

Claim No. HQ16X01238

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
IN GROUP LITIGATION BETWEEN:

ALAN BATES & OTHERS

Claimants

-v-

POST OFFICE LIMITED

Defendant

draft/ GENERIC DEFENCE

INTRODUCTION

1. This Generic Defence responds to the Generic Particulars of Claim (“**GPoC**”). Except where otherwise indicated:
 - (1) references to paragraph numbers are to paragraphs of the GPoC;
 - (2) the Defendant (“**Post Office**”) adopts the headings and abbreviations used in the GPoC, without making any admissions of any matters implied or connoted thereby; and
 - (3) where matters are noted, Post Office makes no admission and reserves its rights in relation thereto.

The generic nature of the GPoC

2. Many of the allegations in the GPoC are at level of generality which **omits important details, obscure the true nature of the claims and treat different situations as if they were the same**. Many of these cannot meaningfully be addressed by Post Office, not least because their true nature and extent cannot be properly understood unless and until Claimants identify the particular actions or omissions they rely on and the context in which and time at which such actions and omissions are alleged to have occurred. In this Generic Defence Post Office responds to the general thrust of such generic allegations without prejudice to its right **[(1) to apply to strike them out and (2)]** to admit, deny or require a particular Claimant to prove them should they be pleaded with proper particulars.

3. At the pleaded level of generality of the GPoC, Post Office cannot anticipate all possible claims that Claimants may be seeking to advance. Nor can Post Office set out all factual and legal defences that it may prove appropriate to advance in all possible cases. Accordingly, in this Generic Defence, Post Office identifies the generic defences that it considers may usefully be identified at this level of generality, without prejudice to its ability to identify further or other matters and defences as may be appropriate for such individual claims as may be pleaded against it.
4. In this Generic Defence, Post Office cannot cover all the variations in its operating practices and procedures that have occurred in the 18 years since Horizon was first introduced. Indeed, until individual claims are properly pleaded, Post Office cannot determine which particular practices and procedures are relevant to those claims. Accordingly, save where otherwise indicated in this Generic Defence, Post Office refers to the practices procedures that were in force as at [WHEN? SHOULD WE REFER TO CURRENT PROCEDURES AND MANUALS OR TO THOSE IN FORCE IN (SAY) 2015, BEFORE ANDY WINN RETIRED AND PROCEDURES WERE CHANGED, OR IN (SAY) 2012, BEFORE THE SUPPORT RESOLUTION TEAM WAS FORMED FOLLOWING THE MEDIATION PROCESS, OR (SAY) BEFORE 2008, WHEN SUBPOSTMASTERS HAD THE SUPPORT OF RETAIL NETWORK MANAGERS/BRANCH DEVELOPMENT MANAGERS, OR SOME OTHER TIME? IS THERE A TIME THAT IS LIKELY TO BE REPRESENTATIVE OF MOST OF THE CLAIMS OF WHICH WE ARE AWARE?]. [It is therefore generally couched in the past tense]
5. Similarly, in relation to the contracts relied upon by the Claimants, Post Office cannot cover all the variations made to those contracts over the years. It is not clear, given the generality of the GPoC, which (if any) of those variations may be material to the pleaded allegations. Save where otherwise indicated, Post Office (like the Claimants) refers to the versions of those contracts served with the GPoC.
6. [ANY OTHER GENERAL POINTS, FOR EXAMPLE ANY DEFICIENCIES IN THE SCHEDULES OF INFORMATION – ARE THEY CONSISTENT WITH AND/OR DO THEY SUGGEST CLAIMS THAT ARE NOT INCLUDED IN/BEAR NO RELATION TO THE GPoC, DO THEY COMPLY WITH THE GLO IN THIS CASE AND DO THEY INCREASE ANY OF THE DIFFICULTIES IDENTIFIED IN PARAS 2, 3 OR 4 ABOVE?]

7. Many of the allegations in the GPoC refer to “the Claimants” as having certain obligations, being required to do certain things and/or taking certain steps in circumstances where the allegation must relate to Subpostmasters only and not to the other classes of person referred to in the GPoC, namely Assistants, Managers, Crown Office employees and Directors and Guarantors of Franchisees. In this Generic Defence, Post Office responds accordingly, without pointing out in each case that the allegation must relate only to Subpostmasters.

SUMMARY OF THE GENERIC DEFENCE

8. A summary of the Generic Defence is provided with this Defence [TO BE DRAFTED ONCE THIS DEFENCE IS SETTLED.]. As can be seen from that summary: [TO BE DRAFTED WHEN THESE DOCUMENTS HAVE BEEN FINALISED: A PUNCHY SUMMARY POINTING OUT:

- (1) SUBPOSTMASTERS ARE POST OFFICE’S AGENTS RUNNING BRANCHES OF POST OFFICE’S BUSINESS AS POST OFFICE’S AGENTS ON POST OFFICE’S BEHALF.
- (2) THE RIGHTS AND OBLIGATIONS CONTAINED IN THE VARIOUS SUB-POSTMASTER CONTRACTS ARE WHAT ONE WOULD EXPECT THEM TO BE (THEY HAVE TO SELL PRODUCTS DETERMINED BY THE POST OFFICE, THEY HAVE TO FOLLOW THE INSTRUCTIONS POST OFFICE GIVES IN THE RELATION TO THE CONDUCT OF ITS BUSINESS, THEY HAVE A DUTY TO ACCOUNT TO POST OFFICE, POST OFFICE IS ENTITLED TO TERMINATE THEIR RIGHT TO ACT AS ITS AGENT IF IT CHOOSES, [CHECK THE OTHER TERMS THAT THE CLAIMANTS ALLEGE TO BE UNUSUAL].
- (3) THE CLAIMANTS’ ARE SEEKING TO REWRITE THE CONTRACTS BY IMPERMISSIBLY IMPLYING A BEWILDERING ARRAY OF TERMS AND ASSERTING DUTIES OF CARE IN TORT AND EQUITY WHICH ARE INCONSISTENT WITH THE EXPRESS TERMS AND WHICH POST OFFICE WOULD OBVIOUSLY NEVER HAVE AGREED. THEY ARE ALSO SEEKING TO IMPLY TERMS COVERING MATTERS WHICH ARE OUTSIDE THE SCOPE OF POSTMASTER CONTRACTS (SUCH AS POST

OFFICE'S RIGHT TO BRING PRIVATE PROSECUTIONS) FOR WHICH THE ONLY REMEDIES ARE IN TORT (E.G. MALICIOUS PROSECUTION).

