

Claim Nos. HQ16XO1238, HQ17X02637 & HQ17X04248

The Post Office Group Litigation

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

BETWEEN:

ALAN BATES & OTHERS

Claimants

– and –

POST OFFICE LIMITED

Defendant

SKELETON ARGUMENT FOR POST OFFICE
CMC ON 22 FEBRUARY 2018

Suggested pre-reading (2 hours): (1) Skeleton Arguments, including exhibits; (2) Draft Orders proposed by each party

References to the Case Management and Hearing Bundles are in the forms [CM/Volume/Tab/page] and [HB/Tab/page], respectively.

A: Introduction

1. This is the Skeleton Argument for D (“Post Office”) for the CMC on 22 February 2018. The CMC is the continuation of the CMC that was adjourned on 2 February 2018. A draft order from that CMC was provided to the Court on the same date. Para. 27 of the draft order provides for the present hearing to address any outstanding questions as to disclosure for the

Common Issues Trial in November 2018, to identify the issues for trial in March 2019 and to give directions in preparation for that trial.

2. There has been some progress towards agreement on technical Horizon-related issues for trial in March 2019. Nonetheless, there do remain significant areas of disagreement as to how best to have a useful and focused trial of the kind proposed by the Court.
3. The position as regards generic disclosure for the Common Issues Trial remains unsatisfactory. Despite the Court's ruling on 2 February that the disclosure should be under Model C of the Disclosure Practice Direction¹, Cs have continued to press for the broad and unfocused disclosure that they sought under Model D.
4. Post Office seeks an order in the form of its proposed Schedule 2 (HB/13/16) and an order for the March 2019 trial in the form at HB/13/21.
5. In this Skeleton Argument, Post Office addresses:
 - a. the background to the present hearing – Section B;
 - b. disclosure – Section C;
 - c. issues and directions for the Horizon technical issues trial in March 2019 –Section D.

B: Background to the present hearing

Disclosure

6. At the last hearing, there was a dispute of principle as to the scope of disclosure that should be required of Post Office for the Common Issues Trial. It is this disclosure that is the subject of Schedule 2. In short:
 - a. Post Office argued that the disclosure should be under Model C as identified in the Disclosure Practice Direction and should be limited to documents that may provide admissible evidence for the resolution of the Common Issues, principally matrix of fact

¹ The draft Practice Direction for the Disclosure Pilot for the Business and Property Courts, which shall apply under para. 5 of the draft order, which is agreed.

evidence. It relied on the well-established orthodoxy as to admissibility of evidence for the purposes of contractual construction.

- b. The Cs sought much broader disclosure, to be given in accordance with Model D, arguing that the disclosure should cover not only the terms of the parties' agreement but also what in fact happened in the course of their relationship. Cs invited the Court to order broad generic disclosure that would bring a "*measure of generic reality as to what was going on*".²
 - c. The Court ruled that the disclosure should be under Model C.
- 7. Having determined that the disclosure should be given under Model C, the Court asked the parties to agree the categories of documents to be covered by the disclosure searches for each of the identified disclosure issues in Schedule 2. Post Office respectfully asked the Court to provide some guidance as to what, if any, further categories should be added to those in its draft Schedule 2. The Court indicated that it was for the Cs to make requests for further categories to be added and that it would be surprised if they, having benefitted from the to-and-fro with the Court in argument, "*were to try and weave a model D approach by putting a whole bunch of categories in model C which actually, when you look at them, [it] is just a rehash of [...] model D*".
 - 8. Following the hearing, the parties made some progress in agreeing additions to Post Office's proposed Schedule 2: see the email dated 8 February at HB/16/92.
 - 9. On Friday 9 February, however, the Cs requested by letter a further 33 categories of documents. Many of the requests were extremely broad and were very similar to the requests that the Cs had advanced for Model D disclosure before the last hearing. The Cs sought disclosure of many documents limited only by reference to their content or subject matter, rather than by document type or any other narrowing factor as required for Model C disclosure.

² Transcript, page 17H – 18A.

10. Post Office responded on Tuesday 13 February 2018: HB/16/66. Post Office objected to the Cs' approach on the basis that it involved the same problems as faced by its Model D disclosure.
11. Cs provided revised proposals late on Monday, 19 February. In the revised proposals, they made minimal concessions, whilst retaining a large number of broad and unprincipled disclosure requests.

March 2019 trial

12. At the last hearing, the Court indicated that it was not prepared to vacate the March 2019 hearing and that it was unpersuaded that it would not be possible to identify sufficiently discrete and focussed issues for such a trial.
13. The Court invited the parties to consider, in particular, whether it might be possible to use the trial window to determine certain technical issues in relation to the Horizon system. In light of concerns then expressed by the parties as to the breadth of the issues on the pleadings that relate to Horizon (including matters as to training and issues of breach³), the Court provided the following guidance:
 - a. The March 2019 trial should not be of all issues relating to Horizon.
 - b. The focus of the trial should be on technical issues that are suitable for determination on expert evidence and that go to the basic functioning and reliability of the system.

See transcript, page 35E-F and page 36E.

