

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 2 FEBRUARY 2018

Suggested pre-reading (2 hours): (1) Skeleton Arguments, (2) Mr Parsons' 6th Witness Statement dated 29 January 2018 ("Parsons 6").

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 the Defendant ("Post Office") for the CMC on Friday, 2 February 2018.
2. The Group Litigation has progressed in accordance with the Order made at the last CMC (19 and 25 October 2017, "the First CMC Order" [CM/Vol 2/G7]). The parties have also been able to make substantial progress in reaching agreement, subject to the Court's approval, as to the future conduct of the Group Litigation.
3. The Managing Judge ordered the present CMC for the consideration of issues as to disclosure: para. 12 of the First CMC Order. For the reasons set out below in Section D, Post Office will respectfully invite the Court to also make case management directions for the trial of the Lead Cases that the parties agree should be tried after the Common Issues. In short, Post Office contends that such directions should not wait until the next CMC in September 2018 or, worse, after the resolution of the Common Issues in early 2019.

4. Post Office seeks an Order in the form of the draft at [HB/2] (the “Draft Order”).
5. In this Skeleton Argument, Post Office addresses:
 - a. the background to the present CMC – Section B;
 - b. disclosure – Section C;
 - c. other case management matters, including proposed directions as to the selection of Lead Claimants and progress towards a trial of Lead Cases–Section D.

B: Background to the present CMC

6. The Court will recall the outline of the issues in this Group Litigation. The parties are working towards the trial of Common Issues that was ordered in October 2017, which trial is set down for 20 days commencing in November 2018. The Common Issues, which are at Schedule 1 to the First CMC Order [CM/Vol 2/G7/67], are almost all issues of contractual construction, although there are also issues that touch upon the nature of the legal relationship between the parties more generally.¹
7. Since the CMC in October 2017, the parties have made good progress:
 - a. The parties exchanged E-Disclosure Questionnaires on 6 December 2017. Post Office’s EDQ is at [HB/6] and runs to 86 pages. It reveals the substantial work that Post Office has already done to put itself in a position to provide such disclosure as is appropriate at each stage of this Group Litigation. It also reveals the huge scale of the universe of documents in Post Office’s possession or control and, it is submitted, the potential for delay and disproportionate expense should an unfocused approach be taken to disclosure.
 - b. The parties have selected Potential Lead Claimants for the purposes of the Common Issues trial in accordance with para. 3 of the First CMC Order.
 - c. Post Office has provided the disclosure required in relation to such Potential Lead Claimants under para. 4(a) of the First CMC Order. This amounted to 1,391 documents. The Claimants provided 498 documents in accordance with para. 4(b).

¹ See, in particular, Common Issues 1, 10, 17 and 18.

- d. Post Office has provided the Horizon-related disclosure required by para. 13 of the First CMC Order, including having reviewed and given disclosure of 28,263 documents from Second Sight. The Claimants' IT expert has spent approximately a day at Fujitsu's offices, where he has inspected the Known Error Log.²
 - e. As to further disclosure, the parties had a constructive inter-solicitors meeting on 22 December 2017. Since that meeting, there have been further telephone and video conferences, and the parties have exchanged detailed correspondence and draft orders. The parties have agreed a disclosure protocol and are agreed, in outline terms, on a process of staged disclosure, with the disclosure at each stage being that necessary for the resolution of the issues at play in that stage of the Group Litigation, applying the principles in the draft Practice Direction produced by the Disclosure Working Group: see paras 5-9 of the Draft Order. A good measure of agreement has been reached on the scope of such staged disclosure, largely in accordance with the proposals that Post Office set out in advance of the disclosure meeting,³ although substantial differences remain as to, in particular, the "Stage 2" disclosure required for the Common Issues trial in November 2018.
8. There has since the October CMC been improved practical cooperation between the parties' respective legal teams. The tone of the correspondence has been more constructive. For its part, Post Office has put forward pragmatic compromise where differences of principle have proven incapable of resolution: see, for example, para. 2.9 of the letter dated 26 January 2018 at [HB/10/426].
9. As regards the next steps in the Group Litigation, the parties have reached agreement on the following points, subject to the Court's views:
- a. Following the resolution of the Common Issues, the parties should proceed to the trial of Lead Cases on all issues. It will be necessary to have a relatively large number of Lead Cases to account for the breadth of factual and legal issues arising across the Claims. Post

² The Court may recall that this database is not within Post Office's possession or control but was made available for the Claimants' inspection with Fujitsu's agreement.

