

FREETHS

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By email: andrew.parsons@GRO

16 October 2017

Our Ref: JXH/1684/2113618/1
Your Ref: AP6/364065.1369

Dear Sirs,

BATES & OTHERS -V- POST OFFICE LTD
Claim No: HQ16X01238
Fourth Witness Statement of Mr Parsons

Further to our letter of Friday, 13 October 2017, we write to respond to particular points in the late witness statement of Mr Parsons. This is an additional distraction and this response cannot be, and is not intended to be, comprehensive.

We do make clear however that we disagree with your characterisation of events and correspondence.

For example, in relation to the Second Sight Protocol, Mr Parsons states at paragraph 32 of his witness statement that "*Freeths wrote to my firm seeking to accept the protocol with a small number of very minor tweaks*". This, and other statements on this issue, do not provide a complete or fair representation of the position. Your client refused to cooperate in giving access to Second Sight, and were obstructive until finally accepting that access was unavoidable. The Protocol was finalised only after we had substantially amended its terms.

Mr Parsons exhibits an email from this firm's James Hartley accepting the protocol, but does not include the weeks of correspondence leading up to that acceptance where the parties negotiated the terms of the Second Sight protocol in detail (for example, our Second Letter dated 17 March 2017). Strikingly, your client specifically requested that the Second Sight correspondence be removed from the CMC bundle. The consequence of this is to engineer a completely misleading picture before the Court. You must have known that you intended to make reference in Mr

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Parsons' witness statement to the very correspondence which you were asking to be removed, on a selective basis.

Questioning of our conduct

We take exception to Mr Parsons' comments at paragraph 26 of his witness statement, in which he impugns our professional conduct:

"Some examples of SOIs served by Freeths are at pages 93-132. Consistently with the Solicitor's Code of Conduct, Indicative Behaviour 11.8, Post Office and its legal team had anticipated that the SOIs, which were required to be confirmed by Statements of Truth, would be the subject of meaningful scrutiny by the solicitors on the record so as to ensure that claims were not advanced without any proper basis. However, these problems appeared to demonstrate that the SOIs had been prepared with minimal input from Freeths"

There are three immediate points to make:

1. Mr Parsons is factually wrong. The task of producing many hundreds of SOIs has been onerous and this firm has had to manage the difficult balance between the requirements of individual cases and proportionality considerations in a group litigation of this type.
2. The reference to Indicative Behaviour 11.8 is misplaced and unwarranted. IB(11.8) addresses:

'demanding anything for yourself or on behalf of your client, that is not legally recoverable, such as when you are instructed to collect a simple debt, demanding from the debtor the cost of the letter of claim since it cannot be said at that stage that such a cost is legally recoverable;'

The SOIs represent a good faith attempt to capture the information ordered by the Senior Master in the SOIs, on the instructions of individual Claimants.

3. This is not the first time that you have made serious and unwarranted allegations against this firm. In your Letter of Response dated 28 July 2016 (at paragraph 2.69), you apparently *'reserve the right'* to report Freeths to the SRA in relation to pursuit of the deceit claim. This was clearly an attempt to deter our clients from bringing claims against your client. It is not appropriate to make allegations of professional misconduct in order to secure a litigation advantage.

You will note that we have hitherto exercised restraint ourselves in relation to your direct contact with our clients (contrary to SRA Indicative Behaviour 11.4) which has caused them considerable concern:

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- (a) On 15th November 2016 your firm wrote directly to one of our clients (Philip Dauncey) threatening enforcement action and bankruptcy, when you were aware that we were acting for him and that he was a Claimant in the Group Action. This was likely if not calculated to intimidate this Claimant and/or gain an unfair advantage over him.
- (b) Your firm served Part 8 proceedings (seeking an order for sale of his property) directly on Dr Kutianawala on 25 August 2016, 20 days after Freeths served the sealed amended Claim Form on your firm, which named him on the Schedule of Claimants. You were aware that we acted for him in the Group Action but nevertheless wrote directly to him.

By 4pm on 17 October 2017, please confirm that you retract the allegations of professional misconduct in the Fourth Witness Statement of Mr Parsons.

Yours faithfully

GRO

Freeths LLP