

- Resource / retention
- funding
- cost of each option:

CONFIDENTIAL AND LEGALLY PRIVILEGED
POST OFFICE GROUP LITIGATION

Steering Group Meeting: 11 September 2017

- order of process: contract first *look down to claim*
- experience of funded cases date this - *learnings*
- review of an case / strengths / weaknesses
- big companies vs little people
- best cases - how do they handle

Bond Dickinson

- Team motivation / ease
- Is MS on steering group? Notland?
- CMC - set out course of incident 4 week 6-12 months
- 522 indiv. claims: as a group → cases
- head claimants 20-40 to test different themes eg HWA, training ... etc. then apply them to others.

LITIGATION STRATEGY OPTIONS

This paper sets out the strategic options for the future management of the Post Office Group Litigation. It summarises the advice provided in the Steering Group paper presented on 11 September 2017.

Our recommended approach is Option 2 combined with Option 3.

OPTION	BENEFITS	RISKS
1. Focus on Horizon Push the Court to address at an early stage whether Horizon is robust and accurately records branch transactions. Recommendation: We do not believe it is possible to address this issue without first establishing Post Office's legal obligations in relation to Horizon (see Option 2).	<ul style="list-style-type: none"> • A successful Court decision on this issue would lessen the strength of all Claimants' claims (though not as much as Option 2 – see below). • Horizon is the high profile issue that attracts the media attention – a successful result would reduce media noise / chatter in the network. • Losing this point is not fatal to Post Office's overall legal case as it may still be successful on the contractual issues (Option 2) and / or on the facts of any individual case. • Losing this point is unlikely to cause an existential problem for Post Office. It will however create the need to rapidly fix any identified problems in Horizon (or migrate to a new system) and that will come with a significant cost and create major short-term commercial problems. 	<ul style="list-style-type: none"> • The Claimants cannot just point the finger at Horizon with no legal basis for their complaints. They need to ground their claims in the postmaster contracts by showing that there was some legal obligation on Post Office to maintain Horizon to a certain standard. Without clear legal obligations, a Court cannot determine whether Horizon meets those obligations. We therefore do not believe that a Court will be attracted to tackling this issue at an early stage. • The above issue also means that we do not know exactly what disclosure and evidence is required, which could lead to very wide disclosure being given at a very high, and potentially wasted, cost. Expert evidence on Horizon will also be very expensive. This lends weight to tackling another issue first.
2. Focus on contractual issues Push the Court to address at an early stage whether the postmaster contract is fair and whether it supports Post Office's current operating practices.	<ul style="list-style-type: none"> • A successful Court decision on this issue would seriously undermine all Claimants' claims. • Moreover, it would establish the principle that Post Office's contracts are fair and support the way Post Office has been operating for the last 20+ years. • Having established this principle, it will be easier to settle the claims without opening the floodgates to 	<ul style="list-style-type: none"> • The Claimants' arguments on the postmaster contracts are not without merit. There is a chance that they might be successful, in which case Post Office would be left in a very difficult commercial position (see our previous advice on possible worst case outcomes and the possibility of an existential crisis for Post Office).

- They have deeper pockets than PO – can we use this ... a reprehensible behaviour that prosecuted.

who is responsible to determine the cause of a loss?

- recontact entire network
- manage the ongoing PPI style historical claims – Spring 2.

Formatted: English (United States)

Freddie: many detailed specifications should be applied

PO: reasonable assurance of time not to prevent them carrying out their business

- remind me - copy....

Tommy Hooper – big companies – precedents for the corporate vs little people – why do they think they can win?

