



26 AUG 2011

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The Post Office  
148 Old Street  
London  
EC1V 9HQ

Quantum House  
Basing View  
Basingstoke  
Hampshire  
RG21 4EX

DX 159070 Basingstoke 26



Your ref  
Our ref PR/753047/TTC7/WILSON/TTC  
Date 23<sup>rd</sup> August 2011

Please ensure that our reference is quoted on all correspondence

Dear Sirs

**OUR CLIENT : JULIAN WILSON**

We act on behalf of Mr Wilson who formerly held the position of subpostmaster ("SPM") of Astwood Bank post office ("the SPO").

We are instructed by Mr Wilson in connection with the determination of his SPM contract with the Post Office Limited ("POL") dated 6 November 2002 ("the Contract") whereby Mr Wilson appointed as the SPM of the SPO.

Circumstances giving rise to the claim.

Mr Wilson informs us that:

On 6 November 2002 he became the SPM before he signed the Contract. Mr Wilson was not advised to and did not seek legal advice before becoming a SPM. His attention was not drawn to any of the onerous terms of the Contract (below) which he saw, in the context of the full Contract, for the first time after his suspension.

The initial training he received comprised a two day induction course in Worcester. During that training computer systems were not used and there was no particular discussion of the Horizon system. Mr Wilson was told he would be expected to balance the accounts but was given no real indication of what that would involve. Mr Wilson had a short period with a trainer whilst at Astwood Bank which included only two balancing exercises in the following Wednesdays. On both occasions the trainer actually performed the exercise and simply talked Mr Wilson through it. Mr Wilson, over 5 years of working as an SPM, managed to raise the income from the SPO from around £38,000 per annum to around £54,000 per annum. However, like other SPM's he found the Horizon system extremely difficult in operation. He had no effective way of monitoring or correcting transactions that were inputted incorrectly. He observed regular discrepancies in the reports which he considered were caused by the system itself. He kept records of the discrepancies. He noted a number of occasions when the extent of discrepancies would actually change whilst the store was closed. So for example a cash declaration would be made on a Saturday and by Monday the figure would have changed, sometimes by a figure reaching hundreds of pounds. Mr Wilson raised that issue, and in particular the possibility of someone remotely accessing his system, with his business development manager Mr Bridges. He was told in terms the system could not be remotely accessed. We understand that is not correct. Mr Wilson also experienced difficulties with extended delays within the Horizon system particularly at busy times, which often resulted in him needing to reboot the system. The system being used by Mr Wilson crashed completely on two occasions with replacement systems being required.



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Mr Wilson attempted to use the helpline on a number of occasions. His experience was that operatives were often unable to give full advice because they had too many calls to deal with. They gave him incorrect advice in relation to the processing of business cheques.

In or around May 2003 an audit of Mr Wilson's SPO took place. A small discrepancy was found and made good by him. Over the next few months the balance figures showed more substantial losses. Mr Wilson raised this with his line manager, Paul Fantouzi, but was told not to worry as transaction corrections would put the errors right and no further action was required by Mr Wilson.

On 11 September 2008 a further audit took place. Mr Wilson advised the auditors there would be a paper shortfall in the region of £27,000. A shortfall of £27,811.98 was identified and Mr Wilson was suspended.

Mr Wilson was warned of the prospect of criminal proceedings and going to jail, even though his bank statements demonstrated that he had not misappropriated the shortfall. Under duress, and in response to a request from POL, Mr Wilson tendered his resignation on 22 September 2008.

On 15 June 2009 Mr Wilson pleaded guilty to two charges of false accounting. He was made subject to a confiscation order.

A company called Interim Enterprises Limited continued to run the SPO after Mr Wilson's resignation. They have suffered similar problems with operation of the Horizon system.

For the avoidance of doubt, it is denied that:

- (a) POL were entitled to or had grounds to determine the Contract either based on the matters relied upon or at all;
- (b) that Mr Wilson was in breach of the terms of the Contract either as alleged by POL or at all; and
- (c) that POL had grounds to prosecute Mr Wilson.