³ See the letter that Post Office sent on 18 December 2017 in advance of the disclosure meeting [HB/10/380].

Office proposes 20 potential Lead Claimants for the purposes of initial disclosure and pleadings and that this be reduced to 16 for the purposes of further disclosure, witness evidence, expert evidence and trial: see paras 14 to 33 of the Draft Order [HB/2/24].

- b. In this context, the parties are unable to identify any issues that could realistically be ready for trial in March 2019, and they accordingly invite the Court to vacate the trial presently listed. The Claimants propose that a similar period in early 2019 be used instead for a stay for the purposes of mediation. Post Office is of course willing to participate in efforts at ADR and can see the sense of such efforts taking place after the resolution of the Common Issues. It nonetheless opposes any stay for ADR. The parties can and should pursue ADR, including a mediation, while also making fast progress towards the determination of Lead Cases.

C: Disclosure

10. The parties agree that initial disclosure for the purposes of the Common Issues trial should be provided by 28 February 2018 and have agreed (subject to the Court's approval) the scope of such disclosure, including the keywords to be used: see Schedule 1 of the Draft Order, referring to "Stage 1" disclosure.⁴ This reflects in large part a proposal that Post Office first put forward in its letter of 18 December 2017, but there has been substantial give-and-take and effective cooperation.
11. The parties are also agreed that there should be a further round of disclosure for the purposes of the Common Issues trial and that such disclosure should be provided in May 2018, which is referred to as "Stage 2" disclosure. The parties have sought to agree the scope of such disclosure in correspondence and discussion, but there remains a substantial disagreement between them. There is a fundamental difference of approach.
12. It is common ground that the disclosure for the purpose of the Common Issues trial should be designed to assist the parties and the Court in resolving the Common Issues. It follows, in Post Office's submission, that Stage 2 disclosure should not extend beyond that which can be expected to provide relevant evidence on those issues. As noted above, the Common Issues

⁴ The parties have reached a compromise under which further custodians that the Claimants wished to include in Schedule 1 will be included in Part 1 of Schedule 2 and so form part of Stage 2 disclosure.

are largely matters of contractual construction, although certain of them may require a slightly broader consideration of the nature of the legal relationship between the parties. The parties must therefore keep in mind the fairly limited scope of factual evidence that will be admissible at the trial of the Common Issues and the effect that this has in terms of limiting the disclosure that is necessary and proportionate. The Court will not, in resolving issues of contractual construction (including whether terms are to be implied into the agreements⁵), go beyond admissible matrix of fact evidence.

13. Post Office remains concerned that the Claimants have not taken on board the limited scope of evidence (and therefore disclosure) that will be admissible in relation to the Common Issues. Post Office pointed out in submissions at the October CMC that the Claimants had not identified with any clarity the matrix of fact on which they proposed to rely, arguing that this was likely to pose a problem for the trial of the Common Issues. The position has not changed, despite Post Office having pressed the issue in correspondence. Specifically:
- a. Most of the Claimants' alleged implied terms appear at para. 64 of the Amended Generic Particulars of Claim [CM/V1/B3/35] ("AmGPoC"). Such terms are put forward "*in the context of the factual matrix*".
 - b. Para. 46 of the AmGPoC provides a clear example of the problem with the Claimants' approach. The Claimants refuse in that paragraph to limit themselves to the matrix of fact that they have identified clearly in the pleading, which leaves Post Office in the position of not knowing what facts the Claimants may seek to prove and rely on for the purposes of construing the agreements.
 - c. Post Office made an RFI of this paragraph. Unfortunately, the response to RFI aggravates the situation. In para. 8.1 of the Response dated 16 May 2017 [CM/V1/E6/7], the Claimants state that they will rely on "*all facts pleaded*" as matrix of fact. Despite invitations to revisit this remarkable assertion, it remains the Claimants' pleaded case. It is fair to point out that, in para. 8.1 of the Response, the Claimants do also identify specific paras of the AmGPoC, but many of those paras plead facts that are not even arguably matrix of fact for the construction of the contracts (or even, to the extent this is

⁵ The Claimants advance over 20 implied terms.

different, facts that may be relied upon in determining the nature of the legal relationship between the parties). See, for example, paras 14, 19, 22-27, 29-30, 32, 34-35 and 38-39 at [CM/V1/B3]. Many of these paras do not relate to the content of the parties' agreement or even to facts and matters that were known to the parties at the time of contracting and which might in principle be admissible background for the construction of the agreements; they relate instead to what in fact happened after the contracts were entered into. Many of them are advanced in support of allegations of breach, rather than duty.

