

FREETHS

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27 September 2019
Second Letter

Our Ref: JXH/1684/IT106/2/KL

Dear Sirs

BATES & OTHERS v POST OFFICE LIMITED – GROUP ACTION
CLAIM NO: HQ16X01238
Horizon Issues Trial Disclosure

We write in response to your reply of this morning, 27 September, to our letter 25 September 2019, in relation to the recent disclosure of documents relevant to the Horizon Issues Trial.

We are puzzled by your correspondence on this and hope that you can clarify the position as quickly as possible.

Your Second Letter of 25 September 2019 stated that you were enclosing “... 32 documents that have come to our attention as part of another, legally privileged, piece of work that we are carrying out for our client” and explained that you would give formal disclosure of those documents shortly.

You explained this as follows:

“Without waiving privilege in that work, our client asked us to advise on an operational change on 29 August 2019. During discussions to scope that piece of work we learned that as part of the operational change, Fujitsu was in the process of producing documents containing explanations of seven issues that had recently arisen. We then received copies of 12 documents relating to 12 issues on 16 September 2019. We subsequently requested copies of the Peaks and a KEL referred to in those documents that had not already been disclosed and we are providing them to you now. On 23 September we received another document relating to another issue and we are disclosing it together with the Peak referred to therein.”

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From your letter, we understood that, by disclosing them, you were positively asserting that these documents were relevant to the Horizon Issues Trial. We therefore proceeded on that basis, and have been seeking to understand the relevance of those documents.

We have also been trying to work out which PEAKs and which KELs are those referred to (or not referred to) specifically in your letter. This is not easy and we would be helped if you could explain this clearly.

Our immediate concerns, on an initial high level review of your letters and the recently disclosed documents, are as follows.

Previous drafts of KELs

Your letter of this morning explains that Paul Smith of the Post Office (who was one of the Post Office's witnesses at the Horizon Issue Trial) "*first received draft copies of the 12 recently disclosed KELs from Fujitsu on 3 September 2019 and then received further versions on 9 and 13 September*" [underlining added] before the disclosed documents were provided to your firm.

It is clear that those draft copies are disclosable on the same basis as the subsequent versions that you have disclosed.

Please now provide all versions received by Paul Smith of the Post Office.

PEAKs and KELs referred to

Your letter of 25 September stated:

"We subsequently requested copies of the Peaks and a KEL referred to in those documents that had not already been disclosed and we are providing them to you now."

Using **PC0278614** as an example, there are several references to KELs raised by Cheryl Card, Anne Chambers and Mark Wright, namely **cardc245s**, **acha4824K** and **wrightm3056J** respectively.

You have not provided these KELs with your disclosure – although by contrast you have provided another KEL mentioned in this PEAK, namely **spar1458P**.

Please now provide them.

It would be helpful if you would yourselves check that you have in fact carried out the exercise which you describe in your letter and ensure that we are not put to further cost of identifying these issues.

Please confirm that you will do this.

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Relevance of disclosure

Using PEAK **PC0278614** again as an example:-

- (1) This PEAK was created on 13 June 2019 some two weeks before the Post Office filed its detailed submissions in relation to the 29 particular bugs, errors and defects identified in the Second Joint Statement, with some information identified as being based *“on instructions”*.
- (2) This PEAK is a clone of PEAK **PC0278488** which was created on 4 June 2019, which you included in your recent disclosure and which includes screenshots of relevant user sessions, generated by the Smiley Desktop tool, which appear to have been emailed to the Post Office.
- (3) These two PEAKs refer to a transaction carried out by the SPM on 25 January 2019.
- (4) It is clear from the emails pasted into the body of both PEAKs that the Post Office Disputes Team were aware of the problem which the SPM was having at the latest on 4 June 2019 (the first day of Mr Coyne’s evidence) – prior to the email at 12:03 on 4 June 2019, the Post Office Disputes Team had *“tried to raise this query to Peter Jobson via Wilson Gill and have been asked to submit it through the service desk.”*
- (5) The issue appears to have arisen because the SPM disputed a Transaction Correction (e.g. p.2 of PEAK **PC0278614**).
- (6) The issue related to a remming in cash to an Outreach branch. However, it seems to be a problem distinct from the Dalmellington bug.
- (7) From 28 June 2019, Steve Parker (who the Post Office called as witness in the Horizon Issues Trial) was personally involved in this issue.
- (8) Initially, the blame was laid on the SPM. Myla Dalman of the Post Office Disputes Team records that *“The team have suggested I return to you for the keystrokes as I will need to provide evidence to the Office that the transaction failed.”* (e.g. p.9 of PEAK **PC0278614**)

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- (9) It turned out not to be the SPM's fault (disproved by the SPM having the final Remittance In Slip) but rather a Horizon issue (e.g. p.22 of PEAK **PC0278614**):

*"For cash/currency pouches the user performs the Pouch Delivery process, but for these pouch types the Remittance In Slip is printed by the delivery code. It is this code that has the bug that if the comms fails then it still prints a single Remittance In Slip *without* the warning text at the bottom of the receipt."*

These two PEAKs are emblematic or supportive of disputed aspects of the Claimants' case at the Horizon Issues Trial, namely that:

- (a) there are further bugs, errors and defects beyond those found by the experts or identified by them in the bugs table in the Second Joint Statement;
- (b) the knowledge base articles relied upon by the Post Office presumed fault on the part of SPMs when that was not correct (see UEB);
- (c) keystrokes are available to the Post Office on request from Fujitsu;
- (d) some bugs, errors or defects arise by the very design of the system and/or may affect a branch by virtue of its characteristics (rather than on the invariable basis of its number of transactions);
- (e) the Post Office itself has concerns over reliability of its data.

We therefore agree with you that these documents would be relevant for the purposes of disclosure and may properly inform the Court's conclusions in relation to Horizon system and its operation prior to the conclusion of the trial.

Subject to considering the earlier drafts of recently disclosed documents and the documents referred to in the recently disclosed documents (or such earlier drafts), the Claimants do not contend that these documents should have been disclosed significantly earlier than they were.

Previously disclosed KELs

Your letter of this morning explains 4 of the recently disclosed KELs had previously been disclosed in January 2019 "as required / requested".

The KELs do not disclose, on their face, what has been added when, merely when they were last updated. For example, GelderR1012Q was created on 28 January 2016 and [check] was disclosed in January 2019; it was last updated by Steve Parker on 19 September 2019. However, the intervening dates of any changes to this KEL are not captured, nor are any changes which have been made (or made and then subsequently revised) readily identifiable on the face of the document.

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Are we to understand that the Post Office has not actively considered whether any revisions made to the KELs disclosed in January 2019 (particularly those in the trial bundle) should be disclosed to the Claimants? It would be helpful for us to understand this aspect of the Post Office's approach to disclosure.

Flowchart

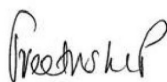
Your letter of this morning explains that:

"The metadata in the flowchart document shows it was created on 29 August 2019 and it became an approved process document in early September 2019 before the process went live yesterday."

Please explain what the Post Office regards the relevance of this entirely new document to be, given that it relates to a process that went live yesterday, so that we can understand why the Post Office concluded that it was under a duty to disclose it, at this distance in time after the conclusion of the trial.

We look forward to hearing from you by 10am on Tuesday, 1 October 2019, given that at present we have proposed that we file any brief submissions on these documents by 4.30pm on Thursday, 3 October 2019.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Freeths', written in a cursive style.

Freeths LLP
Please respond by e-mail where possible