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21st November 2019

Dear Colleagues

POST OFFICE: HORIZON TRIALS – BATES & OTHERS VS POST OFFICE LTD – FURTHER UPDATE

Further to LTBs 234/19 dated 12th April and 292/19 dated 14th May. Branches will be aware of a Group Litigation Action against the Post Office by 557 mainly former Postmasters in relation to alleged errors with the Horizon computer system.

This matter goes back over a period of more than 10 years and was finally brought to trial after the Justice for SubPostmasters Alliance (JFSA) spent many years campaigning for justice. In January 2016 Alan Bates from the JFSA secured the financial funding (through Therium Group, a specialist litigation funder) to take the Post Office to the High Court. Litigation specialists such as Therium cover the costs of a case in return for a proportion of any damages awarded.

It should be noted that these Postmasters needed to find a source of support as the National Federation of SubPostmasters (NFSP), the only organisation recognised by the Post Office for representing Postmasters, did not meaningfully support the claimants through the various stages of their ordeals (even though a significant number of the 557 have been NFSP members at some point). The NFSP, which was formerly a Trade Union but is now a Trade Association (as it was struck off by the Certification Officer in 2013), has previously been cited by the lead Judge in the Horizon cases as not being independent of the Post Office. This was highlighted in Judge Fraser's ruling of 15th March 2019 when he stated:

"It is obvious, in my judgment, that the NFSP is not remotely independent of the Post Office, nor does it appear to put its members' interests above its own separate commercial interests."

"The Post Office effectively controls the NFSP".

Currently there are at least four trials planned in relation to this complex case. A brief synopsis of the trials and decisions so far is as follows:

1. The First Trial – the “Common Issues” Trial – Judge Rules Against the Post Office

The “*Common Issues*” trial concerning the legal construction of the contract between the Post Office and Postmasters took place in November/December 2018. On 15th March 2019, the Honourable Mr Justice Fraser ruled **in favour of the claimants**.

2. Post Office Application for Recusal of the Judge - Mr Justice Fraser

Following the Judge’s ruling against the Post Office and in favour of the claimants in the “Common Issues” trial, on 21st March, the Post Office made an application for the sitting Judge to be recused (remove himself from future trials). The recusal hearing took place on 3rd April and the 77 page judgment was handed down on 9th April. Mr Justice Fraser made the decision **NOT** to recuse himself from the second trial and indeed the third and fourth trials. The Post Office’s QC asked the Judge for permission to appeal which was not granted. **Therefore the Post Office went directly to the Court of Appeal to ask for permission to appeal.**

3. Court of Appeal Refuses Post Office’s Appeal

On 10th May, without a formal hearing, at the Court of Appeal, Lord Justice Coulson made the decision to refuse the Post Office’s appeal in regard to the recusal of Judge Fraser.

4. Post Office Appeals the decision of the First Judgment in The “Common Issues” Trial

Judge Fraser also refused the Post Office permission to appeal the “*Common Issues*” trial judgment. The Post Office therefore applied to appeal directly via the Court of Appeal. However this application was initially rejected by the Court of Appeal due to its length. A shorter application was submitted in June 2019. The Court of Appeal’s decision is expected to be handed down any day now (see 6.a. below).

5. The Second trial – the “Horizon” Trial Recommences

Following the Court of Appeal’s decision to reject Justice Fraser’s recusal, the second trial, known as the “*Horizon*” trial recommenced on 4th June (it had been temporarily suspended following the Post Office’s application to recuse the Judge), with the Managing Judge, Mr Fraser residing. This trial finished on 2nd July and a decision is awaited.

6. Two Decisions/Outcomes Awaited

- a. Lord Justice Coulson's decision on the Post Office’s application to appeal the first trial judgment is anticipated by Friday 22nd November.
- b. The judgment from the Second Trial – the “Horizon Trial” is due any time now.

7. In the Meantime, Mediation is Due to Commence 27th November

Judge Fraser also ordered that the parties should "*consider*" mediation. During week beginning 14th October, Freeths, the Postmasters' solicitors, issued claimants a communication stating:

"an independent and neutral expert is being appointed who has experience in helping to resolve very significant disputes. There will be a mediation meeting with the Mediator in November and we are obviously working very closely with your Steering Committee to plan for that and to decide whether it could offer you, the Claimants, a final resolution that would be in your best interests."

