Following my previous email which set out the summary of the embargoed judgment it may be helpful to set out slightly more detailed review of the judgment. The judge is still to draw together his findings into final answers to the 15 specific Horizon issues which he expects to do so early next week. We will provide a further comprehensive report once that is received.

### Summary

- It has been found that the Horizon system in use today (HNG-A) is "*relatively robust*". This is a helpful finding as it substantially mitigates the immediate operational risk to the network. The judgment contains a number of helpful statements including: "It must be remembered that Horizon as it is today, or at least in the last couple of years, since it became HNG-A, is a very different system to earlier times... Modern Horizon Online as it is today is not the same as the system that was introduced in 2010". Moreover, "Findings in this judgment as to the performance and robustness of Legacy Horizon from 2000 to 2010, and then of Horizon Online (in both its forms, HNG-X and HNG-A) from 2010 to 2018 are *not* findings on the Horizon system as it exists at the date of distribution of the draft of this judgment, in November 2019... It is agreed by the experts that the Horizon System in its HNG-A form is now relatively robust. This judgment is a historical analysis of the Horizon system as it relates to the period in question in the group litigation, not a judgment upon HNG-A as it is today.
- However, the remainder of the Judgment appears adverse to Post Office. The robustness of the previous version of Horizon Online (HNG-X, 2010 to 2018) was "*questionable, and did not justify the confidence placed in it by Post Office in terms of its accuracy*" and Legacy Horizon (2000 to 2010) was "*not robust*".
- On a first read, it appears that the tone of the Judgment is generally better than the Common Issues but there is repeated and, in places stringent, criticism of Post Office and Fujitsu not properly and diligently investigating possible IT problems and being too quick to assume that fault rested with the SPM. This echoes the Judge's comments in the CIT about a lack of investigative support and transparency from Post Office.

### Witnesses and evidence

- The expert evidence and approach of the Claimant's expert, Mr Coyne, was preferred to that of Post Office's expert, Dr Worden. Mr Coyne was found to be a helpful and constructive witness, whereas Dr Worden was found to have taken a partisan view of the evidence and his methodology flawed.
- The Judge accepted the primary evidence of fact from the Claimants' witnesses and has made at least one finding that a Claimant did suffer a loss caused by a Horizon failure.
- In respect of Post Office's witnesses, aspects of Angela's written evidence are criticised as being inaccurate but her oral testimony in Court is complimented and she is credited for being responsible for many of the positive changes in Horizon over the last few years. The other Post Office witnesses were found to be credible.
- In respect of Fujitsu's witnesses, the majority of Mr Godeseth's evidence was found to be reliable and corroborative of Mr Coyne's conclusions, although specific aspects of his evidence are described as highly unsatisfactory. Mr Parker and Mr Dunks were found to be unsatisfactory witnesses. As an organisation, Fujitsu is criticised for seeking to keep the extent of its remote access powers from the Court.
- While the judge noted that Post Office's approach to disclosure is "improving", he criticised aspects of it and called for a change in approach to disclosure generally in the litigation.

### Judge's findings on the Horizon Issues

- The judge has not yet tied his findings to the 15 specific Horizon issues which covers accuracy and integrity of data, controls and measures for preventing / fixing bugs, remote access, availability of information and report writing, access to and/or editing of transactions and branch accounts, branch trading statements, making good shortfalls and disputing shortfalls, and transaction corrections. The Judgment is being finalised by the Judge and we expect him to produce a further section to it setting out findings on each issue in the coming days.

Please note this judgment is subject to an embargo. The content of the judgment, including the information in my email, cannot be discussed outside the Post Office. Failure to adhere to this is a criminal offence. Please do not forward this email or discuss its contents outside of the Board and GE unless you have first discussed with me or the legal team.

Do let me know if you have any queries in the meantime.

Kind regards  
Ben



#### Ben Foat

Group General Counsel  
Ground Floor  
20 Finsbury Street  
LONDON  
EC2Y 9AQ

Mobile : **GRO**

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**From:** Ben Foat

**Sent:** Thursday, November 28, 2019 11:31:12 PM

**To:** Tim Parker <**GRO**>; Tim.Franklin1 <**GRO**>; Carla Stent1  
<**GRO**>; Ken McCall1 <**GRO**>; Nick Read <**GRO**>  
Alisdair Cameron <**GRO**>; Cooper, Tom - UKGI <**GRO**>  
**Cc:** Watts, Alan <**GRO**>; Emanuel, Catherine <**GRO**>; andrew.parsons  
<**GRO**>; Rodric Williams <**GRO**>; Patrick Bourke  
<**GRO**>; Veronica Branton <**GRO**>

**Subject:** GRO - Mediation Day 2 and Summary of Embargoed Horizon Judgment - DO NOT FORWARD - LEGALLY PRIVILEGED AND STRICTLY CONFIDENTIAL

The mediation of the second day has drawn to a close. Given the progress made over the last two days, the parties have decided to maintain momentum and continue to mediate tomorrow for the full day.

The claimants spent the first part of the day working through the quantum methodology. Post Office explained why £19m - £27m was a rational and reasonable range. Subsequently, Post Office offered £32m "all up" inclusive of cost but given that £5.5m has already been paid in respect of costs for the CIJ, the net offer was in effect £26.5m, but optically it presented well to have the offer described at £32m. This approach is based on a 12 month allocation for post termination losses. The Claimants argued that their methodology produces a total of £113m but offered £100m and reduced to £85m. The basis of their offer includes allocating 26 months for post termination losses. This is a promising start to the financial component of a potential settlement.

In addition to the financial settlement, we are working through the other elements of the settlement structure :

- An agreed acknowledgement statement recording the conclusion of the litigation;
- The process POL may take in respect of the convicted claimants;
- Agreed approach in respect of the Claimants who are currently Postmasters but wish to exit the business.

We received the embargoed Horizon Issues Judgment just after 4pm earlier today. Broadly, it has been found that the Horizon system in use today (HNG-A) is "relatively robust". The judge notes that "This judgment is a historical analysis of the Horizon system as it relates to the period in question in the group litigation, not a judgment upon Horizon HNG-A as it is today". This is a helpful finding as it substantially mitigates the immediate operational risk to the network. However, the remainder of the judgement is adverse to Post Office. The robustness of the previous version of Horizon Online (HNG-X, 2010-2018) was "questionable, and did not justify the confidence placed in it by Post Office in terms of its accuracy" and Legacy Horizon (2000 to 2010) was "not robust". Our Horizon contingency planning will be implemented including preparing comms and further analysis on the implications in respect of the convicted claimants (Brian Altman QC has been instructed this afternoon). I will send a more detailed note on the judgment shortly. Please note this judgment is subject to an embargo. The content of the judgment, including the information in my email, cannot be discussed outside the Post Office. Failure to adhere to this is a criminal offence. Please do not forward this email or discuss its contents outside of the Board and GE unless you have first discussed with me or the legal team.

We will continue with the mediation tomorrow and will update you further but do let me know if you have any queries in the meantime.

Kind regards  
Ben



**Ben Foat**

Group General Counsel  
Ground Floor  
20 Finsbury Street  
LONDON  
EC2Y 9AQ

Mobile

**GRO**

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