- (4) HORIZON IS A ROBUST SYSTEM WITH NUMEROUS SECURITY FEATURES AND ALTHOUGH NO SYSTEM CAN EVER BE PERFECT IT HAS RIGOROUS CONTROLS AND OTHER SYTEMS DESIGNED TO DETECT, CORRECT AND REMEDY ERRORS AND THESE WORK WELL IN PRACTICE. IN PRE-ACTION CORRESPONDENCE, THE CLAIMANTS' SOLICITORS HAVE CONFOIRMED THAT THEY DO NOT ALLEGE THAT THERE IS A SYSTEMIC FLAW IN HORIZON.
- (5) POST OFFICE COULD NOT MANIPULATE BRANCH DATA TO CREATE FALSE SHORTFALLS WITHOUT SUBPOSTMASTERS;' KNOWLEDGE [AND CONSENT?] AND IT WOULD BE ABSURD TO SUGGESTION THAT ANY POST OFFICE STAFF WOULD SEEK TO DO SO. CERTAIN SENIOR EMPLOYEES (?) OF FUJISTU HAVE PRIVILEGED ACCESS RIGHTS WHICH COULD ENABLE THEM TO MANIPULATE DATA TO CREATE FALSE SHORTFALLS, THIS WOULD BE EXTRAORDINARILY DIFFICULT THING TO DO AND IT WOULD BE EVEN MORE ABSURD TO SUGGEST THAT THEY WOULDK SEEK TO DO SO.
- (6) THE CLAIMANTS CASE THAT SHORTFALLS CANNOT EFFECTIVELY BE DISPUTED BY POSTMASTERS AND THE RELEVANT FACTS ARE NOT PROPERLY REVIEWED AND CONSIDERED WHEN DISPUTES ARISE IS WRONG.
- (7) THE CLAIMANTS IGNORE THE FACT THAT, WHERE THEY ARE GUILTY OF FALSE CASH DECLARATIONS, FALSE WEEKLY BALANCESS AND FALSE MONTHLY BALANCE TRADING STATEMENTS [ON WHICH POST RELIES?], THIS WILL ALMOST INEVITABLY MAKE IT IMPOSSIBLE TO DETERMINE WHEN AND THUS HOW A SHORTFALL AROSE. IN SUCH CASES, CLAIMANTS CANNOT SENSIBLY CRITISE POST OFFICE FOR FAILING TO DETERMINE THE ROOT CAUSE OF ANY SHORTFALL.
- (8) NOR CAN THE CLAIMANTS AVOID THE FACT THAT THEY BEAR THE BURDEN OF PROVING THEIR CLAIMS, AND THAT WHEN THEY HAVE

SIGNED A BALANCE TRADING STATEMENT CONFIRMING THAT THEIR BRANCH FIGURES ARE CORRECT, THEY BEAR A HEAVY BURDEN TO PROVE THAT THE FIGURES WERE IN FACT INCORRECT AND WHY THEY WERE INCORRECT.

- (9) FURTHER, BY REASON OF THE FACT THAT POST OFFICE MANIFESTLY HAS A CONTRACTUAL RIGHT TO TERMINATE ANY SUBPOSTMASTER CONTRACT ON NOTICE WITHOUT CAUSE, THE CLAIMSANTS HAVE NO CLAIM FOR WRONGFUL TERMINATION WHERE NOTICE HAS BEEN GIVEN AND, EVEN WHERE NOTICE HAS WRONGFULLY NOT BEEN GIVEN, THEY CAN ONLY CLAIM THE PROFITS THEY WOULD HAVE EARNED DURING THE NOTICER PERIOD. MORE GENERALLY, IN THEIR CLAIMS FOR BREACH OF CONTRACT, THEY CANNOT CLAIM DAMAGES REPRESENTING THE LOSS OF THEIR BUSINESSES OR STIGMA DAMAGES, OR DAMAGES FOR DISTRESS OR EXEMPLARY DAMAGES [CHECK THIS LIST]. FURTHERMORE, MANY OF THE HEADS OF DAMAGES THEY CLAIM HAVE NOT BEEN CAUSED BY ANY BREACH BY POST OFFICE AND/OR THE RELEVANT DAMAGES IS TOO REMOTE.
- (10) MANY OF THE CLAIMS AROSE LONG BEFORE 2011 AND THOSE CLAIMS ARE CLEARLY TIME-BARRED.
- (11) ANYTHING ELSE – E.G REFLECTIVE LOSS CLAIMED BY DIRECTORS OF FRANCHISEE COMPANIES?

THE GPoC

9. As to paragraph 1, paragraphs [XX] above are repeated.
10. As to paragraph 2, the Schedules of Information provided to date provide little assistance in understanding the claims that the Claimants propose to bring. For example:
- (1) The Schedules of Information typically identify the causes of action relied upon by the individual Claimant by the inclusion of the word “Yes” or “No” in a table, without the addition of any outline details (such as the specific duties, breaches, actions/omissions and representations on which they rely and the applicable dates/ date ranges).

- (2) In some instances, there are apparent inconsistencies between some of the information provided by particular Claimants and the (largely generic) wording they have also provided in relation to certain causes of action. For example, at Box 4.2 of Mrs Sharon Pauline Brown's Schedule of Information, she answers "No" to the question "*Was there any investigation carried out by the Defendant relating to the alleged shortfalls?*"; yet, at Box 7.3 (relating to the allegation of deceit), the following words have been entered: "...I believed that a thorough and fair investigation had determined that payment was due" [TO DISCUSS – COULD THAT BE CONSISTENT WITH HER HAVING BEEN MISLED AT THE TIME ABOUT WHETHER AN INVESTIGATION WAS CARRIED OUT AND NOW REALISING THAT ONE WASN'T?]. Post Office has concerns as to the process by which the Schedules of Information have been prepared and the extent to which persons other than the individual Claimants have decided upon the content of certain responses.
- (3) [TO DISCUSS: DO THE SCHEDULES OF INFORMATION INCLUDE CLAIMS THAT ARE NOT CONSISTENT WITH THE CLAIMS ASSERTED IN THE GPoC, E.G. FOR DECEIT?]
- (4) Where Post Office is able to understand the losses claimed, it is clear that many Claimants assert claims for amounts that fall outside the GPoC and/or are plainly irrecoverable because, for example, they involve obvious double-counting and/or have no connection to any alleged breach of duty by Post Office. For example, Mr Alan Bates purports to claim in respect of "*holiday reimbursement payment*" on the basis that "*Post Office had not informed me that I was entitled to such pay*" in circumstances where there is no pleaded claim in relation to holiday payments.
- (5) [ANYTHING MORE ABOUT THE INADEQUATE NATURE OF THE DETAILS GIVEN IN THE SCHEDULE OF INFORMATION SO FAR PROVIDED?].

11. As to paragraph 3:

- (1) Post Office has provided voluntary information and disclosure to the Claimants on a generous basis. It is denied (if it be alleged) that the matters to which the Claimants refer provide any justification for a failure properly to plead their generic case or for

advancing and seeking disclosure in relation to speculative claims or contentions for which there is no proper basis.

- (2) Post Office will address the alleged asymmetry of information in responding to specific allegations in that regard. However, the basic thrust of the allegation is denied. Moreover, the Claimants overlook an important asymmetry of information going the other way. At all material times, Subpostmasters and/or their Managers and their Assistants (but not Post Office) have had first-hand knowledge of the transactions taking place in their branches: see further paragraphs [XX] below. This asymmetry of information is material to the construction of the parties' agreements, to the issues of fact between them and to the application of the burden of proof.

A. GPoC INTRODUCTION & KEY FACTS

A.1 The Parties

Defendant

12. As to paragraph 4, it is admitted and averred (1) that Post Office operates its business through a network of around 11,6000 branches in the UK, (2) that it offers Post Office products and services to the public via this network, including the services referred to, and (3) that it specifies procedures governing how branches are to operate its business on its behalf. Where those branches are managed by Post Office itself ("**Crown Office branches**"), they are directly managed by Post Office and so are under its control. However, where those branches are operated by Subpostmasters or Franchisees ("**agency branches**" and "**franchise branches**" respectively), they are under the control of the relevant Subpostmasters or Franchisees.
13. As to paragraph 5:
 - (1) As one would expect, Post Office determines the products and services which are offered to the public as Post Office products and services and it requires certain minimum products and services to be offered by its branches. However, it does not require or indeed permit all Post Office branches to offer all its products and services.
 - (2) Certain new products or services, including ATMs and National Lottery terminals, were introduced in agency and franchise branches only where the relevant

Subpostmasters and Franchisees specifically consented to the introduction of those products or services. [CHECK WHETHER AGENCY BRANCHES ARE TREATED IN THE SAME WAY AS FRANCHISE BRANCHES OR WHETHER FRANCHISEES HAVE A WIDER OR NARROWER RIGHT OF REFUSAL]

- (3) No admissions are made as to the “increased ... complexity” of any particular product or service. Post Office notes that the GPoC does not allege that any such increased complexity is material to any Claimant’s case. [It reserves the right to address these matters further in the event that the Claimants plead that they are material in some way, which would involve the Claimants identifying the product or service concerned, the nature of the complexity relied on, the claims affected and how they are affected]. OR [For the avoidance of doubt, however, Post Office denies that any increased complexity in Post Office products or services is material to the Claimants’ complaints and/or justifies any failures properly to account to Post Office in relation to transactions carried out on its behalf. Post Office provides training in relation to new products and services and makes available further assistance through the Helpline described at paragraphs [...] below. Any Claimant who, despite such training and other assistance, was unable properly to discharge its obligations to Post Office should have drawn this to Post Office’s attention and sought further training and/or assistance.]