- d. It appears unlikely that Claimants can in reality intend to rely on all the pleaded facts for the purposes of construing the agreements. But the Claimants have not felt able to go any further in identifying the true scope of the factual disputes that may require determination at the Common Issues trial.⁶

14. The Claimants' unwillingness to identify the facts on which they rely for the purposes of construing the agreements is of a piece with the stance that the Claimants have taken as regards the disclosure that they say Post Office should provide in Stage 2. The Claimants have in correspondence described Stage 2 disclosure as "*Common Issues Trial – Generic*" but seek disclosure under Model D⁷ and have provided an "*Indicative Table of Documents*" for such disclosure that reveals the great breadth of the search and review process that would be required.

15. The Claimants propose a vast disclosure exercise. The search and review processes required for Stage 2 disclosure on the Claimants' proposals would, in practical effect, be very similar to those that would be required under an order for standard disclosure across most of the generic issues, which is something that the parties have agreed would be inappropriate and which would, as Parsons 6 makes clear, be impracticable in the time available. The Court may recall the argument at the last CMC on this point and, in particular, the evidence from Post Office as to the disproportionate cost and delay of adopting an unfocussed approach. It should follow from the parties' agreement to proceed by way of individually pleaded Lead

⁶ Post Office invited the Claimants to provide an early draft of the Statement of Facts ordered at the last CMC to inform the parties' consideration of what is likely to be in issue as regards matrix of fact, which would in turn allow the parties to narrow the dispute as to disclosure. The Claimants have refused to provide any such draft.

⁷ Model D is the most similar of the Extended Disclosure models to standard disclosure.

Cases that the parties can avoid the huge cost of standard disclosure across the issues in the generic pleadings.

16. Mr Parsons explains in Parsons 6 that the Stage 2 disclosure proposed by the Claimants would require Post Office to host, search across and review many millions of documents, covering the bulk of its operations over the period since 1999. The language used in the Claimants' Indicative Table of Documents reveals the breadth of the process that the Claimants propose, describing the sources of potentially disclosable documents in terms that would be consistent with standard disclosure against broad and unfocussed issues: see, for example, the following entry in relation "*Audits, enquiries and investigations*":

"Internally & Externally generated notes, minutes of meetings, memoranda, correspondence, emails and briefing documents, reports, financial management information and other documents relating to postmaster/branch audits, enquiries and investigations, including but not limited to:

- PO's policies and procedures for initiating and progressing audits, enquiries or investigations, and*
- issues, problems or financial consequences associated with such matters, and*
- necessary or recommended improvements to systems."*

17. This would cover, amongst other things, all Post Office emails from between 1999 and 2018 from which "*issues*" or "*problems*" in relation to audits, enquiries or investigations may be discerned.⁸ The Claimants state in the table that searches for such documents would have to cover every Post Office team identified in the EDQ from 1999 onwards that had "*direct or indirect involvement*" in audits and/or enquiries and/or investigations. The table contains similar entries for practically all of the areas of Post Office's operations that are put in issue by the generic pleadings, and the teams within Post Office are identified in every case as including those with only "*indirect*" involvement in the operations at issue. On the Claimants' proposals, Post Office's searches would also have to cover its financial management systems and the 24 TB of data that they contain. As a useful rule of thumb, 1

⁸ The term "investigations" is extremely broad in the context of Post Office's operations: see Amended Generic Defence, paras 63 to 64.

TB of data will typically represent around 5 million documents (depending, of course, on file type). If one assumes 50 documents per ring-binder, each TB would give 100,000 bundles.