Some Postmaster claimants may understandably be sceptical in regards to mediation as the Post Office set up a complaint and mediation scheme in 2013 which collapsed within 18 months. In parliament, James Arbuthnot MP (now Lord), who was particularly instrumental in raising this matter in Westminster, described the scheme as a "sham". However, the parties have now agreed to go ahead with fresh mediation and it is scheduled to commence from 27th November. Freeths noted the following in a statement to the claimants:

"Progress will be made only if the Post Office demonstrate a significant change in mind set and approach. If mediation gives the Claimants an opportunity to achieve final closure on acceptable financial terms, then that is to be welcomed – if that does not happen, then the litigation obviously continues. Either way, we will not allow the litigation to be held up while mediation happens."

8. Third Trial Scheduled for 2nd March 2020

The third trial, referred to as the "*Quantum*" trial is scheduled to commence from 2nd March 2020. This trial will be in relation to how much the Post Office should pay the claimants if they lose.

Depending on how the mediation talks go, there could well be between four and six trials in total in this case.

9. Criminal Cases Review Commission (CCRC) - cases "Stayed"

Separate to the Group Litigation, the Criminal Cases Review Commission is investigating around 30 Postmaster prosecutions by the Post Office where it is claimed there is a miscarriage of justice. These relate to former Postmasters who have previously been criminally prosecuted and in some cases even imprisoned due to Horizon issues. This investigation began in April 2015 and the cases were "stayed" until after the outcome of the technical aspects of the litigation.

Legal Costs

The Post Office Report & Accounts for the year ending 31st March 2019, published on 15th October, showed legal costs for the 2018/19 financial year were £20m compared with just £3m the previous year. Clearly, the impact of the Horizon cases means the legal costs will have an even greater impact on the current year's results. In this regard, attached to this LTB is a report (blog) from Nick Wallis, journalist, who has been covering the Horizon Trials from the very beginning. Nick attended a "Costs Hearing" at the Royal Courts of Justice on October 23rd. At this hearing, it transpired that combined costs of the two legal teams were at least £36.3m up to September 3rd this year. This figure is relevant as the Post Office has up until now, had to pay 90% of the claimants' legal costs as a consequence of losing the cases thus far. Crucially, these figures don't include the money spent by both parties in preparation for the Court of Appeal hearing. Nick Wallis estimates that the current costs are more likely to be in excess of £42m by now and rising.

Alternative Dispute Resolution (ADR).

Nick Wallis has also reported that at the Costs Hearing, the Judge directed both parties to enter into formal mediation (see point 7. above) via a process called "Alternative Dispute Resolution". Essentially this is a structured method for resolving matters outside of the court room. The following quote from the Post Office's Barrister to Justice Fraser is revealing:

"There's no shying away, my Lord, from the fact that Post Office has spent and proposes to spend a great deal of money seeking to settle the litigation at this stage. It's seeking to devote resource proportionate to what it's spending on fighting the case trying to settle it, trying to resolve it by compromise. If one puts the costs of settlement in the context of the total costs of the proceedings, whilst very substantial, they are not out of line."

Evidently the Horizon litigation has thus far not gone the way the Post Office would have liked and should this direction of travel continue the costs and compensation to the claimants could be colossal. Whatever the end position regarding this matter, what is clear is that public (taxpayers') monies have been put in jeopardy as a consequence of the actions of the Post Office.

My interpretation of the above is that the Post Office is budgeting to pay in excess of £100m in compensation payments to the 550+ members of the Group litigation claim. It is though highly conceivable this figure will end up being an underestimate of what it will cost the Post Office eventually.

Media Coverage

With regards to media coverage on this matter, it has been fairly quiet recently due to the obvious media focus on Brexit and the General Election, although the story has featured heavily and regularly in Computer Weekly. However, we anticipate there will be a fair amount of coverage following the announcements of the two decisions outlined above, which we expect to be by the end of this month.

Further Details on the Horizon Trials

I would like to remind Branches of the useful website set up by the journalist Nick Wallis who has been following the case closely. Nick provides a concise and clear summary of the events so far. The link to the website is as follows (note parts of the website are free and some sections you have to subscribe to):

<https://www.postofficetrial.com/2018/07/about-me.html>

Conclusion

I am certain at some point, probably once litigation has concluded, there will have to be some very serious Parliamentary scrutiny and examination of what has actually transpired here and in particular what were the Post Office policies and governance arrangements (bearing in mind that the Post Office is Government owned via BEIS) that have led to these significant legal claims.

Somebody ultimately has to be accountable to these events that have had such a devastating impact on so many people and their families. These Postmasters were ordinary people who were just trying to earn a living whilst providing such an important public service to society. The traumatic impact on so many indicates a gross injustice on a scale that is nothing short of a national scandal.

Further developments will be reported.

Yours sincerely

Andy Furey
Assistant Secretary