- (4) Save as aforesaid, paragraph 5 is admitted.

Types of branch

14. Paragraph 6 is admitted. These branches are also called agency branches and Subpostmasters invariably operate their own retail businesses from the same premises. In their conduct of Post Office’s business, Subpostmasters act as Post Office’s agent, which involves doing the following things on its behalf:

- (1) entering into transactions with Post Office customers;
- (2) entering into transactions with third parties with whom Post Office has commercial arrangements, such as [LIST SOME EXAMPLES. CAN SUBPOSTMASTERS BE SAID TO ENTER INTO TRANSACTIONS WITH POST OFFICE CLIENTS ON ITS BEHALF?] (“Post Office Clients”);

- (3) operating equipment belonging to Post Office such as [LIST SOME EXAMPLES?];
- (4) dealing [as bailees?] with stock (including cheques, vouchers and other items [ARE THESE CATEGORISED AS STOCK?]) belonging to Post Office; and
- (5) dealing [as trustees?] with cash belonging to Post Office.

15. As to paragraph 7:

- (1) The persons contracting with Post Office to operate branches under franchise agreements (“**Franchisees**”) are not always (and are not required to be) limited companies.
- (2) Post Office is unable to admit or deny whether most of the limited companies that are parties to franchise agreements were set up for the purpose of contracting with Post Office. Many were not (e.g. WH Smith, McColls, the Co-operative Group, and Lakemore. [CHECK THIS. MIGHT THE FRANCHISE AGREEMENTS BE WITH SINGLE PURPOSE VEHICLE SUBSIDIARIES SET UP BY THESE CHAINS?]).
- (3) [ARE ALL WORKERS IN CROWN OFFICE BRANCHES EMPLOYEES OF POST OFFICE?]
- (4) Save as aforesaid, paragraph 7 is admitted.

Subpostmaster Claimants and Contracts

16. Paragraph 8 is admitted as regards the Claimants presently known to Post Office, being those identified on the original claim form in action No. HQ16X01238 (“**the Existing Claimants**”).

17. As to paragraph 9:

- (1) Post Office contracts with Subpostmasters on standard form contracts.
- (2) As well as being expressed not to be contracts of employment, those contracts are not contracts of employment and, as noted in paragraph [XX] below, the Claimants admit that they are not contracts of employment.

- (3) Those contracts are contracts of agency. As one would expect with contracts governing the conduct by an agent of the principal's business, the contracts reserve to Post Office the right to control certain aspects of its business (e.g. the products and services Subpostmasters may offer on Post Office's behalf and the procedures and standards in accordance with which Subpostmasters are to conduct Post Office's business and to account to Post Office for the transactions they have entered into and the cash and stock they have dealt with on its behalf). In relation to matters such as these, Post Office has the power to give instructions that Subpostmasters are obliged to follow.
- (4) However, Post Office would not characterise the Subpostmaster contracts as "reserve[ing] to the Defendant a high degree of power, discretion and control". Post Office is unsure what is meant by this vague expression and it does not know what particular powers, discretions and controls the Claimants have in mind when they use it.
- (5) Save as aforesaid, paragraph 9 is admitted.

18. As to paragraph 10:

- (1) **SPMC:** Paragraph 10.1 is admitted. Like the GPoC, this Generic Defence refers only to the version of the SPMC served with the GPoC. Post Office believes that 130 [CHECK] Existing Claimants were engaged on the terms of the SPMC.
- (2) **Temporary SPMC:** Save that the word "purported" is inapposite, paragraph 10.2 is admitted. [WERE ANY CLAIMANTS ENGAGED ON THE TEMPORARY SPMC? IF SO, HOW MANY? IF NOT, SAY SO]
- (3) **Community Subpostmaster Agreement:**
 - (a) The first sentence of paragraph 10.3 is admitted. Post Office believes that 6 [CHECK] Existing Claimants were engaged on the terms of Community Subpostmaster Agreement.
 - (b) As to the second sentence, Post Office believes that all or at least some of the Existing Claimants who were engaged on the terms of these agreements will have retained a copy of their contracts. Further, by paragraph 1 of their Response to a Request for Further Information dated 16 May 2017 ("Part 18

Response”), the Claimants stated that it was not their case that none of them (i) has or (ii) has ever had a copy of the Community Sub-Postmaster Agreement, from which Post Office infers that at least some Claimants in fact have a copy of that agreement. In any event, Post Office provided a copy to the Claimants on 10 April 2017 [CHECK].

- (c) As to the third sentence, the Claimants are not entitled to proceed on a mere assumption as to the material content (which they have not pleaded) of any contract on which they intend to rely: they must assert a positive case as to the nature, content, construction and effects thereof.

(4) **NTC:**

- (a) The first sentence of paragraph 10.4 is admitted. Post Office believes that 32 [CHECK] Existing Claimants were engaged on the terms of main branch NTC, and that 19 [CHECK] Existing Claimants were engaged on the terms of the local branch NTC.
 - (b) The second sentence is noted.
 - (c) As to the third sentence, Post Office believes that all or at least some of the Existing Claimants who were engaged on the terms of these agreements will have retained a copy of their contracts. Further, by paragraph 1 of their Part 18 Response, the Claimants stated that it was not their case that none of them (i) has or (ii) has ever had a copy of the main branch NTC, from which Post Office infers that at least some Claimants in fact have a copy of that contract. In any event, Post Office provided a copy to the Claimants on 10 April 2017 [CHECK]. [PLEASE PROVIDED US WITH A COPY OF THE MAIN NTC AGREEMENT]
 - (d) As to the fourth sentence, the Claimants are not entitled to proceed on a mere assumption as to the material content of any contract on which they intend to rely: they must assert a positive case as to the nature, content, construction and effects thereof.
- (5) Paragraph 10.5 is noted. Post Office will respond to any claim based on any other contract if and when such a claim is properly pleaded.