18. In a letter dated 29 January 2018, the Claimants seek to justify their insistence on broad Stage 2 disclosure by arguing that evidence will be required in the November trial as to “*what actually happened*” in practice:

“As to the documents which you have identified in Part 2 of Schedule 2, our main concern is that your proposals are essentially limited to documents referring to what ought to have happened rather than to what actually happened. This is effectively to parse the factual matrix in an unrealistic way, which will not provide the necessary context for the resolution of the Common Issues. Indeed, it presents the real likelihood of revelations after the resolution of the Common Issues which may call into question the factual picture upon which those Common Issues were determined. This would be unfortunate as well as unfair to our clients. It is plainly desirable that the court should be in a position to resolve the Common Issues on a realistic assessment of the relevant factual matrix, as opposed to a selective and unrepresentative one. We think that this necessarily flows from the pleaded issues between the parties, which will of course be further clarified by your client's provision of the Further Information sought, for the second time, in our RFI of 29 December 2017.” (emphasis added)

19. The Claimants’ approach to matrix of fact evidence, as revealed by that paragraph, is fundamentally misconceived, for the following reasons.
20. First, the purpose of the Common Issues trial is to determine the content (and, to a lesser extent, the nature) of the parties’ legal relationship, principally the express and implied terms of the contracts between them. It is a trial of issues as to legal duties or, in the Claimants’ words, “*what ought to have happened*”.
21. Secondly, for the purposes of construing the express terms of the agreements and/or seeking to imply terms into the agreements, evidence as to “*what actually happened*” necessarily post-dates the agreements and will be inadmissible. Such evidence cannot be matrix of fact because it cannot be “*background*” to the agreement in the sense in which that term is used in **Investors Compensation Scheme v West Bromwich Building Society** [1998] 1 W.L.R. 896. This is clear from the ICS case and more recent authority:

- a. *“Interpretation is the ascertainment of the meaning which the document would convey to a reasonable man having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract”* (per Lord Hoffmann in *ICS* at p. 912; emphasis added)
- b. *“The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties. Given that a contract is a bilateral, or synallagmatic, arrangement involving both parties, it cannot be right, when interpreting a contractual provision, to take into account a fact or circumstance known only to one of the parties”* (per Lord Neuberger in *Arnold v Britton* [2015] A.C. 1619 at [21]; emphasis added).
22. Thirdly, insofar as any broader factual enquiry may be justified by the inclusion of Common Issues 17 and 18, such enquiry is limited to evidence going to the “*true agreement*”⁹ between the parties in relation to the circumstances in which Post Office could lawfully terminate the agreements: see paras 69-71 of the AmGPoC [CM/V1/A3/39]. It cannot justify opening up the question of “*what actually happened*” in relation to the provision of training, the conduct of audits, enquiries and investigations, the operation of suspense accounts, *etc.*
23. In this context, Post Office submits that the Stage 2 disclosure sought by the Claimants is inappropriate:
- a. First, as noted above, the main burden of the disclosure sought by the Claimants would be aimed at the investigation of post-contractual facts that were known only to Post Office, e.g. Post Office’s contemporaneous knowledge of any supposed deficiencies in its training processes that may be revealed by internal emails *etc.* Documents of this kind might ultimately be relevant to liability issues, which are to be determined in the Lead Cases, but they cannot provide material for the construction of the contracts in the

⁹ 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.

Common Issues trial.¹⁰ The Common Issues trial is limited to questions of contractual construction and the identification of the legal relationship between the parties.

- b. Second, the Claimants' proposed disclosure would be inconsistent with the focussed approach to disclosure that the parties have agreed is appropriate, seeking to reflect the principles espoused by the Disclosure Working Group: see the Draft Disclosure Pilot at [HB/7/263].
- c. Third, it would not be possible to provide the disclosure sought by the Claimants within any timescale that would allow the Common Issues trial to proceed in November 2018: see Parsons 6 at para. 23.¹¹ This is, at least in large part, the result of applying disclosure Model D, rather than Model C (which allows for searches to be limited to identified classes of document). Post Office will resist strongly any suggestion that the trial be put back to allow for broad Model D disclosure to take place.
- d. Fourth, there is no good reason to expose Post Office (or even the Claimants) to the huge costs of disclosure of this kind when it is common ground that matters going to breach and liability can and should be addressed through Lead Cases to be determined after the resolution of the Common Issues. It would deprive the parties of much of the practical benefit of this Group Litigation to impose on them disclosure costs of the scale that would arise if the Claimants had all sued individually.
- e. Fifth, the disclosure exercise that the Claimants propose would inevitably overlap with disclosure exercises to be undertaken at later stages in the proceedings (by which time the searches can sensibly be limited to documents that may touch upon the issues in the Lead Cases). Post Office should not be required to cover the same ground twice, and it should not be required to spend many hundreds of thousands of pounds in data hosting fees alone in relation to documents that are extremely unlikely to contain any evidence that would assist in the resolution of the Common Issues.