14. On 15 February, Post Office put forward 11 Horizon issues with cross-references to the generic pleadings: HB/17/111. It provided with the issues a draft order containing directions for trial, including a staged process for expert evidence. Post Office proposed issues that are, insofar as practicable, limited to matters that could be resolved on expert evidence and without the need for lead claimants or extensive factual background.

³ See, for example, transcript page 32C-E and page 35F-36A.

15. The Cs responded on 19 February: HB/17/112. The Cs' proposed issues were wide-ranging and fact-sensitive, and are largely not suitable for determination at a Horizon issues trial focused on expert evidence.

C: Disclosure

16. The Court will recall that broad disclosure is to be given in relation to the Lead Claimants for the Common Issues Trial. Post Office made clear at the last hearing that this disclosure would likely extend well beyond those documents that would be admissible for the purposes of contractual construction but that it had sought to reach a pragmatic compromise in light of Cs' extremely broad requests and the current absence of any proper pleading as to matrix of fact. The Cs will receive very large quantities of documentation, which will fully cover any matters which could even arguably constitute part of the factual matrix (and some matters which could only have, at best, forensic relevance and which will be inadmissible at the Common Issues Trial).
17. Post Office's proposals for the Model C disclosure under Schedule 2 are also broad and were offered, in part, in a spirit of pragmatic compromise. Under its Schedule 2 proposals, Post Office would anticipate disclosing, in addition to the documents relating to the Lead Claimants under Schedule 1, around 100,000 – 200,000 documents. This is an extraordinary amount of disclosure to be provided for the purposes of determining the nature and content of the parties' contractual relationship (being principally matters of contractual construction), taking into account the following:
- a. For almost all of the issues, any evidence as to what in fact occurred after the agreement was entered into (or, where relevant, varied) will be inadmissible: see, for example, **Arnold v Britton** [2015] A.C. 1619 at [21] *per* Lord Neuberger. Post Office anticipates that much of the evidence that the Cs may wish to lead will be inadmissible and liable to strike-out.
 - b. It is true that there are Common Issues that go beyond matters of contractual construction. But they are very limited in scope: see Common Issues 17 and 18, relating

to the “*true agreement*”⁴ between the parties as to the circumstances in which Post Office could lawfully terminate the agreements.⁵ The Court in November will not be concerned with the facts as to what happened in terms of training, the operation of the Helpline, the discovery and investigation of shortfalls, the operation of Post Office’s financial systems and client accounting, *etc.*

- c. The Common Issues trial is a trial of Lead Claims. In the unlikely event that any broader disclosure might shed light on the construction of the Lead Claimants’ contractual relationships with Post Office, such disclosure is to be provided in any event under Schedule 1.

18. Post Office has sought to reflect in its proposals the need for Model C disclosure to proceed by reference to “*narrow classes of documents relating to a particular Issue for Disclosure*” (Practice Direction, page 7; emphasis added). It is not appropriate to request, as Cs do, categories of document that are defined only by the information that they contain. A request for all material relating to a particular subject matter is not a proper request under Model C. It would not enable Post Office to make focussed searches and keep the disclosure process within manageable bounds, taking into account the short period of time available.

19. The requests which remain in dispute are set out in the summary document exhibited to this Skeleton Argument. It is anticipated that, if the Cs maintain these Requests, it will be necessary at the upcoming hearing to go through each of them with the Court. Broadly, though, three overarching observations fall to be made:

- (a) The proper scope of factual matrix disclosure should not be in doubt (and if there was any doubt, it ought to have been removed by the discussion at the last hearing). Matters which occurred after the entry into, or (where relevant) variation of, the relevant contracts cannot be relevant to their proper construction. Similarly, no material which was only within the purview of one party to a contract can be relevant to its interpretation. The purpose of the Common Issues Trial is to establish, in the context of the upcoming Lead Claimants’ trial, the meaning of the relevant contracts. The disputed requests have no

⁴ Post Office’s position is that the exceptional principle in **Autoclenz v Belcher** [2011] UKSC 41 has no possible application to business-to-business relationships of the kind at issue in these proceedings.

⁵ See paras 69-71 of the AmGPoC: CM/V1/3/39.

relevance to that exercise; as opposed to, for example, the subsequent exercise of determining whether there was breach of the obligations as determined in the Common Issues Trial.

- (b) In their letter of 19 February, the Cs suggest that disclosure going beyond the factual matrix is required. They observe that one issue in the Common Issues trial will be as to the 'burden of proof', i.e. whether, under the relevant contracts, the Post Office is entitled, in the absence of evidence to the contrary, to treat any shortfall as being the responsibility of the relevant Subpostmaster. The Cs note that Post Office's pleading on this point makes reference to background facts such as the Post Office's difficulty in knowing what explains any given loss. They argue that this justifies wide-ranging disclosure on related matters. That is wrong. The only matters relevant to the proper construction of the contract (as to burden of proof or anything else) are matters which were publicly known or 'crossed the line' between the parties – including what both parties knew about the difficulties for Post Office in determining the cause of a shortfall. But if some internal Memorandum at Post Office lamented how difficult it was to determine the cause of a shortfall, that would not be a reason for construing the contracts in the way that Post Office submits they should be construed, i.e. with 'burden of proof' on Subpostmasters. The converse is equally true – some internal Memorandum privately lauding the ease of investigating shortfalls would not assist the Cs' case on construction.
- (c) The Cs have withdrawn a number of requests on the basis that further disclosure, in respect of the March 2019 trial or otherwise, is anticipated. For the avoidance of doubt, Post Office does not make any concession in the context of this hearing as to whether any such disclosure should be made, and its position is entirely reserved.