19. For the avoidance of doubt, Post Office pleads back in relation to the SPMC, the Temporary SPMC, the NTC and the Franchise Agreement attached to the GPoC, without prejudice to its right to rely in individual cases on the terms of such agreements as they stood at the time(s) relevant to the particular claims made by particular Claimants.
20. As to paragraph 11:
- (1) Regarding paragraph 11.1, Post Office believes that 2 [CHECK] Existing Claimants were employed in Crown Office branches (“**Crown Employees**”) and that both or one of them will have retained a copy of their employment contract. Further, by paragraph 1 of their Part 18 Response, the Claimants stated that it was not their case that none of the Claimants (i) has or (ii) has ever had a copy of their employment contract, from which Post Office infers that at least one Claimants in fact has a copy of that contract. [IS THERE A REASON WHY WE HAVE NOT PROVIDED A COPY? THEY WILL BE ABLE TO DEMAND ONE AS SOON AS WE SERVE THIS DEFENCE].
 - (2) Regarding paragraph 11.2, Post Office believes that 5 [CHECK] Existing Claimants assert that they were employed by Subpostmasters as their Managers or Assistants. Post Office notes that it had no contractual or other relationship with these individuals and that the Claimants have not disclosed the basis or terms upon which they were employed by the relevant Subpostmasters [CHECK THE SCHEDULES OF INFORMATION FOR THESE PEOPLE – IS ANY MATERIAL INFORMATION GIVEN ABOUT THEIR EMPLOYER, THEIR EMPLOYMENT, THE ROLES THEY PERFORMED OR THEIR CLAIMS THAT MAY BE WORTH MENTIONING HERE?].
 - (3) Regarding paragraph 11.3, Post Office believes that [HOW MANY?] Existing Claimants assert that they were directors of Franchisees and that [HOW MANY] were guarantors of Franchisees. It admits that the relevant Franchisees contracted with Post Office on the terms of the Franchise Agreements [CORRECT?]. It also notes that Post Office had no contractual or other relationship with the Existing Claimants who are merely alleged to have been directors [DO ANY CLAIMANTS FALL INTO THAT CATEGORY OR WERE ALL CLAIMANT DIRECTORS ALSO GUARANTORS?] and that the Claimants have not disclosed the basis or terms upon which they acted as directors of the relevant Franchisees [CHECK THE

SCHEDULES OF INFORMATION FOR THESE DIRECTORS – IS ANY MATERIAL INFORMATION GIVEN ABOUT THEIR EMPLOYER, THEIR EMPLOYMENT, THE ROLES THEY PERFORMED OR THEIR CLAIMS THAT MAY BE WORTH MENTIONING HERE?]. Further, [ARE WE IN A POSITION TO ADMIT OR DENY WHETHER THE EXISTING CLAIMANTS SAID TO HAVE BEEN GUARANTORS DID EXECUTE GUARANTEES WITH POST OFFICE?].

(4) Save as aforesaid, Post Office is unable to admit or deny paragraph 11.

A.2 Horizon

21. Paragraph 12 is admitted. Until 2010, Horizon was a distributed system in which transactions were undertaken within branches, whose terminals subsequently transmitted transaction data to a central Post Office data centre [and also to certain Post Office Clients such as [GIVE A FEW EXAMPLES]]. Once Horizon Online was introduced in 2010, transactions were effected through real time exchanges of data from branches to a central Post Office data centre [and transaction data was also transmitted to Post Office clients, sometimes in real time]. Save where otherwise indicated, Post Office uses the term “**Horizon**” to refer to the pre-2010 version of Horizon (“**Original Horizon**”) and to Horizon Online as the context may require and as the system existed at the relevant time(s), without prejudice to its ability to plead more fully as to Horizon’s features and operations as may be relevant to any individual claim (should such a claim raise any specific issues in that regard).
22. As to paragraph 13, it is admitted that any Claimants who have acted as Subpostmasters for agency branches at any time since the introduction of Horizon in those branches have been users of Horizon [CORRECT? EVEN WHERE THEY WERE ABSENTEE SUBPOSTMASTERS AND HAD A MANAGER RUNNING THEIR BRANCHES? WHAT ABOUT THE DIRECTORS OR GUARANTORS OF FRANCHISEES?]. Save as aforesaid, Post Office is unable to admit or deny the paragraph.
23. As to paragraph 14, which appears to relate simply to Claimants who were Subpostmasters:
 - (1) It is admitted that, if and to the extent that any Claimant Subpostmasters worked in a Post Office branch prior to the introduction of Horizon to that branch and

continued working in that branch thereafter, the introduction significantly changed how they were required to work in that branch. Save as aforesaid, paragraph 14.1 is denied.

- (2) Paragraphs 14.2 and 14.3 are embarrassing, in that they fail to identify any of the limitations apparently relied on. In any event, the introduction of Horizon increased, rather than limited, the ability of Subpostmasters to access, identify, obtain and reconcile transaction records and to investigate shortfalls. Before the introduction, Subpostmasters had access to [WHAT TRANSACTION RECORDS?]. Afterwards, they also had the ability to obtain an extensive range of reports, as pleaded further in paragraph [XX] below.
24. Paragraph 15 is embarrassing for lack of particularity. In the absence of any indication as to the actual changes the Claimants intend to rely on and as to the effect(s) each such change is alleged to have had, Post Office cannot plead to this paragraph. However, Post Office is not aware of any change to Horizon which had any of the effects alleged in paragraph 14. Moreover, although it accepts in general terms that some changes to products and services offered in a branch would have affected the work done at that branch, nor is Post Office aware of any change to products or services which had any of the effects alleged in paragraphs 14.2 and 14.3. [CAN WE SAFELY SAY THIS, OR WERE THERE SOME NEW PRODUCTS AND SERVICES THAT WOULD HAVE CREATED OR INCREASED DIFFICULTIES IN ACCOUNTING, RECONCILING FIGURES OR INVESTIGATING TRANSACTIONS?]
 25. Post Office notes that, on the Claimants' pleaded case, any changes in the Claimants' ability to access records and investigate shortfalls caused by the introduction of Horizon or by subsequent changes to Horizon or to products and services offered has no apparent relevance to any of the breach of contract or other claims advanced in the GPoC.
 26. The first sentence of paragraph 16 is admitted [IS EVERY WORD OF THAT SENTENCE TRUE EVEN IN RELATION TO ORIGINAL HORIZON, WHERE THE SUBPOSTMASTER WAS RESPONSIBLE FOR THE PHONE LINE ETC?]. As to the second sentence, which is noted, Post Office's use of the terms "Horizon", "Original Horizon" and "Horizon Online" similarly does not include training.

The operation of Horizon

27. As to paragraph 17:

- (1) Regarding the first sentence, at all material times since the introduction of Horizon:
 - (a) Data reflecting transactions entered by Subpostmasters or other authorised users of branch terminals was transmitted to and replicated on a central database centre [(now called the branch database or “BRDB”)].
 - (b) On receipt by the data centre, the integrity of this transaction data was checked. Furthermore, it was compared against every available third-party data source (i.e. the data held by Post Office Clients [DEFINE THIS TERM HERE IF NOT DEFINED IN PARA 20 ABOVE], including data those clients had obtained directly from branches). It was also copied to an audit store in which it was retained, generally for 7 years.
 - (c) These were aspects of a rigorous “Core Audit Process” which has at all material time been (and still is) applied to Horizon with a view to ensuring that Horizon accurately records and retains the data keyed into branch terminals. Other aspects are referred to in paragraphs [XX] below.
 - (d) The Core Audit Process is regularly upgraded, an example being the introduction of encryption technology when Horizon Online was introduced, since which time all transaction data sent from branch terminals has contained digital signatures. The Core Audit Process is one set of safeguards against errors in Horizon recording and retaining data input from branch terminals. Others safeguards are referred to in paragraphs [XX] below.
- (2) Regarding the second sentence:
 - (a) [WHAT PAPER RECORDS (i) WERE/ARE SUBPOSTMASTERS REQUIRED TO PRINT AND KEEP (AND FOR HOW LONG), (ii) COULD/CAN SUBPOASTMASTERS PRINT AND KEEP (AND HOW TYPICAL WAS IT FOR THEM TO DO SO)? FIN PARTICULAR, HOW EXTENSIVE WERE/ARE THEIR PAPER RECORDS OF TRANSACTIONS IN BRANCH, HORIZON PRINTOUTS, AND THIRD PARTY (CLIENT) RECORDS ETC? HAVE THERE BEEN ANY SIGNIFICANT CHANGES IN (i) AND/OR (ii) SINCE THE ORIGINAL

INTRODUCTION OF HORIZON IN 1999/2000?]. Subpostmasters were able to use these records to perform extensive searches, checks and reviews of their branch transactions. If they wished, Subpostmasters also had the ability to use Horizon to perform a wide variety of additional searches, checks and reviews, as set out below.

