

Claim No. HQ16X01238, HQ17X02637 & HQ17X04248

**THE POST OFFICE GROUP LITIGATION
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BEFORE THE HONOURABLE MR. JUSTICE FRASER
BETWEEN:**

ALAN BATES & OTHERS

Claimants

AND

POST OFFICE LIMITED

Defendant

[XXX] [DRAFT] WITNESS STATEMENT OF ANDREW PAUL PARSONS

I, ANDREW PAUL PARSONS, WILL SAY as follows:

1. I am a partner at Womble Bond Dickinson (UK) LLP, solicitors for the Defendant ("Post Office") in the above proceedings. I am duly authorised to make this statement in support of Post Office's application for an order striking out certain sections of the evidence adduced by the Claimants for the purposes of the Common Issues Trial. The facts set out in this statement are within my own knowledge.
2. I have assumed in the preparation of this statement that the application will be heard by the Managing Judge. I do not therefore set out the background to these proceedings. I also do not set out the Common Issues or refer in detail to the Statements of Case in relation to those issues.
3. I provide in the exhibit to this statement (AP9) versions of the Claimants' witness evidence with highlighting to identify the passages that Post Office respectfully invites the Court to strike out. I identify pages of the exhibit in the form [page x].

Background

4. In a Request for Further Information dated 27 April 2017, Post Office (in Request 8) asked the Claimants to clarify which pleaded facts they relied upon as factual matrix for the construction of the contracts between the parties. This was a request made of the Generic Particulars of Claim (“GPOC” and, as amended, “AGPOC”).
5. In their Response dated 16 May 2017, the Claimants indicated that they relied, for factual matrix on “*all facts pleaded*” in the GPOC (Answer 8.1), as well as “*all facts as may further be established as relevant in individual cases*” (Answer 8.2). Reference was also made to specific paragraphs of the GPOC, but it was made clear that these references were not exhaustive.
6. The Individual Particulars of Claim for the Lead Claimants (“IPOCs”), served on 13 April 2018, traversed a large number of matters which could not, on any view, be admissible factual matrix, or otherwise relevant to the trial of the Common Issues. The most obvious examples of this were extensive allegations as to things said or done by Post Office after the date on which the parties entered into the contracts, including allegations as to inadequate training, inadequate support, failures to investigate the causes of shortfalls and other matters relating only to the performance or breach of contractual obligations, rather than providing background for the construction of those obligations or the parties’ contractual relationship more generally.
7. The Claimants adopted the same approach to the Statement of Factual Matrix that was required by paragraph 13 of the Second CMC Order, seeking to include post-contractual conduct and events as matrix of fact for the construction of the parties’ contractual relationship. In the event, the Statement of Factual Matrix that was filed on 4 May 2018 was in large part not agreed. Post Office did not accept that many of the facts asserted by the Claimants could (even if true) form part of the admissible matrix of fact, including technical matters relating to the operation of Horizon and Fujitsu’s role in processing and retaining data: see, for example, entries 73 to 82 (in the middle column).
8. In this context, at the CMC on 5 June 2018, Leading Counsel for Post Office highlighted Post Office’s concern that the Claimants apparently intended to advance allegations as to matters that would be inadmissible at the Common Issues Trial, and to

adduce extensive inadmissible evidence in support of those allegations. The Managing Judge observed rightly that Post Office had made this point “*four different times over a period of many months*” in correspondence and argument (Transcript, p.57).

9. The Managing Judge also made the following statement to the Claimants’ Leading Counsel:

“I am going to express myself very clearly. If you serve evidence of fact which includes passages which are plainly not relevant and, hence, not admissible, Mr. [C]avender is going to have a choice. He can either simply say, “I am not going to be cross-examining at all” or he is going to issue an application to have it struck out. If he does issue an application to have it struck out and that application is effective, it will involve the court going through it and simply striking out large amounts. The court will make time to do that but cringing costs consequences¹ will follow... It is an exercise which will be very tedious and expensive and it will take a day or two but it can be done.” (Transcript, p.59)

10. At the same hearing, in response to Post Office’s reference to the leading authorities on admissibility, the Managing Judge underscored that evidence of “*what is said during the negotiation of the contracts*” and evidence of “*the subsequent conduct of parties*” would be inadmissible as factual matrix for the construction of the parties’ contractual relationship (Transcript, p.61).
11. In its Individual Defences, served on 8 June 2018, Post Office highlighted in relation to each Lead Claimant the matters pleaded in the IPOC that were irrelevant to the determination of the Common Issues and so inadmissible: see, for example, paras 2 and 3 of the Defence to Mr Abdulla’s IPOC (“Abdulla Defence”). Post Office’s approach to the inadmissible parts of the IPOCs was to indicate, without prejudice to its case on admissibility, the outline case that it would advance as and when appropriate in any trial as to breach / liability, without pleading back in detail to the inadmissible allegations: see, for example, para. 36 of the Abdulla Defence (responding to his complaints about the termination of his contract).
12. By way of a letter dated 27 June 2018, Post Office asked the Claimants to confirm that they accepted that “*evidence of matters that occurred only after the entry into the contracts will be inadmissible for the purposes of construction*”. The purpose of this letter was to make sure that the Claimants had taken on board the indications given at the CMC on 5 June 2018.

