

## Postmaster Litigation Subcommittee Board



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### MINUTES OF A MEETING OF THE POSTMASTER LITIGATION SUBCOMMITTEE OF POST OFFICE LIMITED HELD ON TUESDAY 17 SEPTEMBER 2019 AT 20 FINSBURY STREET, LONDON EC2Y 9AQ AT 10.00 HRS

#### Present:

Tim Parker	Chairman (TP) (by phone)
Ken McCall	Senior Independent Director (KM)
Tom Cooper	Non-Executive Director (TC)

#### In attendance:

Nick Read	Group Chief Executive (NR)
Ben Foat	General Counsel (BF)
Veronica Branton	Company Secretary (VB)
Rodric Williams	Head of Legal – Dispute Resolution & Brand (RW)
Catherine Emanuel	Herbert Smith Freehills (CE)
Andrew Parsons	Womble Bond Dickinson (AP)
Richard Watson	General Counsel – UKGI (RW)
Alan Watts	Herbert Smith Freehills (AW)

#### Action

#### 1. Welcome and Conflicts of Interest

The Directors declared that they had no conflicts of interest in the matters to be considered at the meeting in accordance with the requirements of section 177 of the Companies Act 2006 and the Company's Articles of Association.

#### 2. Minutes and Matters Arising

The minutes of the meetings held on 24 April 2019, 12 June 2019 and 20 June 2019 were **APPROVED** and **AUTHORISED** for signature by the Chairman.

#### 3. Updates on Court Activity (oral updates)

Catherine Emanuel provided an overview of court activity including the Common Issues Appeal, the Horizon Issues Judgment and the Third/ Further Issues Trial.

An oral hearing on the application for leave to appeal had been scheduled for 12 November 2019 at which each side would have two hours to make their case.

The Horizon issues judgment was likely to be released at some point in October 2019 but the timing was in the Court's hands. The Court would also indicate when the Judgment would be made public but it was likely that POL and the claimants' solicitors would receive a copy under embargo. The embargoed Judgment would be circulated to the Subcommittee<sup>1</sup> and the legal team would read through this at speed to provide the headline findings and then produce a more detailed briefing.

Ben Foat reported that a Horizon contingency planning group had been working through the worst case scenarios (including the Judge finding the Horizon system not fit for purpose) and through less extreme scenarios.

The Horizon Issues Judgment and the decision on leave to appeal would change the overall position of the litigation.

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<sup>1</sup> It was agreed that this should not include Richard Watson, General Counsel, UKGI who was an observer at the Subcommittee meetings.

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The third trial was scheduled for March 2020 and would look at the principles of how loss would be calculated. Work would start at the end of October 2019 with test cases. Four of the six claimants from the Common Issues Trial had been selected. The briefing notes associated with these cases would be circulated to the Subcommittee. The trial was not designed to focus on the details of the original cases but the legal team would be working on the assumption that claimants would wish to pivot back to their case. A number of court hearings would also be taking place on procedural issues. A decision would need to be reached on which counsel to use for the trial. Helen Davies QC had held this time in her diary but the Subcommittee would be asked to take the decision on which counsel to appoint when we knew more about the timing of the Common Issues appeal.

Rodric Williams

A number of points were raised, including:

- that the Subcommittee would like to see what we had done and would be doing to re-design business processes and which changes were a consequence of the Common Issues Judgment. An item would be added to the next Subcommittee agenda
- ownership of business processes was discussed and it was noted that this had changed when Al Cameron had become interim CEO and business processes had moved into the Chief Operating Officer's remit under Rob Houghton. A permanent owner needed to be identified now that Rob Houghton had left the business and Nick Read would consider who this should be.

Julie Thomas/  
Veronica Branton

Nick Read

#### 4. Settlement / Mediation (Draft Board Report)

Ben Foat provided an overview of the paper to the Board on the settlement and mediation issues. Our legal strategy had changed to explore settlement options fully. The paper considered recoverability from a legal perspective, the claimants' funding arrangements and what their funders might seek from a settlement. Settlement ranges were provided, including factors such as post termination losses and other categories of claim such as personal injury, stigma and harassment and what might be recoverable under these. The Subcommittee was not being asked to take any decision on potential settlement figures currently. We were trying to arrange a lawyers meeting for both sides in October 2019 to discuss a number of issues, including figures, prior to the mediation process starting.

Catherine Emanuel provided an overview of the advice on settlement provided by Herbert Smith Freehills and the Subcommittee discussed this in detail. It was noted that assistants' claims were not included in this analysis. There were different potential periods for post termination losses. It was reported that normally claims would be limited to the contract termination period but that the Common Issues Judgment had referred to a payment not being "less than" the termination period while also referring in some instances to a period of 12 months. The period for post termination losses was an issue that we would like to take to appeal. It was noted that £5m in payments had been made to claimants to date.

A number of points were raised, including:

- that we needed a better understanding of the thinking of the claimants and their funders and how we would be approaching the case in their position
- that it would be helpful to translate some of the figures provided into specific examples (a "bottom up" analysis) and see what the overall position would be depending on which categories of claimants we included
- the approval process for determining settlement figures and funding was discussed. It was noted that a merits opinion would need to be produced as part of the Shareholder

Legal Team

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funding approval process but that it was sensible for this to be drafted after the Horizon Issues Judgment had been issued.

5. **Date of next meeting:**  
11.30 hrs, 22 October 2019