- (b) Until the introduction of Horizon Online, transaction data [held in the data centre] was freely available to Subpostmasters for 42 days from the date of the relevant transaction. From the introduction of Horizon Online, such data was freely available for [60 OR 84 DAYS?]. [DID HORIZON NOT PERMIT SUBPOSTMASTERS TO SEE ANY DATA AFTER THE RELEVANT PERIOD? NOT EVEN OLD CASH DECLARATIONS OR BRANCH TRADING STATEMENTS?]
- (c) While such transaction data was available, Subpostmasters could search for, identify, organise and analyse data by means of wide range of reports, including a transaction log report which could list all transactions undertaken in the relevant branch in the entire period and which could be limited in a variety of ways if the Subpostmaster wished, including by reference to date ranges, transaction types, stock items, value ranges and even particular users or terminals [ANYTHING ELSE? WERE ANY OTHER SORTS OF REPORT AVAILABLE WHICH WOULD ALSO BE HELPFUL IN SEEKING TO UNDERSTAND HOW AND WHEN DISCREPANCIES AROSE? WHAT CAN BE SAID TO GIVE AN EVEN BETTER IMPRESSION AS TO HOW WIDE RANGING, HOW THOROUGH AND HOW POWERFUL THE SEARCH/REPORT FUNCTIONS ARE ON HORIZON?]
- (d) [TO DISCUSS: SHOULD CASH DECLARATIONS AND BRANCH TRADING STATEMENTS BE MENTIONED HERE AS BEING AVAILABLE? FOR HOW LONG WERE THEY AVAILABLE AND HOW USEFUL WERE THEY TO UNDERSTAND HOW AND WHEN DISCRPANCIES AROSE?].
- (e) Thus, in addition to the substantial paper records that were available, Horizon provided Subpostmasters with powerful tools for searching, checking and

reviewing all aspects of the transactions undertaken in the branches for which they were responsible.

Transaction Corrections AND Transaction Acknowledgements

28. Paragraph 18 refers to transaction corrections. One of the safeguards against errors in the data keyed into branch terminals was a process by which Post Office proposed corrections to the transaction data held on Horizon (“**Transaction Corrections**”). These were [(and are)] typically generated in the following way:
- (1) Post Office’s Financial Services Centre (“**FSC**”) would check Horizon transaction data (i.e. data as keyed into branch terminals) against and seek to reconcile it with transaction data provided by Post Office Clients. For example, client banks have since around [DATE] provided to Post Office their own records of transactions carried out in Post Office branches (transmitted directly from the chip and pin devices used in branches), allowing Post Office to compare these to the transaction data on Horizon.
 - (2) Where there was a discrepancy between the two sets of data, [WHO?] would review the available data with a view to determining whether he or she considered it likely that the transaction data shown on Horizon required correction. Where this was the case, [WHO?] would generate a Transaction Correction notification, which would be sent to the relevant branch via Horizon.
 - (3) A Transaction Correction took the form of an additional accounting entry that, without editing any transaction data already input into Horizon, corrected the effect of the apparent error in the transaction record. For example, where the payment in of a cheque was recorded on Horizon as involving a £100 credit but the true amount of the cheque was £90, a Transaction Correction with a value of £10 debit would be generated. The original transaction entry remained the same on Horizon but the error was corrected by the new Transaction Correction entry.
 - (4) A Transaction Correction notification included (i) a description of the transaction to be corrected, (ii) the contact details of an employee of Post Office who will provide further detail if required, (iii) typically, the outline reason for or nature of the correction, and (iv) sometimes, evidence justifying the proposed correction. For example, where a Transaction Correction deals with a cheque payment that was

ineffective because the cheque was not signed, Post Office would typically have provided the explanation “*Cheque not signed*”.

- (5) A Transaction Correction notification sent by Post Office to a branch was a proposal, not an instruction, and it did not take effect unless and until accepted by the Subpostmaster concerned. On receiving a Transaction Correction notification, the Subpostmaster could (i) accept it by selecting that option on Horizon or (ii) if he or she did not accept the correction and/or required further information, contact the person identified in the Transaction Correction notification or, failing that, the Helpline.
- (6) If the Subpostmaster accepted the Transaction Correction and the effect of the correction was to increase the cash position of the branch, the Subpostmaster was required to make good the amount of the increase, either by:
 - (a) paying cash or a providing a cheque in that amount to the branch, or
 - (b) adding that amount as a debit to an account maintained by the Subpostmaster with Post Office (his “**Subpostmaster Account**”) [CHECK: DO WE CALL THIS THE LOCAL SUSPENSE ACCOUNT?]. The option of adding an item to the Subpostmaster’s account with the Post Office was called “**settling centrally**”. It was only available if the amount involved was at least £150.
- (7) If the Subpostmaster accepted the Transaction Correction and the effect of the correction was to decrease the cash position of the branch, he or she would either remove the relevant amount in cash from the branch or settle it centrally by crediting it to his Subpostmaster account with Post Office.
- (8) If the Subpostmaster did not accept the Transaction Correction, he or she was required to raise any request for information or query by contacting, in the first instance, the person identified in the Transaction Correction notification. The process was identified in [page ref] the operating manual entitled “Branch Trading: balancing and dispatch of documents” (“**The Branch Trading Manual**”).
- (9) If having discussed the matter and reviewed any further information provided by the person identified, the Subpostmaster wished to dispute the proposed Transaction Correction, he [PLEAD WHAT IS TYPICALLY DONE WHEN THERE IS A

DISPUTE. IS THERE A REVIEW OR INVESTIGATION AND IF SO, WHO BY? IS FURTHER DATA/EVIDENCE OBTAINED, WHERE APPROPRIATE, AND IN WHAT CIRCUMSTANCES IS THIS APPROPRIATE? IS THE POSTMASTER ALLOWED TO SEE THE EVIDENCE OBTAINED BY THE POST OFFICE AND TO SUBMIT HIS OWN EVIDENCE AND MAKE REPRESENTATIONS? WHO MAKES THE ULTIMATE DECISION?

- (10) If having considered the dispute [WHO]'s view was that the Transaction Correction was correct, the Subpostmaster could appeal by providing written submissions to the branch's Relationship Manager, identifying the reasons for which it was contended that the "*loss (or gain) is not proper to [the] branch*". The process was identified in [page ref] of the Branch Trading Manual.
- (11) The initial review and any appeal was conducted on the basis of the available evidence. Post Office cooperated with Subpostmasters in relation to any dispute, including by providing any necessary further explanation, information and evidence for the proposed correction.
- (12) [WHAT HAPPENS IF THE POSTMASTER CONTINUES TO OBJECT, EVEN AFTER THE APPEAL? WHAT IS PLEADED ABOVE INDICATES THAT POST OFFICE DOES NOT DO SOMETHING IN HORIZON WHICH MEANS THAT THE CORRECTION IS EFFECTED EVEN WITHOUT THE POSTMASTER'S CONSENT. SO WHAT DOES POST OFFICE DO TO FORCE HIM TO ACCEPT – FOR EXAMPLE, DOES IT TELL HIM WHEN HE RAISES A DISPUTE TO ACCEPT THE TC AND SETTLE IT CENTRALLY ON THE BASIS THAT IT WILL BE BLOCKED PENDING RESOLUTION OF THE DISPUTE, OR DOES IT TELL HIM WHEN THE DISPUTE IS RESOLVED THAT HE MUST ACCEPT THE TC, FAILING WHICH HE WILL BE TERMINATED, OR DOES IT THREATEN TO SUE HIM, OR WHAT? IT IS IMPORTANT TO BE CLEAR ABOUT THIS, BOTH FOR LEGAL REASONS AND ALSO BECAUSE OF THE ALLEGATIONS OF BULLYING THAT ARE BEING MADE BY FREETHS]
- (13) [ADD A REFERENCE TO TRANSACTION ACKNOWLEDGEMENTS SAYING THAT THE PROCESS IS SIMILAR EXCEPT THAT, UNLIKE WITH

TCs, POSTMASTERS HAVE TO ACCEPT THE TA IN ORDER TO
CONTINUING TRADING. DOES THAT MEAN THAT – UNLIKE TCs (?) –
DISPUTED TAs ARE ALWAYS PAID PENDING POSSIBLE
REIMBURSEMENT (IF LESS THAN £150) OR SETTLED CENTRALLY AND
BLOCKED PENDING RESOLUTION OF THE DISPUTE?