¹ I recall that the Managing Judge actually said “*swingeing costs consequences*” and believe this has been mis-transcribed in the transcript.

13. No reply to this letter was received.
14. On 6 July 2018, the Claimants' Individual Replies were served. These, too, traversed a large number of matters which are irrelevant to the Common Issues Trial, and on which any evidence would be inadmissible. The Claimants make clear in the Replies that they intend to rely on all the material that Post Office identifies as inadmissible in its Individual Defences, including post-contractual conduct: see, for example, para. 4 of Mr Abdulla's Reply ("Abdulla Reply"). ¶The Claimants further contend that Post Office is "*debarred from adducing any evidence*" in support of any positive case on the matters that it asserts are inadmissible: see para. 7 of the Abdulla Reply.¶
15. Post Office wrote to the Claimants again, on 19 July 2018, trying to establish whether the Claimants at least accepted that "*anything that was not known (or at least knowable) to a person in the position(s) of the parties at the time of contracting cannot be admissible matrix of fact*".
16. In their response, of the same date, the Claimants referred to "*trite propositions of law*" in Post Office's letter "*which, in themselves, are not the source of any real disagreement between the parties*" – but neither expressly accepted the relevant proposition, nor explained how the evidence they apparently still intended to serve was, or could be, admissible. The Claimants instead requested clarification of Post Office's case on various matters.
17. Following an extension of time, the parties served their witness evidence for the Common Issues Trial on Friday, 24 August 2018.
18. Post Office's evidence covers the circumstances of the Lead Claimants' appointments, with a particular focus on the information that was available to the Lead Claimants prior to contracting. Post Office also gives evidence as to the business models that it has deployed over the relevant period, the contracts that it has used with agent Subpostmasters and (in outline only) how agency branches are managed and fit into its operations. Post Office's evidence does not deal with the Lead Claimants' complaints as to, for example, training, Helpline support, the investigation of shortfalls, suspension and termination; nor does it address the detail of Post Office's practices and procedures for supporting Subpostmasters, ensuring the accuracy of the data stored on Horizon and detecting and preventing fraud in agency branches.

The Claimants' witness evidence

19. The Claimants' evidence consists of 6 witness statements, one from each of the Lead Claimants, accompanied by 2,983 pages of exhibits. The exhibits to the statements include many documents dating from after the entry into the Lead Claimants' contracts, such as correspondence in relation to disputed shortfalls and internal Post Office documents provided through disclosure in these proceedings.
20. The passages that Post Office contends are inadmissible and requests that the Court strike out are identified by highlighting in the witness statements exhibited to this statement. For some of the Lead Claimants, a large proportion of the evidence that they propose to adduce relates to post-contractual conduct and events: see, for example, Ms Stubbs' witness statement, of which around 50 paragraphs are, in Post Office's submission, inadmissible and should be struck out.
21. I should make clear that Post Office does not accept that all the evidence that it has not highlighted is admissible and may be used for the interpretation of the parties' contractual relationship. Post Office has tried to take a pragmatic view and has highlighted only those passages that it contends, in addition to being plainly inadmissible, relate to post-contractual events that cannot be the subject of any determination at the Common Issues Trial. Post Office's concern is to prevent the trial being swamped with vast amounts of plainly inadmissible and potentially prejudicial material, rather than to try to determine now all possible disputes on finer points of admissibility. Post Office would propose to deal with any more involved questions of admissibility and relevance at the trial as and when they may be relevant to the argument on particular issues. An example of evidence that Post Office has not sought to exclude but which will be inadmissible in relation to all or at least most of the Common Issues would be the Lead Claimants' statements as to their subjective (and unexpressed) intentions at the time of contracting.
22. It may assist to identify in the body of this statement several examples of evidence that is, Post Office will argue, very clearly inadmissible and should be struck out, as follows:
 - 22.1 **Training:** Mr Sabir complains at paragraphs 51-58 (**page [...]**) about the quality of the training that he was provided in late August 2006, which is more than a month after he

signed the Conditions of Appointment (see paragraph 47 of his statement) and was appointed.