20. To take specific examples from Cs' requests:

- (a) Requests c and d cover documents that could only shed light on Post Office's subjective views as to the construction of a contractual provision. Such evidence would be inadmissible and is irrelevant.
- (b) Request e relates to discussions between Post Office and Fujitsu as to bugs, errors or defects in Horizon. It is entirely irrelevant to the construction of the parties' agreements.

(c) Request f is extremely broad (covering all “instructions”, irrespective of the class of document in which such instructions might be provided) and relates in any event to accounting operations in practice, rather than shedding any light on the construction of the agreements. Similar comments apply to request 37.

(d) Request i proceeds on a fundamental misunderstanding of Post Office’s case on the burden of proof: see paragraph 19(b) above.

21. Post Office has sought to scope the disclosure by reference to the evidence that might plausibly be admissible and useful in the resolution of the Common Issues. It has focussed on disclosure that might plausibly bring to light documents that could assist in identifying facts known to the parties at the time of agreeing the contractual documents (and variations to those documents) and that might assist in construing the express terms of the agreements and/or determining whether or not an alleged implied term is necessary. In doing so, Post Office has already gone beyond what is admissible evidence at the Common Issues trial and has volunteered disclosure of other classes of documents where they can be narrowly defined.

22. Post Office has gone very far towards accommodating the Cs’ desire for extensive generic disclosure. It resists strongly any attempt to rely on its pragmatic approach to divorce the Stage 2 disclosure process from the resolution of the Common Issues which was its intended purpose.

D: Issues and directions for the trial in March 2019

Issues

23. At the last hearing, the Court gave clear guidance as to the proper scope of the March 2019 Horizon Issues trial. The Judge indicated that, while the trial should not focus on “*every single issue that arises from Horizon*”, there could be a trial of “*fundamental Horizon points on the pleadings about how it works or how it does not work*”: Transcript, 35F. The instructions which the Court gave to the parties were to “*either agree or each propose an isolated number of issues on the pleadings related to Horizon that would involve expert evidence, but not evidence of individual cases*”: Transcript, 36E.

- (
24. All of the issues proposed by Post Office obey this guidance. While the Cs' issues overlap to some extent with Post Office's (and to that extent there is a measure of substantive agreement) they stray well beyond the proper subject matter of expert evidence, and into areas requiring significant factual evidence.
25. A table is exhibited to this Skeleton Argument showing the key points of comparison on an issue-by-issue basis, including where, in the interests of being as accommodating as possible, Post Office can accept some part of the Cs' proposals. However, as that table indicates, the Cs' proposed issues are frequently focused on questions going far beyond the proper and manageable scope of the Horizon Issues trial:
- (
- (a) Horizon is designed to transfer and store the data put into it. It does not create shortfalls or reconcile errors – those are accounting matters, not IT matters. Questions about accounting matters are not appropriate for a trial focused on Horizon, and could not result in any sensible answer from an IT expert. This fault affects, in particular, the Cs' Issues 1 and 5.
- (b) A number of the Cs' proposed issues focus not on how Horizon works, but on the factual context in which it is operated. For example, proposed Issue 8 asks whether *"Subpostmasters have the means reasonably to identify whether such bugs, errors or defects in Horizon...were the cause of [any] shortfall"*. Issues 9 to 12 are expressly concerned with the relationship between Post Office and Fujitsu, which cannot be relevant to the technical question of how Horizon works. Issue 14 asks how often Post Office/ Fujitsu in fact used whatever abilities they had to adjust data, rather than what such ability may be. Issue 15(b) asks about what Post Office knew, and what it told Subpostmasters. These issues, insofar as they are relevant at all, go to breach – and are only suitable to be resolved in lead cases which will involve substantial factual evidence. They are inappropriate for a trial focused on how Horizon works.
- (
- (c) Other proposed issues are focused on the consequences of alleged defects. The Cs' Issue 7(i) asks whether particular bugs or defects caused shortfalls to Post Office. Issue 15(a) asks to what extent any ability remotely to alter data affected the reliability of accounting balances. These issues are similarly directed to Post Office's accounting and operating
- (

practices and are inappropriate for a trial focused on how Horizon works as a technical IT question.

- (d) Insofar as the Cs' proposed issues are focused on the correct subject-matter, they are frequently far too broad and/or nebulous. Issue 1 requires an analysis of every single upgrade to Horizon, however minor. Issue 3(c) brings in a potentially vast number of communications with third parties. Issue 6 ("*To what extent did bugs, errors or defects occur in the Horizon system?*") is not apt for judicial determination and does not focus on the types of bugs or errors that might be relevant to the Claims. The Horizon Issues trial needs to be rigorously focused on issues which can, following expert evidence, admit of a clear answer, and which will assist in resolving the Claims. Issues which ask the Court to rate the prevalence of errors on an undefined scale, or which bring in large quantities of irrelevant material, will not aid that purpose.