Mr Wilson relies on the fact that he was compelled to make the declarations by virtue of economic duress and that any offences that arose were therefore a direct result of the unfairness of the system devised for use by SPM's as further explained below, and/or as a result of errors generated by the system itself.

Mr Wilson holds Post Office Ltd responsible for wrongful determination of the Contract by reason of their: -

- (a) Breach of contract;
- (b) Further or alternatively their negligence; and
- (c) Further or alternatively their misrepresentation.

In addition Mr Wilson will reserve the right to say that in purporting to determine the Contract and/or by pursuing him to recover the alleged accounting loss and in pursuing criminal proceedings against Mr Wilson POLs actions constitute misfeasance in a public office.

By reason of these matters Mr Wilson claims against the Post Office Ltd damages for breach of contract and/or for negligence and/or misrepresentation and/or for misfeasance in a public office.

#### Details of breaches relied upon

We have set out below details of the allegations or breaches of contract, negligence, breach of duty, misrepresentation and/or details of misfeasance in a public office which we believe are relevant.

The Contract was governed by amongst other things the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contract Regulations 1999.

It was an express alternatively implied term of the Contract that:

1. POL would provide adequate training in relation to its systems and in particular in relation to the Horizon system used for recording and processing transactions ("Horizon").
2. POL would provide adequate and sufficient system support for Horizon.
3. POL would ensure that the Horizon system was free from defects.
4. POL would provide a suitable, adequate and fair means for dealing with transaction corrections.
5. POL would operate any disciplinary processes within the Contract fairly.

Further the Contract contained onerous and/or unfair terms which were not adequately drawn to the attention of Mr Wilson including but not limited to:

Section 1 paragraph 8: This purported exclusion clause is clearly onerous and unfair as it attempts to exclude compensation for loss of office no matter how caused. It therefore excludes liability no matter how serious a breach POL may have committed.

Section 1 paragraph 10: The ability of POL to determine the contract at any time in case of non-provision of Post Office Services is onerous and unfair given the an SPM, having completed a trial balance which shows a discrepancy, has to choose to either make good that amount or commit false accounting by saying he has made good that amount, in order to be able to trade the following day. Under this term of the contract an SPM will know that if he does not trade the following day POL can determine his contract immediately. This means an SPM has no opportunity to investigate the discrepancy. Further, the ability of POL to determine a contract on 3 months notice, for any reason, is onerous and unfair given the impact on the investment & income of a SPM if termination of the contract occurs.

Section 12 paragraph 4: The obligation to ensure that accounts of all stock and cash are kept in the form prescribed by POL and the obligation to immediately produce such accounts are onerous and unfair in that they require the production of records but the Horizon system does not adequately cause or allow reproduction of records as set out under heading 3 below. Nor does it deal with the situation where errors in accounting are generated by the operation of the Horizon system itself.

Section 12 paragraph 12: The responsibility imposed on SPM's for losses of all kinds (whether careless or not) caused by assistants and the obligation to make good such losses without delay are onerous and unfair in that they apply regardless of the level of care taken and apply to nominal losses which do not reflect real losses to POL.

#### Breaches of the above obligations

1. The training provided was inadequate. There was insufficient focus on the balancing procedure given the importance of that procedure in light of the contract terms set out above. Mr Wilson was shown how to complete the balancing procedure twice but was not talked through the process himself. There was no training as to how to investigate the source of a discrepancy. There was insufficient training in relation to the steps to be taken to regularise discrepancies when they did occur. We are also aware that the recruitment process for SPM's appears to have changed significantly. We understand there are now three interview and a six week training period. Those changes underscore the inadequacy of the training system previously in place. Given that the transactions completed by an SPM include and exceed those in a high street bank the training given to SPM's should be exceed that given to bank cashiers & managers, however it does not.
2. The helpline service provided by POL was unfairly difficult to access due to both its hours of operation (in particular stopping the service at 8pm on a Wednesday) and the insufficiency of operators to deal with the level of demand placed on the service. In relation to the incidents related above the helpline was unable to provide any assistance, but simply required or advised Mr Wilson to pay the amounts allegedly owing. It appears that those operating the helpline were either not familiar with or were instructed not to engage SPM's in relation to



defects in the Horizon system as set out below and were therefore unable to provide any substantive assistance on a number of the issues arising. Likewise the Area Manager was unable to provide any substantive assistance when called upon.