- 22.2 **Helpline:** Ms Stubbs gives at paragraphs 71-73 (**page [...]**) and 96-98 (**page [...]**) evidence in relation to telephone calls that she made to the Helpline in 2009 and 2010 and at other times, saying that she cannot “*recall a time when the Helpline was able to resolve any issue important issue I had raised*”. Ms Stubbs was appointed in 1999.
- 22.3 **Shortfalls:** Ms Stockdale provides at paragraphs 101-119 (**pages [...]**) an account of shortfalls in her branch that covers events from May 2014 to May 2016, including her explanation as to why she prepared and submitted false accounts (see paragraph 118). Ms Stockdale was appointed in February 2014.
- 22.4 **Audits and investigations:** Ms Dar gives evidence at paragraphs 135-146 (**pages [...]**) in relation to the audits carried out in her branch in June 2015, May 2016 and February 2017, including by reference to internal Post Office emails disclosed in these proceedings (see paragraph 139). Ms Dar contracted with Post Office in July 2014.
- 22.5 **Termination:** Mr Abdulla complains at paragraphs 114-124 (**pages [...]**) about the circumstances in which his appointment came to be terminated in June 2009. He claims that he was treated unfairly. Mr Abdulla commenced his appointment in January 2007.
23. In respect of all these examples, all or at least some of the other Lead Claimants give evidence of a similar nature.
24. This evidence is obviously intended to support the allegations in the parts of the IPOCs that Post Office has identified as inadmissible and to which it has responded in only outline form in the Individual Defences. For example, the passage of Ms Stockdale’s evidence that I refer to in paragraph [22.3] above mirrors paragraphs 43-67 of the Stockdale IPOC, to which Post Office responds in summary form only at paragraph 30 of the Stockdale Defence.

Reasons for the Application

25. Post Office has serious concerns in relation to the Claimants’ intended reliance on inadmissible evidence, going beyond the point of principle that it should not be required to address inadmissible material. Much of this is a matter for submissions, and Post

Office will advance its arguments at the hearing of this application. For present purposes, I would stress four points.

Evidence to be restricted to the Common Issues

26. First, the parties do not have permission to serve and rely on evidence going beyond the Common Issues, and Post Office has prepared for the trial on the basis of the directions made by the Court. Paragraph 10 of the Order dated 25 October 2017 directed that evidence be filed and served “*in relation to the Common Issues*”. The same restriction applied to the Statements of Case: see paragraph 8 of the Order. Disclosure was similarly directed towards the resolution of the Common Issues (although it did, for pragmatic reasons, also include some general disclosure in relation to the Lead Claimants). In compliance with these directions, Post Office has not (i) pleaded a case, (ii) provided disclosure or (iii) prepared evidence on the inadmissible allegations.

Insufficient time at trial

27. Second, there is simply not enough time available at the Common Issues Trial to include the consideration of the inadmissible allegations.
28. Post Office’s preparations for the Common Issues Trial lead me to believe that all 20 days available for the hearing will be required for the resolution of the Common Issues on the admissible evidence and argument on the law, leaving no time for extensive satellite argument or evidence on irrelevant matters. [Post Office’s Leading Counsel endorse this assessment.] Specifically:
 - 28.1 The Common Issues are extensive, and their determination will likely require many days of legal argument. This is reflected in the fact that each of the Post Office’s Individual Defences contains more than 30 pages of pleading on the Common Issues. Many of the Claimants’ arguments are novel and/or highly ambitious and may invite extensive citation of authority and legal argument: see, for example, Common Issue 1 (“relational contract”), Common Issue 17 (the “true agreement” as to termination) and Common Issue 5 (concerning the Claimants attempt to apply the **Interfoto** principle to a signed contract between two businesses). Many of the Common Issues themselves break down into a large number of discrete issues for determination: for example,

Common Issue 2 requires the Court to consider 21 alleged implied terms, and Common Issues 5 and 7 each relate to the [...] express terms identified in the relevant paragraphs of GPOC.