Directions

26. As the Court will see from comparing the parties' proposed draft Orders, there is a broad measure of agreement on next steps. There are a number of differences on points of detail (such as when the Horizons Issues trial should be held). More significantly, there are three key points in dispute:

- (a) The Cs' draft Order deletes the requirement, set out in Post Office's draft Order, that the Cs should, via their expert, set out their case on what relevant faults existed in the Horizon system. This is essential, in order to provide a framework within which the debate at the Horizon Issues trial can take place and to draw out points on which the Court can reach clear decisions. In the absence of provisions to this effect, the Court will be left with an unfocused inquiry into a very large IT system without a stated objective.
- (b) Post Office's draft Order proposes a detailed timetable leading up to the Horizon Issues trial, including the service of expert reports, supplemental expert reports, and a joint memorandum. The Cs have not included any such timetable in their draft Order. It is a practical necessity that a timetable should be ordered, and dates reserved in the experts' diaries given that detailed reports will need to be produced on short notice and within an

overall litigation timetable that has little tolerance for delays. The Cs' opposition to this is unexplained.

- (c) The Cs have added, to paragraph 4 of the draft Order, requirements that Post Office should demonstrate how it identified and corrects shortfalls (para 4(a)(ii)), and how it compares its records against the records of Post Office clients (para 4(a)(iii)). For the reasons given above, none of this is relevant to the question of how Horizon works, and there is no reason to add these provisions. The Cs also propose (para 4(a)(iv)) a demonstration of how data can be edited. It is difficult to see how such a demonstration could assist in the determination of any issue in dispute; nonetheless, in the interests of being pragmatic and cooperative, Post Office is prepared to agree to the inclusion of this provision.

DAVID CAVENDER QC

OWAIN DRAPER

GIDEON COHEN

One Essex Court,

Temple

20 February 2018

Claim Nos. HQ16XO1238, HQ17X02637 & HQ17X04248

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

The Post Office Group Litigation

BETWEEN:

ALAN BATES & OTHERS

Claimants

- and -

POST OFFICE LIMITED

Defendant

SKELETON ARGUMENT FOR POST OFFICE

CMC ON 22 FEBRUARY 2018

Solicitor for Post Office:

Andrew Parsons

Womble Bond Dickinson (UK) LLP

t: GRO
e: andrew.parsons@GRO

Exhibit 1

SUMMARY OF AGREED AND DISPUTED CLASSES OF DOCUMENTS

ISSUE FOR DISCLOSURE	PLEADING REF (Info only)	AGREED CLASSES OF DOCUMENTS	CLAIMANTS' ADDITIONAL REQUESTS WHICH ARE OBJECTED TO BY THE DEFENDANT	DEFENDANT'S COMMENTS ON REQUESTS WHICH ARE OBJECTED TO
215 Products and services offered by Post Office.	GPOC 4 – 5, 15 GDef 24 - 25 Reply 20	<ul style="list-style-type: none"> Defendant's original classes of documents are set out in black. <u>Classes / words which are underlined are additions proposed by the Claimants and accepted by the Defendant.</u> 	a) Policies, manuals, process documents, setting out procedures to be applied between Post Office and its clients for dealing with discrepancies, shortfalls or losses.	<p><u>Request A</u></p> <p>This request goes to issues of breach and relates to information that is not factual matrix. It calls for information that is not needed for and would not be admissible at the Common Issues trial.</p> <p>This request also relates to the financial reconciliation process and other operational activities undertaken by Post Office.</p>
Post Office's standard contract terms	GPOC 8 – 10 GDef 28 - 31	<ul style="list-style-type: none"> Suite of standard contractual documents used by PO when appointing postmasters, since 1999. <u>Suite of product or service-</u> 	b) Minutes of management meetings to discuss the variation of postmasters' contracts nationally insofar as such variations concerned or impacted upon the operation or	<p><u>Requests B, C & D</u></p> <p>Post Office's internal and subjective views on its contract terms are not relevant factual matrix given that these views would not have been known to postmasters.</p>

216		<p><u>specific contracts between Post Office and postmasters and guidelines, referred to in the reports of Second Sight.</u></p> <ul style="list-style-type: none"> 5. Contractual variations issued to the branch network since 1999. 6. Written policies and process documents relating to the process of varying a postmaster's contract. 7. Standard and template documents, letters, notes and memos issued to postmasters relating to the variance of their contracts. 	<p>use of Horizon, branch accounts and/or discrepancies and shortfalls that may arise therein.</p> <ul style="list-style-type: none"> c) Minutes of management meetings in which the operation and effect of section 12, clause 12 of the standard contract was considered or discussed. d) Standard guidance, rules, or Instructions to Managers / Contract Advisors regarding the operation and effect of section 12, clause 12 of the standard contract. 	<p>"<i>Management</i>" and "<i>Managers</i>" have a potentially broad meaning as, like all major corporates, Post Office has layers of management who regularly attend meetings.</p> <p>"<i>Standard guidance, rules, or Instructions</i>" could be interpreted very broadly if this were to include guidance, rules or instructions issued by email.</p> <p>It is unlikely that Post Office's management team would have discussed the operation and effect of a specific contract term without the advice and / or presence of a lawyer. If these documents do exist, they are likely to be privileged.</p>
appointment of postmasters	GPOC 42 - 46 GDef 78 - 82	<ul style="list-style-type: none"> 8. Written policies and process documents relating to: <ul style="list-style-type: none"> a. the advertising for vacancies (permanent and temporary) b. the postmaster application processes c. the on-boarding process (including the provision of contracts) d. checks on postmasters prior to appointment e. upfront payments made by postmaster to Post 		