3. The Horizon system suffers with inherent defects and/or an unfair system of operation including the following.

It does not allow or cause the production of receipts for certain kinds of transactions including transactions involving withdrawal of cash using a debit card or post office cash account card, or when funds are credited to the SPO account as part of a bill payment as a result of a withdrawal using a debit card or post office cash account card. That in turn prevents or makes unnecessarily difficult (to the point of unfairness) reconciliation of any discrepancies that arise. The SPO simply has no mechanism for reconciling the result of downstream processing by Horizon and POL with what occurred at the SPO either at the time or when discrepancies are later identified.

A further problem is that the standard operating procedure for post office counter clerks does not include reconciliation of bill payment or counter credit slips with the individual amounts recorded by the counter clerk onto Horizon. In effect, this standard operating procedure makes it impossible for the SPO to identify any failures by POL or the Horizon system in identifying or dealing with discrepancies arising from incorrect data entry.

In effect, Horizon makes it impossible for the SPO to demonstrate that an error has occurred in the downstream processing.

Further, the system crashes periodically and in a way which does not allow the operator to tell if transactions inputted prior to or during the crash have been recorded properly or at all. It is clear from information before this firm that a large number of SPM's have suffered various problems with the operation of the Horizon system over time due to defects in the system, which defects POL has never acknowledged or attempted to deal with openly.

The errors set out above were never corrected by POL who simply demanded payment from Mr Wilson. As far as Mr Wilson knows there was no or no adequate investigation into his complaints to the helpline. His examples betray the unfair way in which section 12 of the Contract operates against SPM's. It is also reflective of what we understand to be an internal policy operating at POL that investigating officers are instructed to disregard complaints made about defects in the Horizon system during the course of their investigations; and indeed an internal policy that POL does not impose any requirement that investigating officers should properly understand the operation of the Horizon system in order to be permitted to undertake investigations and report thereon. Perversely, POL has no incentive to resolve discrepancies that appear as cash losses at the SPO counter because the Contract imposes personal liability on the SPM.

There is also an issue relating to the use of the suspense account upon which conflicting advice is given by helpline operatives.

We understand that transaction corrections can take a period of up to and in some cases beyond six months to be properly processed. That is plainly unfair in light of the modest likely financial circumstances and resources of most SPMs when compared to POL, as well as being an inadequate and insufficient system in the circumstances.

Further and in any event the discrepancy allegedly identified in the audit amounted to an error of about 0.07% over Mr Wilson's time in charge of the SPO. Such an error should not reasonably or fairly have attracted the threat of criminal proceedings and/or the termination of the Contract.

Mr Wilson reserves the right to add to these allegations should court proceedings subsequently be required.

Further, it is clear that POL owed Mr Wilson a duty of care in relation to the above five obligations. It is fair just and reasonable to impose such a duty bearing in mind the power in POL (and in no-one

else) to ensure that training was sufficient, to ensure that support was sufficient, and to ensure that the Horizon system was free from defects; and the potential consequences to a SPM in the event that those obligations were not complied with.

For the same reasons as are set out above POL is in breach of that duty of care and those breaches have led to the losses set out below.

By virtue of the matters set out above Mr Wilson has suffered and continues to suffer loss and damage under the following heads:

- (i) Repayments of discrepancies over time as SPM that POL are unable to prove were as a result of his or his staff's error
- (ii) Legal fees for Criminal solicitor
- (iii) Amounts paid under a confiscation order
- (iv) Loss of capital investment in SPO and business premises
- (v) Loss of income as an SPM and shopkeeper due to unlawful termination of contract
- (vi) Damage to reputation

Mr Wilson reserves the right to add to this Schedule of Damage and Loss should further details become available, or should court proceedings subsequently be required. We estimate the current level of loss to be in excess of £150,000.00.