¹⁰ Information that was necessarily known to only one of the parties cannot be matrix of fact: see the quotation from *Arnold v Britton* above.

¹¹ The Claimants have indicated in correspondence that they do not accept the account given by Mr Parsons.

24. Post Office has put forward a pragmatic compromise proposal: see Part 2 of Schedule 2 to the Draft Order. Even under the compromise proposal, Post Office will inevitably review and even disclose a great many documents that will not be admissible at the Common Issues trial. Nonetheless, the use of Model C and searching across classes of documents selected to reflect the Issues for Disclosure that may arise on the Claimants' pleas as to background facts and factual matrix is intended to provide a practical way forward (and is proposed without prejudice to Post Office's position on admissibility). Post Office has invited the Claimants to propose any additions to Part 2 of Schedule 2.

D: Further Case Management Directions

25. Post Office proposed in mid-January 2018 that the parties make a joint approach to the Court to seek a longer CMC to allow time to address case-management issues other than disclosure. The rationale for this proposal was that questions as to what disclosure is appropriate at any given stage in the proceedings are most sensibly dealt with alongside a consideration of the progress of the proceedings more generally. Under the staged approach to disclosure, it is important to understand how the proposed disclosure fits into the relevant stage and, in particular, why it is appropriate at that stage, taking into account the issues that require determination. Unfortunately, no agreement was reached and Post Office did not wish to burden the Court with a dispute in advance of the CMC.

26. Post Office nonetheless invites the Court to make the further case management directions set out in its Draft Order. The Claimants agree that some (much more limited) case management directions should be given. Most notably, it is common ground that it would be appropriate at this stage to order that there be a trial of Lead Cases. The dispute between the parties is relatively narrow but is important. Specifically:

- a. Post Office seeks a listing for the trial of the Lead Cases and directions in relation to that trial, allowing the parties to make some progress in that regard in 2018 and prior to the determination of the Common Issues.
- b. The Claimants oppose the making of any directions at this stage, proposing that a listing be obtained at the CMC in September 2018 and that directions be given at a later stage.

The Claimants nonetheless seek "Stage 3" disclosure (relating to issues that may be determined in the Lead Cases) by October 2018.

27. If the Court does not consider it appropriate to resolve the dispute between the parties at the present CMC, it may nonetheless assist the parties for there to be some discussion of these matters at the hearing to assist the parties in narrowing the dispute.
28. If the Court is willing to resolve the dispute as to future case management directions, Post Office respectfully submits that its proposals are the more likely to promote the fair and efficient resolution of the issues in the Group Litigation:
 - a. First, there is no good reason to wait until September 2018 to list the trial of the Lead Cases and give directions. The parties will be in no better position in September 2018 than they are now in terms of understanding the likely issues in the Lead Cases and how best to select potential Lead Claimants, and months will have been lost. Indeed, September 2018 will be a particularly bad time to start to focus on the Lead Cases, given that the parties' efforts will by then be focussed intensely on preparations for the November trial of the Common Issues.
 - b. Secondly, it would be nonsensical to proceed to disclosure for the purposes of the trial of Lead Cases without even identifying potential Lead Claimants. It would put the cart before the horse to require disclosure for the purpose of resolving claims that have not yet been selected, and it would deprive the parties of much of the practical benefit of Group Litigation and the selecting of Lead Cases. Given that it is agreed that there should be extensive disclosure of documents material to the Lead Cases after those claims have been selected and pleaded, it makes no sense to require Post Office to also conduct a similarly expansive disclosure process in advance of the selection. The selection and pleading of the Lead Cases will draw out the factual disputes between the parties and will bring the focus that is presently lacking. It will provide a sound basis on which disclosure in relation to liability issues can properly and efficiently be given: see paras 23-25 of the Draft Order in relation to "Stage 4" disclosure.
 - c. Thirdly, in the meantime, some disclosure can still be given in preparation for the Lead Cases trial. Once an initial pool of Lead Claimants has been selected, it will be possible

to search for and disclose documents that refer directly to those Lead Claimants by using the Claimant's name and other personal identifiers but without the need for the Claim to be pleaded or the issues in the Claim to be otherwise identified with precision. Post Office proposes that this initial disclosure for the Lead Cases take place as "Stage 3" Disclosure: see para. 17 of the Draft Order.