		<p>Office; and</p> <p>f. deductions from postmasters remuneration upon a postmaster joining Post Office</p> <p>9. Standard and template documents, letters, notes and memo issued to postmasters before or shortly after appointment as a postmaster.</p>		
<p>Operation of Horizon</p> <p>217</p>	<p>GPOC 12 – 17, 22 – 24, 25-28</p> <p>GDef 33 - 38, 57-60</p> <p>Reply 9, 36, 41</p>	<p>10. Technical documents regarding Horizon stored by Fujitsu in its Dimensions systems (subject to Post Office using its best endeavours to give disclosure of those documents that are under Fujitsu's control).</p> <p>11. Known Error Log (subject to a suitable means of inspection being agreed).</p> <p>12. Branch Operating Manual (including previous versions or equivalent historic document).</p> <p>13. Operating instructions and rules issued to all postmasters.</p> <p>14. <u>Minutes of meetings of Post Office's board of directors (or historic equivalent) (a) between 1999 and 2001 at which the roll-out of Horizon, its operation and any associated operational risks</u></p>		

		<u>were considered or discussed, and (b) between 2010 and 2011 at which the same was considered or discussed with respect to Horizon Online, limited in each case to matters associated with financial reconciliations, shortfalls, discrepancies or losses.</u>		
Fujitsu	GPOC 20 – 21 GDef 47 - 50 Reply 9.6(e), 44 and 45	15. Contract between Post Office and Fujitsu (ICL) for Horizon and all written contractual variations to it.	e) Minutes of meetings between Post Office and Fujitsu at which any known or suspected bugs, errors, or defects (of the nature referred to at paragraphs 22 to 24 of the Amended Generic Particulars of Claim) were considered or discussed, including the Calendar Square/Falkirk issues, Payments Mismatch issue, and Suspense Account bug.	<u>Request E</u> This request goes to technical questions about Horizon and / or issues of breach. It is not factual matrix. It calls for information that is not needed for and would not be admissible at the Common Issues trial.

<p>Information available to postmasters regarding transactions</p>	<p>GPOC 14.2 and 19.3 GDef 35, 76(6), 92 - 93 Reply 11, 14.2 - 14.4, 15, 16.1</p>	<p>16. Technical documents regarding Horizon stored by Fujitsu in its Dimensions systems (subject to Post Office using its best endeavours to give disclosure of those documents that are under Fujitsu's control)</p> <p>17. Branch Operating Manual (including previous versions or equivalent historic document).</p> <p>18. Any written policies or process documents regarding the completion of branch accounts in the period immediately before Horizon was introduced.</p> <p>19. Any guidance notes or written advice issued to postmasters on accessing transaction information through Horizon.</p>	<p>f) Written instructions to Managers and Trainers regarding the availability and provision of transaction information to postmasters.</p> <p>g) Internally and externally produced management information, reports and briefing papers containing information and data relating to the aggregate volume, value and nature of Transaction Corrections issued annually since 1999.</p>	<p><u>Request F</u></p> <p>This request goes to technical questions about Horizon and / or issues of breach. It is not factual matrix. It calls for information that is not needed for and would not be admissible at the Common Issues trial.</p> <p><u>Request G</u></p> <p>This request goes to issues of breach and relates to information that is not factual matrix. It calls for information that is not needed for and would not be admissible at the Common Issues trial.</p> <p>Notwithstanding this, Post Office is open to considering whether the information sought could be provided through another means. The raw transaction correction information is generally held within the POLSAP finance system. It might therefore be possible to run queries on the raw database to create documents containing the information sought. As this requires documents to be created, this is not an appropriate request for disclosure. Post Office is willing to discuss this matter further in correspondence at an appropriate stage but this information is not needed for the Common Issues trial.</p>
--	---	--	--	---