<p>Recommendation: This is our recommended approach in conjunction with Option 3.</p>	<p>claims / complaints from other postmasters.</p>	<ul style="list-style-type: none"> On Post Office's best case it accepts that it had some responsibilities to support postmasters, albeit to a lower standard than that sought by the Claimants. Winning the contractual arguments will therefore not determine the whole litigation but will leave the Claimants with much more difficult claims. There are dozens of sub-issues that are connected to the postmaster contracts. There is therefore unlikely to be a binary win/lose outcome, with Post Office being successful on some points and losing others.
<p>3. Focus on weak claims</p> <p>Ask the Court to strike out Claimants who are facing legal and procedural problems, such as their claims being out of time, having previously signed settlement agreements or generally having very weak claims on their own facts.</p> <p>Recommendation: We do not believe that a Court would focus on these satellite issues in insolation as this would not tackle the major issues at the heart of litigation. They could however be addressed in conjunction with Option 2.</p>	<ul style="list-style-type: none"> A successful result on these satellite points could see over 200 of the 522 Claimants being struck out. This would make settlement easier / cheaper. It sends a message to the Claimants that Post Office will not allow weak and poorly presented claims to survive in this litigation. Some early victories might shake the confidence of the Claimants and their litigation funder. The Claimants are trying to portray themselves as having been oppressed by Post Office. Getting some of the weakest and most unattractive claims in front of the Court at an early stage, especially those where there is clear theft or dishonesty, might re-balance the Court's views on the general fairness of Post Office's position. 	<ul style="list-style-type: none"> The downside with this approach is that it is piecemeal. It will require lots of satellite issues to be run in parallel. The Court may not want to do this as it may see it being very burdensome for the Court to manage (and Judges are very conscientious about the use of Court resources). It may also cause Post Office to incur costs on matters that only have a micro effect on the overall dynamic of the litigation. It will not give Post Office a victory on a key point of principle and so may not quell media noise or complaints from other postmasters.
<p>4. Settle now</p> <p>Try to agree a settlement now that closes down the litigation at an early stage.</p> <p>Recommendation: This option is not recommended as it would result in Post Office having to pay significantly over the</p>	<ul style="list-style-type: none"> An immediate settlement avoids the possibility of an adverse Court decision under Options 1 and / or 2. A settlement avoids further legal costs (though these are anticipated to be considerably less than the amount of a settlement at this stage). 	<ul style="list-style-type: none"> The claims have not yet been fully valued but early indications place the valuation at around £100m. This figure is however open to a large margin of error and we believe it to be highly inflated. A settlement now, without proper challenge to these figures, would lead to a much higher settlement number. A settlement now would undoubtedly cost more than £21m as that is the litigation funder's share of

*Add to option 5.
But it doesn't address
the key issue + we set
of deflecting real issue.*

odds.		<p>the winnings. The settlement would need to be more than this for the Claimants to receive any money.</p> <ul style="list-style-type: none"> • Drawing the above two strands together, we cannot see a viable settlement being reached in the short-term without Post Office paying out at least £40m. • Settling now without any Court decision in Post Office's favour may give the impression that Post Office has a weak legal position. This may encourage new claims against Post Office or give postmasters an excuse to run up losses in branches. • A number of the Claimants have been prosecuted and are looking for their convictions to be overturned. A settlement with these Claimants would cause their convictions to become unsafe. Not settling with these Claimants may make settlement as a whole impossible.
<p>5. Attrition 'war of finance'</p> <p>Stretch out the litigation process so to increase costs in the hope that the Claimants, and more particularly their litigation funder, decide that it is too costly to pursue the litigation and give up.</p> <p>Recommendation: This option is not recommended as we believe the pressure on, and cost to, Post Office would become unbearable before the Claimants gave up.</p>	<ul style="list-style-type: none"> • This approach avoids tackling at an early stage the issues in Options 1 and 2 and therefore delays (but does not avoid) the risk of an adverse Court decision. • In effect, this approach would mean agreeing with the Claimants' current case management proposals which set the litigation on a long course with no objective in mind. This would limit arguments at the CMC. 	<ul style="list-style-type: none"> • The Claimants' litigation funder, Therium, is an experienced funder with deep pockets. It will be prepared for a long piece of litigation. So long as it believes the merits of the case are favourable, it can be expected to fund the litigation. • Over time the litigation will become more disruptive to Post Office's business as more operating practices are put under the spotlight and then have to be overseen by lawyers in order to avoid problems in the litigation process. • Although media reporting on this matter is presently low key, there is increasing chatter in the network and a feeling that the <u>litigation may start to dissuade individuals from being postmasters</u>. This will increase as the litigation continues without a result in Post Office's favour.

They may have 3-5 year plan
£10-15m p.a. - cost to resolve
£100m. (Therium)

BAU impact of
not prosecuting
existing PMs.
∴ they turn to direct.
⇒ ∴ what

So what is our narrative?

Tony Robinson QC

public sector - ^{seems} but always with intention.

① by corporate but has opponent to individual.
mostly British companies giving things to suppliers → contracts
- full frontal attack on our contract scheme
of unfair contracts act.
• the challenge is not it.

• on EC is v. excited about this... good - bad...

② HNG - robustness (is it sufficiently over regulated / did PO support
business enough)

• ③ judge is new / experienced (we think?) & uncooperative to the law.

④ Fructus trying to prove that PO is a relational contract - yes, it
implies a duty of good faith.
legal - good faith - it must be commercially reasonable
(or not commercially disadvantageous)
not capriciously.

is not provided by
it is a substantial question...

→ Alan Bates - Hong Kong audit (1/2)
Laird

→ we were
at fault how best
a strategy to
account for the audit
Laird.

⑤ go into 10-20 lead cases - tier 1 & 2 above.
by we could budget for 2 years for 2 years.

⑥ prove the contract relations.

IV to spl 2 Tony
Hooper
is Alan Bates trying to bring in
Laird?
What do Fructus want
- least not / must return.