

Bond Pearce

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Our ref:
 SJD3/NJM1/348035.348
 Your ref:

Dear Hugh

Potential deletion of Track II data from the Horizon System

I refer to our telephone conversation this afternoon.

1. Background

My understanding is that Track II data contains the 15-19 character primary account numbers relating to customer transactions, expiry date of the card, information about what the card can be used for and how it should be handled at the point of payment, and other discretionary data.

You believe that Track II data has to be destroyed to comply with PCI DSS, but seek advice as to the potential impact upon Post Office Limited's ability to bring and defend claims with subpostmasters. Subpostmasters act as agents for Post Office Limited and are contractually liable for any shortfalls at Post Office Limited branches.

The litigation context is this: subpostmasters can, rightly or wrongly, seek to blame the Horizon computer system when there is an unauthorised shortfall at a branch. They talk to each other on websites. A recent example is the Justice for Sub Postmasters Alliance (jfsa.org.uk) who are a countywide action group formed to represent alleged "victims of the system" and who are meeting Shoosmiths solicitors today to discuss bringing litigation against Post Office Limited. Their perception is that there are serious problems with the Horizon system.

The Horizon system is used in a network of around 11,300 Post Office® branches so it is essential that the computer system is robust and seen to be robust. It is about confidence. In the event of a dispute it is essential that the information that subpostmasters input into the system is accurately preserved.

2. Fujitsu's advice

Fujitsu's corporate legal counsel, Jean-Philippe Prenovost has stated in his email of 12 February 2010 to you that if Track II data is destroyed, Fujitsu would not be able to testify that historical data is true, accurate and (crucially) unchanged. You have asked him to clarify whether:

- (a) Fujitsu are saying they don't know whether this will affect the reliability of the system,
- (b) whether they won't know until they open the Track II data box; or
- (c) whether the information will not be the same.

In response, he has admitted that he is not in a position to determine how the system operates and suggests a meeting to bottom out each side's respective understandings or concerns and I suggest that this takes place as soon as practicable.

Rod

3. Commercial litigation issues - preliminary advice

There may be three issues:

1. Whether the Track II data that it is proposed to be deleted could itself be useful and relevant in pursuing or defending a claim against a sub postmaster. It is difficult to see how the Track II data could be obviously relevant in litigation with subpostmasters. However, to be sure, we need to bottom this out with Fujitsu.
2. If we are satisfied that the Track II data is irrelevant to litigation, could it definitely be deleted without the risk of damaging other data? Initial indications from Fujitsu do not sound promising. If it could be deleted without damaging other data, what would Fujitsu be willing to say in a witness statement about the integrity of the Horizon system? The stronger Fujitsu could be, the better and we should ascertain precisely what they would say.

Even if irrelevant data is deleted, this could be misconstrued as Post Office Limited trying to hide data. At the very least it could create an unhelpful perception about data being changed. It may be necessary on occasion to call evidence from Fujitsu to explain why deleted data is irrelevant and dispel any misguided "conspiracy theories".

3. If the deletion of the Track II data risks compromising other data on the Horizon system, then this would be much more serious. It could adversely affect Post Office Limited's ability to pursue or defend subpostmaster litigation. To give an example of this, in *Post Office Limited v Lee Castleton* [2007] EWHC 5 (QB), Post Office Limited brought a claim on accounts stated by one of its former sub postmasters, the defendant Mr Castleton. Mr Castleton's case was that the losses shown in the accounts were illusory and not real. He asserted that they were entirely the product of problems with the Horizon computer and accounting system and that the apparent shortfalls were nothing more than accounting errors arising from the operation of the Horizon system. The judge heard evidence from Anne Chambers, a system specialist employed by Fujitsu. She was taken through Horizon events logs and transaction logs by Mr Castleton who examined her about these. She reached the conclusion that there was no evidence whatsoever of any system problem. The judge accepted her evidence. If Ms Chambers had not been able to give that evidence because the data she was examining had been corrupted, damaged or lost, it would have been much more difficult to succeed. Mr Castleton was (and still appears to be) in a dialogue with other sub postmasters who have grievances about the Horizon system, so word does get about. There are other cases where the deletion of Horizon data would have been prejudicial. Even in cases where the Horizon system may not be specifically challenged by the subpostmaster, Post Office Limited's ability to prove the accuracy of the historic Horizon logs will be important. In many debt and fraud claims against subpostmasters, it is necessary to re-construct the entries into Horizon by the subpostmaster. If, in such cases, Fujitsu is unable to provide an unqualified confirmation that the historic Horizon logs are accurate, this could lead, in some cases, to difficulties in Post Office Ltd proving its claim. Further, if it becomes standard practice for Fujitsu to provide qualified confirmations, this risks a development of a perception among subpostmasters that the system is not reliable.

I appreciate this preliminary advice is just one part of a larger jigsaw and there are competing risks across the business. I recommend an urgent discussion with Fujitsu to understand the precise risks that the deletion of the Track II data may have on the other parts of the system and what they would be prepared to testify in Court should the Track II information be deleted.

Kind regards.

Yours sincerely



GRO

Stephen Dilley
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for and on behalf of Bond Pearce LLP