29. As to paragraph 18:

- (1) The first sentence of paragraph 18 is denied. Post Office did not require that the Transaction Correction be accepted unless proven by the Subpostmaster not to be correct. The process was as summarised in paragraph [XX] above.
- (2) Save for the reference to “limited” reports (as to which see paragraph [XX] above), the second sentence of paragraph 18 is admitted. However:
 - (a) If a Transaction Correction related to a trading day before the commencement of the trading period in which the correction is proposed to be made, [IS EXTRA HELP/INFORMATION/EVIDENCE GENERALLY PROVIDED?]
 - (b) If a Transaction Correction related to a trading day more than 42/60 [84?] days before the date on which it was proposed, [IS EXTRA HELP/INFORMATION/EVIDENCE GENERALLY PROVIDED?].
 - (c) In any event, the Subpostmaster could request transaction data for the relevant period by contacting the person identified in the Transaction Correction notification. [WOULD ANY STANDARD OR MINIMUM EVIDENCE/ DOCUMENTS/INFORMATION BE PROVIDED IN RESPONSE TO A TC MADE LATE?]

30. In paragraph 19, the Claimants combine many allegations together. Post Office separates out and addresses those allegations in paragraphs [XX] below. In the interests of clarity and consistency, Post Office uses the following terms to refer to differences between the account shown on Horizon and the true position in a branch [THE UTILITY OF THESE TERMS AND THEIR DEFINITIONS IS TO BE DISCUSSED]:

- (1) “**Discrepancy**” refers to any difference between (i) the actual cash and stock position of a branch and (ii) the cash and stock position that would exist had all transactions been completed correctly (and cash and stock properly retained).
- (2) “**Gain**” refers to an event that causes a positive Discrepancy (i.e. the situation where the branch has more cash and/or stock than it should have had the relevant transaction(s) been completed correctly). For example, a Subpostmaster carrying out a bank account withdrawal of £100 for a customer, entering that withdrawal into Horizon but providing only £90 in cash to the customer would generate a Gain of £10.
- (3) “**Loss**” refers to an event that causes a negative Discrepancy (i.e. the situation where the branch has less cash and/or stock than it should have had the relevant transaction(s) been completed correctly). For example, a Subpostmaster carrying out a bank account withdrawal of £100 for a customer, entering that withdrawal into Horizon, but providing £110 in cash to the customer would generate a Loss of £10.
- (4) “**Shortfall**” refers to negative net Discrepancy shown on Horizon at the end of a trading period (i.e. the amount by which Losses, if any, exceed Gains, if any, in the period).
- (5) “**Net Gain**” refers to positive net Discrepancy shown on Horizon at the end of a trading period (i.e. the amount by which Gains (if any) exceed Losses (if any) in the period).
- (6) “**Horizon-Generated Shortfall**” refers to a Shortfall that is attributable to an error, bug or defect in Horizon.

Branch Trading Statements, making good and disputing Shortfalls

31. As to the first sentence of paragraph 19, it is denied that the matters addressed in paragraphs 19.1 to 19.3 “accentuated the importance of the accuracy of Horizon”. Paragraph 19 addresses requirements whose purpose was to ensure the proper discharge of the Subpostmaster’s contractual and fiduciary duties to account to Post Office for the transactions they entered into on its behalf and for the cash and stock it entrusted to their care. Such obligations were to the mutual benefit of Subpostmasters and Post Office in that (amongst other things) they ensured the early identification and correction of any

errors and defaults relating to the transactions carried out and/or to the cash and stock held in the branches for which the Subpostmasters were responsible.

32. These requirements were as follows:

- (1) Subpostmasters were required to perform a regular “**balancing process**”, which involved counting all stock and cash at their branches, comparing it with the cash and stock indicated on Horizon and producing (and confirming) an account of the transactions undertaken since the last balancing process and of the cash and stock held. Initially, Subpostmasters were required to do this weekly, but from 2005, they were required to do so at the end of each “**Branch Trading Period**” (Post Office-specified periods of 4 or 5 weeks, of which there are 12 in the year and which, for convenience, are variously referred to herein as “**trading periods**” [and “**months**”]). The purpose this exercise was to
- (2) In order to “balance” their accounts, Subpostmasters were required to address any Discrepancies identified from this process. They were not required to confirm the derived figures on Horizon but were required to identify the cash and stock actually held in branch (e.g. by counting the cash held in cash registers).
- (3) Where this process disclosed a Shortfall and the Subpostmaster accepted liability for the Shortfall, he or she was required to make it good (1) by adding cash or a cheque to the branch or (2) by settling it centrally (generating a debit or credit in his or her account with Post Office), in the manner described in paragraph [XX] above).
- (4) Where this process disclosed a Shortfall and the Subpostmaster disputed liability for the Shortfall, he or she was required to raise this dispute by calling the Helpline referred to in paragraph [XX] below. If the Shortfall was for less than £150, he or she was required to make it good by adding cash or a cheque to the branch pending resolution of the dispute (on the basis that it would be repaid to the Subpostmaster if it was ultimately determined that he or she was not liable for the Shortfall). If the Shortfall was for £150 or more, he or she could settle it centrally pending resolution of the dispute. In that situation, Post Office would put a block or hold on the relevant debit created in his or her account with Post Office (i.e. the amount settled centrally) until the resolution of the dispute. Unless and until it was ultimately determined that the Subpostmaster was liable for the Shortfall, that debit was not (and was not treated as) a debt due to Post Office.

- (5) Equivalent processes were followed where the Subpostmaster accepted or disputed a Net Gain, with the relevant transactions being the removal of cash from the branch or the creation of a credit with the Subpostmasters' account with Post Office.
- (6) The transactions referred to in sub-paragraphs [(3) to (5)] above would be recorded on Horizon. By this means, additional entries would be made the cash and stock in hand indicated by Horizon and Horizon's figures would thus would be brought into balance with the physical cash and stock counted by the Subpostmaster.
- (7) These processes are addressed in [page ref] of the Branch Trading Manual, which stated that [CHECK MANUAL – DEPENDING ON WHAT IT SAYS, WE MAY NEED TO AMEND THIS WORDING].
- (8) Having followed these processes, Subpostmasters were required to produce and sign a statement setting out the quantities and values of the various receipt and payment transactions that had been carried out in the branch during the relevant period and the cash and stock held in the branch at the end of the trading period (called a “**Cash Account**” until 2005 and a “**Branch Trading Statement**” from 2005). Branch Trading Statements contained the following statement by the Subpostmaster: “*I confirm that the content of this balancing and trading statement is an accurate reflection of the cash and stock on hand at this branch*”.
- (9) A branch could not enter (or “**roll over**” into) a new Branch Trading Period without the Subpostmaster declaring to Post Office the completion of the Branch Trading Statement as aforesaid. However, although Subpostmasters were required to produce Branch Trading Statements at the end of each trading period, if they did not do so, [the branch could continue to trade within the previous trading period for up to [HOW LONG?]].