Please note that Mr Wilson has entered into a Conditional Fee Agreement to pursue his claim for damages and loss. The CFA is dated 22 November 2010 and provides for a success fee within the meaning of Section 58 (2) of the Courts and Legal Services Act 1990.

While no specific pre-action protocol is understood to apply to this matter, it is Mr Wilson's wish and intention to comply with the provisions and spirit of the general pre-action protocol prescribed under the Civil Procedure Rules 1998.

You are asked to acknowledge receipt of this letter within 14 days of the date that you receive it, that is by 7 September 2011. We strongly recommend that you pass a copy of this letter to your Public Liability Insurers, if you have one, as soon as possible. Please confirm to us their details and that you have done so also within 14 days of the date that you receive this letter. Thereafter we look forward to hearing from you, or your insurer within 28 days of the date of this letter, that is by 21 September 2011 with confirmation that liability is admitted, and if not with written confirmation of what matters are relied upon for disputing liability.

Further, we invite you to set aside the confiscation order that is currently in place.

Request for pre-action disclosure.

We believe that you will retain or hold in your possession, custody or power a number of documents that are or may be relevant to Mr Wilson's claim comprising, in no particular order, the following:

**Documents specific to Mr Wilson**

- (i) Final Office Balances for periods at which it is alleged false accounting took place ("Relevant Period");
- (ii) Transaction Logs for Relevant Period;
- (iii) Events Log for Relevant Period;
- (iv) Copy of Terminal Records for Relevant Period;
- (v) Daily Snap Shots for Relevant Period;
- (vi) Details of money claimed or allegedly received by Mr Wilson according to the Horizon System;
- (vii) Details of all amounts "made good" by Mr Wilson or deducted from Mr Wilson's remuneration;
- (viii) Statements produced for criminal proceedings against Mr Wilson;
- (ix) Records of interviews in respect of Mr Wilson;
- (x) Auditors records and reports for Mr Wilson's SPO;
- (xi) The application form completed by Mr Wilson;

- (xii) Any criteria / assessment sheets completed in respect of Mr Wilson;
- (xiii) Any record Paul Fantouzi and/or POL made in 2003 relating to the use of Horizon at Astwood Bank SPO.

**General Documents**

- (xiv) Details of Horizon system testing with respect to the ability of the Horizon system to produce information with sufficient clarity to allow an SPM to reconcile discrepancies;
- (xv) Error logs for Horizon;
- (xvi) details of any firmware and software updates of Horizon between 2005-2009 and the reasons for those updates;
- (xvii) The documents relating to the assessment of the pilot testing of Horizon Mark 2 and Horizon Mark 3, the results of those assessments, the losses that were found within the system and details of how those losses were reconciled or otherwise dealt with;
- (xviii) Details of training provided to sub postmasters in respect of balancing;
- (xix) All types of application forms that SPM's have been asked to complete when applying for the position of SPM since the introduction of Horizon as well as those from immediately before Horizon was introduced; and
- (xx) All types of criteria / assessment sheets used to assess suitability of SPM's since the introduction of Horizon as well as those from immediately before Horizon was introduced.
- (xxi) Details of any correspondence between POL and IEL relating to the use of Horizon and/or issues that had arisen in relation to that use.

We invite you at this stage to provide us with copies of these documents.

Should you decline to accede to our request to disclose documents, or should it be necessary for us to make an Application for Pre-Action Discovery in this matter, we will refer to the contents of this letter, both on the substantive Application and when the question of costs of that Application come to be dealt with. We will rely on the case of *Hall v Wandsworth Health Authority* where costs were awarded against the Defendant who wrongly refused disclosure of relevant records following receipt of a detailed Letter of Claim.

We have not included any voluntary disclosure with this letter as the majority of documents we hold are one produced by POL. However we will consider any request for pre-action disclosure that you wish to make.

We await hearing from you with regard to the matters set out above.

Please note that in the absence of your response within the period specified court proceedings to recover Mr Wilson's claim together with costs and interest will be commenced against you without further notice.

Please note that to assist us in improving our services we may record or monitor our telephone calls.

Yours faithfully,

**GRO**

SHOOSMITHS