- d. Fourthly, if the parties wait until the resolution of the Common Issues before making progress towards a trial of the Lead Cases, there is no realistic prospect of a trial of such claims in 2020.

29. On this last point, the Claimants have argued that, even if the parties take no steps (other than "generic disclosure") in relation to the Lead Cases until after the resolution of the Common Issues in early 2019, the parties could still be ready for trial in early 2020. It is, in Post Office's submission, unrealistic to suggest that the parties could go from zero to a trial of 16 Claims in around 12 months. It is difficult to see how the Claimants can have reached that view unless they have not yet addressed their minds to the scale of the task of preparing the Lead Cases for trial.

30. On Post Office's proposals (which benefit from work commencing this year), the Lead Cases could be ready for trial commencing in May or October 2020. Post Office's proposed directions are at paras 12 to 33 of the Draft Order. It is respectfully submitted that those directions would provide a challenging but realistic timetable to a 12-week trial in 2020. For instance, on the timetable for a trial in October 2020 (shown in green in the Draft Order):

- a. The parties would benefit from having selected the pool of Lead Claimants in the course of 2018 (by reference to Lead Cases Issues as agreed or ordered – para 14 of the Draft Order).
- b. The Claimants would have to file and serve 20 individual Particulars of Claim by 29 March 2019 (within around 2 months of the anticipated receipt of the Judgment on the Common Issues).
- c. Post Office would then have less than 3 months to produce 20 individual Defences (due on 28 June 2019).

- d. Pleadings would continue over the Long Vacation and close by 23 August 2019.
 - e. Disclosure for the finally selected 16 Lead Cases for trial would be completed by mid-October 2019, less than 2 months after the close of pleadings.
 - f. The Lead Claimants and Post Office would have around 3 months (until 24 January 2020) to take into account the disclosure and produce witness evidence for trial.
 - g. Expert reports in the 16 Lead Cases would be filed in April 2020 (Claimants) and June 2020 (Post Office), within 2 and 4 months, respectively, of the service of any supplemental witness statements in February 2020.
31. The Court will note that, even on Post Office's accelerate timetable (shown in red in the Draft Order), the parties would not be ready for trial until May 2020. It is respectfully submitted that this would be the tightest realistic timetable for a 12-week trial of 16 Lead Cases.
32. If, by contrast, the parties were to follow the Claimants' preferred approach and wait until 2019 to commence work on the selection of Lead Claimants, there is no realistic prospect of the parties being ready for trial in 2020. Post Office submits that the Claimants' approach would likely lead to a Lead Cases trial in mid-2021, around a year later than could be achieved on Post Office's timetable. Post Office's timetable can however only be achieved if work begins now.
33. There are two further matters to mention:
- a. As noted above, Post Office opposes the Claimants' request for a stay for ADR in March 2019. Post Office proposes instead that there be a mediation after the resolution of the Common Issues and that the parties have a liberty to apply for a stay should it become apparent that this would assist: see para. 34 of the Draft Order.
 - b. The Court should be aware that Post Office intends to issue an application for security for costs. It has been trying for several months to resolve through correspondence the serious concerns that it has in relation to the Claimants' ATE policy and the extent to which it can have practical recourse for costs against the Claimants' off-shore litigation funder, Therium.

If no further progress is made in this regard, the application will be issued by no later than 16 February 2018. In Post Office's respectful submission, it may be appropriate to set aside time for a one-day hearing of the application now, in order to prevent any delay resulting from listing difficulties.

DAVID CAVENDER QC

OWAIN DRAPER

One Essex Court,

Temple

30 January 2018

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SKELETON ARGUMENT FOR POST OFFICE

CMC ON 2 FEBRUARY 2018

Solicitor for Post Office:

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t: **GRO**
e: **GRO**