Branch Trading Statements

33. As to paragraph 19.1, subject as set out in paragraphs [XX] above:

- (1) The first and second sentences are admitted.
- (2) The third and fourth sentences are denied. Paragraphs [XX] above are repeated as regards the comparison between the derived figures for cash and stock shown on Horizon and the actual cash and stock as counted and declared by the

Subpostmaster, paragraph [XX] above is repeated as regards bringing Horizon's figures into balance with the cash and stock as counted, and paragraph [XX] above is repeated as regards the ability to continue trading without entering a new trading period.

Making good

34. Paragraph 19.2 appears to be intended to allege that, whenever there was a Shortfall between Horizon's figures and the cash and stock counted by the Subpostmaster: (1) the Subpostmaster would (unless some special arrangement was made) be required to make good the difference; and (2) if he or she did so by settling centrally, the amount of the Shortfall would be treated as a debt due to Post Office. These allegations are specifically denied. As explained in paragraph [XX] above (and in particular paragraph [XX]), Post Office's procedures enabled Subpostmasters to dispute liability for Shortfalls.

Disputing Shortfalls

35. As to paragraph 19.3:
- (1) It is admitted that there was no "option within Horizon" to dispute a Shortfall, in the sense that the process of raising and resolving a dispute did not take place through submitting information and argument within the Horizon system. However, as indicated in paragraph [XX] above, Horizon provided information as to the process to follow in order to dispute Shortfalls (by contacting the Helpline).
 - (2) As indicated in paragraph [XX] above, Subpostmasters who contacted the Helpline with a dispute were not required to settle the disputed amounts centrally and, where they did so, this did not mean that they owed those amounts as debts to Post Office as appears to be alleged.
 - (3) It is specifically denied that Subpostmasters were unable to carry out effective investigations into the disputed amounts. So is the wholly unparticularised allegation that there were unspecified "limitations" on Subpostmasters' ability to access, identify and reconcile transactions in Horizon and that Horizon had no "adequate report-writing feature", as to which paragraphs [XX] above are repeated. As indicated in those paragraphs, Horizon provided Subpostmasters with powerful tools for searching, checking and reviewing all aspects of the transactions undertaken in the branches for which they were responsible.

- (4) There were provisions in Post Office's Operating Manual as to the process for disputing Discrepancies (see, for example, [page ref] of the Branch Trading Manual) and it is denied that these provisions gave insufficient guidance regarding that process. In any event, the process involved calling the Helpline and, if further guidance was needed, it was available from the Helpline.
- (5) As to the last sentence of paragraph 19.3, where amounts were disputed, [WE NEED DETAILS OF THE DISPUTE RESOLUTION PROCESS, COVERING THE SORT OF POINTS RAISED IN PARAGRAPHS 28(9) AND 28(12) ABOVE. IS IT THE SAME AS THE PROCESS FOLLOWED FOR DISPUTED TCs AND TAs? WHO WOULD RESOLVE THE DISPUTE AND WHAT WOULD THEY DO TO ENABLE THEMSELVES TO DECIDE? COULD THE IDENTITY OF THE DECISIONMAKER CHANGE, DEPENDING ON THE NATURE OF THE DISPUTE? HOW SHOULD WE CHARACTERISE THE STEPS TAKEN TO LISTEN TO THE CONCERNS EXPRESSED BY THE POSTMASTER AND REVIEW ANY EVIDENCE HE OR SHE PRODUCED, TO UNDERSTAND THE ISSUES ARISING, TO OBTAIN THE AVAILABLE EVIDENCE NECESSARY TO RESOLVE THE DISPUTE AND SHARE IT WITH THE POSTMASTER AND, HAVING HEARD THE POSTMASTER'S ARGUMENTS, TO DECIDE WHETHER THE POSTMASTER WAS (PROBABLY?) LIABLE FOR THE SHORTFALL?]

A3. Fujitsu

36. As to paragraph 20:

- (1) Post Office has provided to the Claimants a copy of its contract with Fujitsu dated 31 March 2016 ("**the 2016 Fujitsu Contract**"). The Claimants have not identified any reasons for thinking that any other agreements between Post Office and Fujitsu are required for them properly to plead their generic claims.
- (2) The Claimants have not identified any respects in which the redactions to the 2016 Fujitsu Contract have prejudiced their ability to plead their case on the relationship between Post Office and Fujitsu. The redactions were made in order to preserve commercially sensitive information and/or because the redacted content was irrelevant to the issues in this case.

- (3) Save as aforesaid, paragraph 20 is admitted.

37. As to paragraph 21: [TO BE REVISITED ONCE WE HAVE RECEIVED THE WRITTEN COMMENTS PROMISED BY FUJITSU]

- (1) Paragraph 21.1 is admitted. [SHOULD WE MAKE IT CLEAR THAT UNTIL THE INTRODUCTION OF HORIZON ONLINE, THE TELEPHONE LINES (AND THE INTERNET SERVICE?) BETWEEN AGENCY/FRANCHISE BRANCHES ON THE ONE HAND AND THE DATA CENTRE ON THE OTHER WERE PROVIDED BY POSTMASTERS AND FRANCHISES?]
- (2) Paragraph 21.2 is admitted. [SHOULD WE MAKE IT CLEAR (IF IT IS THE CASE) THAT FUJITSU ALSO PROVIDED A DATA TRANSFER SERVICE DIRECTLY BETWEEN POST OFFICE BRANCHES AND POST OFFICE CLIENTS?]
- (3) As to paragraph 21.3, Fujitsu's role included identifying and remedying coding errors and bugs in Horizon as pleaded in paragraph [XX] above. However, it was not its role to change the transaction or accounting data on Horizon or to identify and remedy coding errors in bugs in a manner that adversely affected such data. [TO DISCUSS – DID IT SOMETIMES CHANGE TRANSACTION DATA, E.G. BY SENDING BALANCING TRANSACTIONS OR USING PRIVILEGED ACCESS RIGHTS OR EVEN SENDING TCs OR TAs?]. On the contrary, the purpose and effect of identifying and remedying of errors and bugs was to improve the reliability of the record of transactions on Horizon and therefore the derived figures for branch cash and stock.
- (4) As to paragraph 21.4, it is admitted that until 17 June 2014 Fujitsu provided a telephone advice service to Post Office in relation to technical problems with the Horizon system or equipment. This service was mainly used by Post Office staff (such as staff working on the Helpline referred to in paragraph [XX] below), but sometimes Fujitsu staff would have direct contact with third parties such as Subpostmasters in order to obtain a better understanding of the problem on which it was asked to advise [CORRECT SUMMARY?]. However, from 17 June 2014, this telephone advice service was provided by [INSERT FULL NAME OF ATOS]. [THE ALLEGATION THAT FUJITSU PROVIDED A TELEPHONE SERVICE IS PRESUMABLY BASED ON THE 2016 VERSION OF THE

FUJITSU/POST OFFICE CONTRACT THAT WE HAVE GIVEN THE CLAIMANTS. IF FUJITSU STOPPED PROVIDING A TELEPHONE SERVICE IN 2014, ONE WOULD NOT EXPECT THIS SERVICE TO BE PROVIDED FOR IN THE 2016 CONTRACT. IS IT PROVIDED FOR IN THAT CONTRACT? IF NOT, WHY DO THE CLAIMANTS THINK THAT FUJITSU PROVIDED IT? IF SO, DO WE NEED TO CHANGE THIS PARA – FOR EXAMPLE, MIGHT THE CLAIMANTS HAVE IN MIND SOME OTHER TELEPHONE SERVICE THAT FUJITSU ARE STILL PROVIDING? GIVEN THE FUJITSU ARE RESPONSIBLE FOR THE OPERATION OF HORIZON, IT WOULD BE ODD IF POST OFFICE HAD NO RIGHT CALL FUJITSU FOR ADVICE ON THE OPERATION OF HORIZON. IS IT POSSIBLE THAT, IN THIS PARA, WE HAVE DESCRIBED THE CURRENT ADVICE SERVICE PROVIDED, AND OMITTED A PREVIOUS SERVICE WHICH WAS USED AS ONE OF THE LEVELS OF SUPPORT WITHIN NBSC, TO PROVIDE DIRECT ADVICE TO POSTMASTERS?]

