

CONFIDENTIAL AND LEGALLY PRIVILEGED

**DECISION 5: Does Post Office agree not to assert any Official Secrets Act obligations against the Claimants?**

**SUMMARY:**

The subpostmaster contract contains a clause that prohibits subpostmasters from making disclosures of Post Office information in the context of the Official Secrets Act (**OSA**).

At paragraph 184 of the Letter of Claim, Freeths ask for an assurance from Post Office that *“no claimant, witness or other person who may provide assistance in relation to this litigation (eg. an ex- Fujitsu employee) will be subject to any allegation, claim or proceedings for breach of the Official Secrets Act, breach of contract relating to disclosure of any information or document or any claim on any other basis arising out of their use or disclosure of documents in or related to this litigation.”*

The subpostmaster contract goes further than the Act in providing that no postmaster may without permission make disclosures of any information or document obtained in the course of their work (as opposed to banning the disclosure of the specific categories of information protected by the OSA).

The wording of this section of the contract is confusing and somewhat archaic. From our enquiries of long serving staff at Post Office, nobody has ever heard of Post Office enforcing these provisions or can recall their underlying purpose.

**ADVANTAGES:**

- Giving Freeths the assurance they seek avoids wasting time on an irrelevant side point.
- Avoids further scrutiny of unhelpful / confused sections of the subpostmaster contract which do not paint Post Office in a good light.
- Seems like a concession when, in fact, Post Office has no intention of enforcing any OSA obligations anyway.

**DISADVANTAGES:**

- Given that we cannot find any practical or commercial advantage of these provisions to Post Office, we cannot see any disadvantage in confirming Post Office will not enforce these provisions.

**RECOMMENDATION:**

- Give the assurance that Post Office will not enforce these provisions in relation to the Group Action.