<p>Information available to Post Office regarding transactions</p> <p>220</p>	<p>GPOC 55</p> <p>GDef 76(4)-(6), 92 - 93</p> <p>Reply 46, 47</p>		<p>h) Written policy and process documents, guidance, notes or memoranda relating to:</p> <ul style="list-style-type: none"> i. The ability of Post Office (whether itself or by Fujitsu) remotely to detect the occurrence of shortfalls or other branch account discrepancies, when the same occurred and whether those discrepancies were caused by bugs, errors and/or defects in the Horizon system; ii. the ability of Post Office and/or Fujitsu to conduct transactions, (by entering, deleting or otherwise altering the same) in postmasters' branches remotely; iii. specific authorization to conduct such transactions; iv. the exercise of any such ability referred to in a. above; v. the use of "Global User" authorization by Post Office employees and/or contractors; 	<p><u>Request H</u></p> <p>This request goes to technical questions about Horizon and / or issues of breach. It is not factual matrix. It calls for information that is not needed for and would not be admissible at the Common Issues trial.</p> <p><u>Request I</u></p> <p>This request goes to issues of breach and relates to information that is not factual matrix. It calls for information that is not needed for and would not be admissible at the Common Issues trial.</p> <p>The reference to "<i>instructions</i>" is very broad and would likely include emails between a large number of Post Office employees.</p> <p>This request could be agreed if narrowed in scope using the following wording, but this has been rejected by the Claimants: "<i>Any written policies or process documents regarding the recovery of shortfalls from postmasters.</i>"</p> <p><u>Request J</u></p> <p>This request goes to issues of breach and relates to information that is not factual matrix. It calls for information that is not needed for and would not be admissible at</p>
---	---	--	--	--

221			<ul style="list-style-type: none"> vi. the use of “privileged user access rights” by Fujitsu employees and/or contractors; and vii. Balancing Transactions. i) Any written policies or process documents and network-wide instructions to Managers / Contract Advisors / Auditors regarding the recovery of shortfalls from postmasters. j) Minutes of meetings / memoranda / reports relating to Post Office’s network-wide approach to identifying, tracking or managing discrepancies, shortfalls or losses, or to Postmasters’ ability to dispute shortfalls. 	<p>the Common Issue trial.</p> <p>This request is extremely wide. For example, it would potentially capture all internal and external emails regarding all shortfalls and losses in all branches, not just those of the Claimants. This request would also extend to a large number of Post Office teams as many teams have an active role in handling discrepancies, shortfalls and losses.</p> <p>A narrower formulation of this request can be found at 25, 26 and 27. Although these documents may still be inadmissible the Defendant is prepared to disclose them as part of Stage 2 Disclosure because they are narrowly defined.</p>
Transaction Corrections	GPOC 18 GDef 39 – 41 Reply 21, 32	<ul style="list-style-type: none"> 20. Branch Operating Manual (including previous versions or equivalent historic document). 21. Operating instructions and rules issued to postmasters in relation to Transaction Corrections. 22. Post Office written policies and process documents regarding the issuing of Transaction Corrections. 	k) <i>[Claimants' version of request 22]</i> Post Office written policies, and process documents, internal guidance and briefing notes regarding the issuing of Transaction Corrections.	<p><u>Request K</u></p> <p>This request could be agreed if narrowed in scope using the following wording, but this has been rejected by the Claimants: <i>"Post Office written policies, and process documents, and formal internal guidance documents (not emails) regarding the issuing of Transaction Corrections."</i></p>

<p>Declaring, Making Good and Disputing Shortfalls</p>	<p>GPOC 19.1 – 19.3 GDef 44 - 46 Reply 9.3, 22</p>	<p>23. Branch Operating Manual (including previous versions or equivalent historic document).</p> <p>24. Guidance notes issued to postmasters on how to complete overnight cash declarations and Branch Trading Statements.</p> <p>25. Guidance notes issued to postmasters on how to make good, settle centrally and dispute shortfalls, <u>including, but not limited to, outside of the 42/60 period.</u></p> <p>26. Written policies regarding postmasters making good and settling centrally shortfalls.</p> <p>27. Written policies or process documents regarding the reports which could be run or steps taken by postmasters to investigate shortfalls.</p>		
<p>Training</p>	<p>GDef 17, 61(2), (4), (5) Reply 42 - 43</p>	<p>28. Written policies and process documents relating to the provision of training when a new postmaster joins Post Office, <u>from 1999.</u></p> <p>29. Written policies on when further</p>	<p>l) Policies, instructions and guidance notes issued network- wide to trainers related to training on Horizon and Horizon Online.</p> <p>m) Course materials focusing on</p>	<p><u>Requests L & M</u></p> <p>This request goes to issues of breach and relates to information that is not factual matrix. It calls for information that is not needed for and would not be admissible at the Common Issues trial. In particular, it is</p>

223		<p>training is offered due to the introduction of new products and services.</p> <p>30. Training materials and other standard / template documents used for new postmasters.</p> <p>31. Written policies or process documents relating to ongoing training which is provided due to the needs of postmasters or the introduction of new practices, systems or services.</p>	<p>the dealing with or disputing of discrepancies.</p> <p>n) Network-wide instructions to Post Office trainers in how to train a postmaster to deal with and dispute a shortfall.</p>	<p>noted that the Claimants have not pleaded in the GPOC that the training of postmasters forms part of the factual matrix.</p> <p>Given that the vast majority of all branch operations are conducted through Horizon, this is effectively a request for all policies and process documents on all elements of training over an 18 year period.</p> <p>Post Office has already included at requests 28 to 31 information on training that is at least proximate to the factual matrix needed for the Common Issues trial – relating to the training for new postmasters and the introduction of new products.</p> <p><u>Request N</u></p> <p>This request appears to go to allegations that the training provided was defective and / or the trainers provided misleading information. Post Office's response to Requests L & M is repeated.</p> <p>The reference to "<i>instructions</i>" is very broad and would likely include emails between a large number of Post Office employees.</p>
-----	--	---	---	---