- 28.2 Even putting the inadmissible material to one side, there remain potentially important factual disputes between the parties. Post Office anticipates substantial cross-examination of the Lead Claimants on the matters that are properly in issue at the Common Issues Trial (principally, the circumstances of appointment, the nature of the parties' relationship and the notice that the Lead Claimants had of the disputed contractual provisions). Post Office will challenge substantial elements of the accounts that the Lead Claimants have chosen to give of these matters.
- 28.3 Taking these factors into account, Post Office's Leading Counsel and I currently believe a trial timetable as follows may be required to deal with the admissible evidence and Common Issues:
- 28.1.1 2 days opening by the Claimants
 - 28.1.2 2 days opening by the Defendant
 - 28.1.3 5 days to cross-examine Post Office's 14 witnesses
 - 28.1.4 5 days to cross-examine the 6 Lead Claimants
 - 28.1.5 3 days for the Claimants' closing submissions
 - 28.1.6 3 days for the Defendant's closing submissions
29. If the inadmissible material remains in the statements and is therefore in evidence at trial, there is a risk of a lot of time being wasted with arguments as to admissibility and, potentially, on the substance of the allegations as the trial progresses. This leaves out of account the time that would be required if Post Office had to cross-examine on this inadmissible evidence. As is clear from Post Office's pleadings, much of the inadmissible material will be hotly disputed at any trial on breach / liability, with the benefit of full disclosure and evidence from both sides. I cannot see how the current timetable for a 4 week trial in November could be remotely adequate for the

consideration of the inadmissible material in addition to the matters that are properly in dispute.

30. Post Office would also need considerable time to cross-examine the Lead Claimants on these matters, including by taking them to audit reports, admissions made in interview and other contemporaneous documents that undermine the veracity of their accounts of shortfalls and other post-contractual events. I would estimate that, were all the inadmissible matters properly in issue, Post Office would wish to cross-examine each of the Lead Claimants for around [...] days. I do not see how this could be accommodated within the Common Issues Trial.

Necessary evidence not available

31. Third, Post Office is not in fact in a position to deal with the inadmissible material at the Common Issues Trial. The timetable for preparations for the Common Issues Trial was set in the expectation that the parties would be constrained to evidence on the Common Issues. If the inadmissible material had been within scope, Post Office would have needed more time and would have spent vastly more money on its trial preparations. I cannot confidently predict the increase, except to say that I would expect it to be measured in months and millions of pounds. Post Office has not set out a pleaded case, provided disclosure or given evidence on the Lead Claimants' inadmissible allegations. Realistically, it could not have done so in the time available.
32. It may assist to give an example of the kind of work that would be required for Post Office to respond fully to the inadmissible allegations:
- 32.1 For Post Office to respond fully to Ms Stubbs' complaints in relation to the Helpline calls that she made in 2009 and 2010, it would have to adduce generic evidence of its Helpline procedures and practices at the relevant time (including the training provided to Helpline operators and the resources available to and used by Helpline operators) but also evidence from the operators that were involved in dealing with Ms Stubbs' calls. In my experience, even locating the relevant operators would be difficult given that (I understand from instructions given to me by my client) there have been hundreds of operators of the helpline over the years and therefore Mrs Stubbs would therefore have likely spoken to many different people. I note that Ms Stubbs does not accept

that Post Office's call logs are accurate or even complete, and that other Lead Claimants take the same position.

- 32.2 Responding to Mr Sabir's complaints in relation to training would require Post Office to lead generic evidence as to its training procedures and practices at the relevant time in addition to specific evidence as to what Mr Sabir was told (and not told) during his training in August 2006. Post Office would also wish to lead evidence as to its practice and procedures at all relevant times in relation to the provision of further training and support, including the provision of guidance through Horizon, the Operating Manual and other documents. These documents changed from time-to-time, as did Post Office's practices and procedures. All the Lead Claimants make loosely similar complaints about their training over the different time periods involved.
- 32.3 If Post Office were required to respond to Mr Abdulla's evidence in relation to his termination, it would want to lead evidence as to its practices and procedures in relation to suspension and termination (including in cases of false accounting), the audits that it carried out at Mr Abdulla's branch and the facts of its investigation into Mr Abdulla's conduct, including by reference to his admissions in interview.
- 32.4 All the Lead Claimants say, to some extent, that defects in Horizon caused or contributed to the shortfalls in their branches. To deal with an allegation about the cause of shortfalls would necessarily first require determination of the Horizon Issues listed to be heard at the second trial in March 2019.
33. ¶It is also notable that many of the Lead Claimants' inadmissible allegations are put in very general terms. If Post Office had been required to respond to those allegations, it would have insisted on proper particulars and further disclosure from the Lead Claimants.¶

No need to review the inadmissible evidence

34. Fourth, it is difficult to see why the Claimants want to advance allegations of misconduct by Post Office at the Common Issues Trial other than for prejudicial reasons, presumably in an attempt to create some subconscious influence on the Court. The Lead Claimants state in the IPOCs that their pleadings are served without prejudice to their "*case on all other issues*", which seems to me to indicate that the

Lead Claimants might want to advance a different case on the inadmissible matters at some later trial. For its part, Post Office would oppose the court reaching any determination on the inadmissible allegations at the Common Issues Trial. In this context, it is difficult to see what legitimate objective the Lead Claimants can have in advancing the allegations in evidence now, rather than at any trial on breach / liability.