<p>Helpline</p>	<p>GPOC 29 - 30, 57 - 58 GDef 61 - 62 Reply 18 - 19</p>	<p>32. NBSC Knowledge Base (subject to a suitable method of inspection being agreed).</p> <p>33. Written policies and procedures regarding the operation of either the NBSC or HSD helplines, <u>including but not limited to (a) the operation of the escalation process, particularised at paragraphs 61-62 of the Generic Defence (excluding criminal investigations).</u></p> <p>34. Formal notices issued to postmasters regarding the operating hours of helplines.</p>	<p>o) <i>[to be included at the end of 33]</i> Instructions to both Helplines in dealing with queries from postmasters regarding shortfalls.</p>	<p><u>Request O</u></p> <p>This request goes to issues of breach and relates to information that is not factual matrix. It calls for information that is not needed for and would not be admissible at the Common Issues trial.</p> <p>The reference to "<i>instructions</i>" is very broad and would likely include emails between a large number of Post Office employees.</p>
<p>Investigation</p>	<p>GPOC 31 GDef 63 - 64 Reply 23 - 24</p>	<p>35. Written policies and procedures regarding the investigation of shortfalls in branches (excluding investigations into suspected criminal misconduct).</p> <p>36. Written policies and procedures for initiating and progressing audits.</p> <p>37. <u>Instructions or guidance (excluding emails) given to auditors on dealing with discrepancies, shortfalls and losses identified or suspected in branch.</u></p>		

224

Termination	GPOC 32 – 33 GDef 65 - 66	38. Written policies and process documents relating to: a. the suspension of postmasters; and b. the termination of postmaster's contracts (and any connected appeals process).		
Suspense Accounts	GPOC 38 - 39 GDef 73 - 74 Reply 29 -33	39. Written policies and process documents in relation to the operation by Post Office of any "suspense" account associated with branch accounting, <u>including, specifically, the account or accounts in which unattributed surpluses generated from branch accounts (such as, for example, perceived overpayments by banks in respect of particular transactions) were placed and, after a period of 3 years, credited to Defendant's profits and reflected in its profit and loss accounts.</u>		

Assistants	GPOC 43, 56 and 74 GDef 79, 95 and 116	40. Written policies and process documents relating to the appointment and registration of assistants. 41. Training materials provided to postmasters for the training of assistants.		
------------	---	---	--	--

Exhibit 2**Defendant's commentary on proposed Horizon Issues**

Defendant's issues	Claimants' issues	Reasons for objection to the Claimants' issues
1. Is Horizon robust and extremely unlikely to be the cause of shortfalls in branches?	1. Did the introduction of (or subsequent changes to) Horizon (including upgrades and addition of products and services) import the potential for errors to be made during data entry or at any point thereafter including transfer, processing, reconciliation or recording?	Reconciliation is not a Horizon process. Horizon does not create shortfalls or reconcile data, it only transfer and stores data. The remainder of the Claimants' issue 1 is covered by the Defendant's issues 3 and 6.
2. When it was introduced in 1999/2000, did Horizon have poor checks and controls against preventing data entry errors by users when conducting transactions?	2. What error repellency measures and/or controls were in place?	The Claimants' issue 2 is covered by the Defendant's issues 2 and 3.
3. Were the Horizon technical control measures in place from time to time such as to reduce to an extremely low level the risk of error in the transmission, replication and storage of	3. Were such error repellency measures and/or controls sufficient to ensure the prevention, detection, identification and reporting of errors? In particular, were they sufficient to ensure:	The Claimants' issue 3(a) mixes the concepts of user error with transmission error. 3(b) is already covered in the

Defendant's issues	Claimants' issues	Reasons for objection to the Claimants' issues
transaction data?	<ul style="list-style-type: none"> a. repency against (i) data entry errors and (ii) data packet or system level errors (including data processing, effecting and reconciling transactions and recording the same); b. the detection, correction and remediation of software coding errors or bugs in Horizon; c. the absence of errors in the transmission, replication and storage of transaction record data (whether by its transfer to and from the Defendant's central data centres, to and from third parties or otherwise); and d. the reliability of the data stored in the central data centre as an accurate record of the transactions entered on branch terminals? 	<p>Defendant's issues 6 and 7.</p> <p>The reference to "third parties" in the Claimants' issue 3(c) extends the issue to reconciliation which, as stated above, is not a Horizon process.</p> <p>3(d) is covered by the Defendant's issues 2 and 3.</p>
4. Were such Horizon controls, procedures and practices in place from time to time robust?	4. At all material times, what report-writing features did Horizon have?	The Claimants' issue 4 is covered by the Defendant's issue 11.
5. Are the circumstances in which transaction data can be edited or deleted without the consent of the Subpostmaster limited as pleaded at Defence paragraph 57?	<p>5. To what extent, did those features allow Subpostmasters:</p> <ul style="list-style-type: none"> a. to access, identify and reconcile transactions recorded on Horizon; b. to reconcile Horizon data with other transaction data 	<p>The Claimants' issue 5(a) is covered by the Defendant's issues 9 and 10, save that the reference to reconciliation is outside the scope of Trial 2 as it is an accounting process.</p> <p>The Claimants' issues 5(b) and (c)</p>

Defendant's issues	Claimants' issues	Reasons for objection to the Claimants' issues
	held by the Defendant; and c. to investigate the cause of apparent or alleged shortfalls?	are outside the scope of Trial 2 as they relate to an accounting process. Such issues are not technical issues and would require lead claimants.
6. Does Fujitsu operate industry recognised processes for developing and updating Horizon and for investing and resolving any identified potential system errors?	6. To what extent did bugs, errors or defects occur in the Horizon system?	The Claimants' issue 6 is nebulous. The Defendant's issues 6, 7 and 8 address the technical issues as to the controls and measures for preventing / fixing bugs and developing the system.
7. Which, if any, of the measures and controls against software coding errors and bugs pleaded at Defence paragraph 50 were in place at the times covered by the Claims?	7. Did such bugs, errors or defects (including those referred to at §24 of the GPOC and §§49 to 56 of the Generic Defence) occur which (i) caused; or (ii) had the potential to cause apparent or alleged shortfalls which did not represent a real loss to the Defendant?	The Claimants' issue 7 is covered by the Defendant's issues 6, 7 and 8. The Defendant takes issue with the reference to "real loss" in the Claimants' issue 7.
8. Are the incidents of bugs and errors	8. Did Subpostmasters have the means reasonably to	The Defendant takes issue with the

Defendant's issues	Claimants' issues	Reasons for objection to the Claimants' issues
admitted by Post Office consistent with the operation of robust measures for the detection, correction, remediation of software coding errors and bugs in Horizon?	identify whether such bugs, errors or defects in Horizon (of the nature pleaded in GPOC at §18, 24 and Defence at §§49 to 56) were the cause of the shortfall?	Claimants' issue 8, as this is an issue for the lead cases and is not to do with Horizon.
9. Did Post Office and/or Fujitsu have access to all transaction data recorded by Horizon?	9. What information: a. was practically available from or provided to the Defendant by Fujitsu in relation to (i) bugs, errors and defects; and (ii) remote access to the Horizon system. b. was the Defendant legally entitled to from Fujitsu, in relation to the same?	The Claimants' issues 9 (a) and (b) are not questions to be addressed by the experts.
10. What transaction data and reporting functions were available through Horizon to Post Office for identifying shortfalls and/or the causes of shortfalls in branches?	10. Was there any information for which the Defendant had to pay Fujitsu?	The Claimants' issue 10 is not an expert question and is covered by the Defendant's issue 9.
11. What transaction data and reporting functions were available through	11. If so, what sums were payable for that information,	The Claimants' issue 11 is not an expert question and to the extent that

Defendant's issues	Claimants' issues	Reasons for objection to the Claimants' issues
Horizon to Subpostmasters for identifying shortfalls and/or the causes of shortfalls?	and under what circumstances?	it is related to an expert issue - it is covered by the Defendant's issue 9.
	12. Was it part of Fujitsu's role to manage coding errors, bugs, and fixes so as to prevent, manage or seek to correct apparent discrepancies in the data, in a manner which would potentially affect the reliability of accounting balances, statements or other reports produced by Horizon?	The Claimants' issue 12 is covered by the Defendant's issues 6, 7 and 8.
	13. Whether the Defendant and/or Fujitsu have had the ability/facility: (i) to insert or inject, (ii) to edit, or (iii) to delete transaction data in branch accounts; (iv) to implement fixes in Horizon that affected, or had the potential to affect, specific items of transaction data; or (v) to rebuild branch transaction data: a. remotely; b. without the consent of the Subpostmaster in question; and c. without the knowledge of the Subpostmaster in question.	<p>The Claimants' issue 13 is covered by the Defendant's issue 5, although the Defendant would be content to add the words "insert and inject" to their paragraph 5.</p> <p>If the Claimants' version is adopted, the Defendant would also request that the word "potentially" be inserted at the start of issue 13(c).</p>

Defendant's issues	Claimants' issues	Reasons for objection to the Claimants' issues
	14. If the Defendant and/or Fujitsu did have such ability, how often was that used, if at all?	The Defendant does not object to the Claimants' issue 14.
	<p>15. If and when the Defendant and/or Fujitsu used the above ability:-</p> <p>a. To what extent did the same affect, or have the potential to affect, the reliability of accounting balances, statements or reports?</p> <p>b. To what extent:</p> <p>i. was the Defendant aware of its use; and</p> <p>ii. did the Defendant make Subpostmasters aware of the same?</p>	<p>The Claimants' issue 15(a) should be amended as follows:-</p> <p>If and when the Defendant and/or Fujitsu used the above ability, to what extent did the same have the potential to affect the reliability of transaction data, statements or reports?</p> <p>The Claimants' issue 15(b) amounts to a factual enquiry and is opposed.</p>
	16. Did use of such facilities affect, or have the potential to affect, the reliability of accounting balances, statements or reports?	The Claimants' issue 16 is the same as their issue 15(a). The Defendant therefore requests that this is deleted