- (5) [TO DISCUSS: DO WE NEED TO INCLUDE ANYTHING IN THIS GENERIC DEFENCE ABOUT THE ROLE PLAYED BY POST OFFICE ITSELF IN “SCRIPTING” AND IT CHECKING FOR BUGS ETC? IF WE MAKE NO REFERENCE TO IT, IS THERE A RISK THAT OUR DEFENCE COULD BE SEEN AS MISLEADING?]

Bugs, errors or defects in Horizon

38. As to paragraph 22:

- (1) If and to the extent that the Claimants wish to assert that any of the Shortfalls for which they were held responsible were Horizon-Generated Shortfalls, it is for them to make that distinct allegation and seek to prove it. Post Office notes that they do not make the allegation in the GPoC. It further notes that, in paragraph 20 of their solicitors’ letter to Post Office’s solicitors dated 27 October 2016, the Claimants make it clear that they do not allege that there is a systematic flaw in Horizon or indeed any flaw which has caused any Claimant to be wrongly held responsible for any Shortfall.
- (2) [Further, as is pleaded further in paragraphs [XX] below, Subpostmasters that produced Branch Trading Statements and/or other accounts to Post Office without

disputing those accounts or that raised but then discontinued a dispute are bound by such accounts unless and to the extent that they can show such accounts to have been mistaken and that it would be equitable to permit them to re-open or falsify entries in the accounts.][SHOULD WE LEAVE THIS ALLEGATION UNTIL LATER?]

- (3) It is denied that Post Office has unreasonably or otherwise failed to provide “obviously relevant disclosure” in relation bugs, errors or defects in Horizon. There has been no order or application for disclosure and, in the premises set out above, there appears to be no basis for providing disclosure [TO DISCUSS: CAN WE GO SO FAR AS TO SAY THIS?].

39. Paragraph 23 is embarrassing for its lack of particularity, in that (amongst other things) it does not identify the errors, bugs or defects they rely on or how “large” their number was or the period in which they are said to have occurred and nor does it identify the transaction data that Fujitsu is alleged to have rebuilt, how “frequent” was the need to rebuild it or the extent of the “risk of error” which is said to have been introduced. In the premises, Post Office cannot plead to the first three sentences of this paragraph. However: [TO BE REVIEWED BY POST OFFICE TECHNICAL PEOPLE, DELOITTE AND FUJITSU]

- (1) All IT systems experience software coding errors, bugs or defects which require fixes to be developed and implemented. Horizon was no exception. For a system of Horizon’s scale, Post Office would characterise the number of errors, bugs or defects which required fixes in Horizon as relatively low [CORRECT?]. In any event, as is noted in paragraph [XX] below, there were robust measures in place for their detection, correction and remediation.
- (2) All IT systems involving the transmission of data over the internet experience data or data packet errors during transmission and they all have protective measures in place to prevent such errors creating any difference between the data transmitted and the data received and retained by the recipient (which may be referred to as the “corruption” of data). As is noted in paragraph [XX] below, Horizon had robust measures making it extremely unlikely that a data packet error could result in the recording and retention of transaction data at the central database that is different from the data provided by the branch.

- (3) [DETAILED INSTRUCTIONS NEEDED ON THE THIRD SENTENCE OF
PARA 23: WHAT DO WE SAY IN RESPONSE TO THE ALLEGATION
THAT THERE WAS A NEED TO REBUILD **BRANCH TRANSACTION
DATA** FROM BACKUPS? DID BRANCH TRANSACTION DATA EVER
NEED TO BE REBUILT, EITHER

(a) AS A RESULT OF BUGS ETC OR

(b) AS A RESULT OF DATA PACKET ERRORS ETC?

TWO PARAS WILL PROBABLY BE NEEDED HERE, ONE DEALING
WITH BUGS ETC AND ONE DEALING WITH DATA PACKET ERRORS
ETC. IF REBUILDING WAS NEEDED FOR EITHER, HOW FREQUENTLY
WAS IT NEEDED, WHY WAS IT NEEDED AND HOW HAS THE
REBUILDING BEEN DONE – E.G. THROUGH TCs, TAs, BALANCING
TRANSACTIONS, PRIVILEGED USER ACCESS, OR WHAT? IS THERE A
SIGNIFICANT DIFFERENCE TO BE DRAWN IN THIS CONTEXT
BETWEEN AUTOMATIC REBUILDING, WHICH MAYBE HAPPENS ALL
THE TIME (E.G. WHEN DATA IS TRANSMITTED DOWN TELEPHONE
LINES) AND MANUAL REBUILDING? IF IT HAS HAPPENED, CAN WE
SAY THAT IT IS ALWAYS OR AT LEAST SOMETIMES A POSITIVE POINT
FOR HORIZON – THAT THE SYSTEM IS DESIGNED TO REPLICATE
DATA ON A CONTINUAL BASIS SO THAT, IF THERE WERE ANY
CORRUPTION, IT COULD BE IDENTIFIED AND REMEDIED?]

- (4) It is admitted that Fujitsu maintained (and maintains) a “Known Error Log”. This is not used by Post Office and nor is it in Post Office’s control [PLEASE CHECK
THIS – IT MAY DEPEND ON THE RIGHTS POST OFFICE HAS UNDER
ITS CONTRACT WITH FUJITSU] but, to the best of Post Office’s information and belief, the Known Error Log was not a record of software coding errors, bugs or defects for which fixes had been developed. It was a knowledge base document explaining how to deal with problems that can sometimes arise in Horizon software or hardware for which (often because of their triviality) fixes have not been developed. As far as Post Office is aware, [the vast majority] of these problems had nothing to do with the accuracy of branch transaction data or branch accounting.
[THIS PARA SHOULD BE CHECKED CAREFULLY BY FUJITSU AND

CORRECTED/REWORDED AS APPROPRIATE. IS THERE A BETTER WORD THAN “PROBLEMS”? CAN WE SAY THAT NONE OF THEM AFFECTED BRANCH TRANSACTION DATA AND ACCOUNTING?

- (5) [Post Office repeats paragraphs [XX] above in relation to Horizon-Generated Shortfalls. Without prejudice to the burden of proof, it is not aware of any errors, bugs or defects in Horizon which have created Horizon-Generated Shortfalls for which any Claimants were held responsible.]
40. In paragraph 24, the Claimants combine many allegations together. Post Office separates out and addresses those allegations in paragraphs [XX] below. [EACH OF PARAS 41-44 BELOW ARE TO BE REVIEWED BY POST OFFICE TECHNICAL PEOPLE, DELOITTE AND FUJITSU]
41. As to paragraph 24.1, it is a truism that bugs, errors or defects in an IT system and data or data packet errors have the potential to create errors in the data held in that system. Horizon was no exception. However, Horizon has at all material times included technological features and control measures to reduce to an extremely low level the risk of data errors affecting the replication and storage of the transaction record in the central database. These have varied from time to time and would most appropriately be addressed in relation to particular claims made. However, as at [USE THE SAME SAMPLE DATE AS IS USED FOR POST OFFICE’S PRACTICES AND PROCEDURES AS PER PARA 4 ABOVE], these features included the following:
 - (1) Horizon created, transmitted and stored transaction data in the form of “baskets”. A basket is a complete transactional session between a customer and Post Office. A basket may include one, several or many individual transactions that take place within the same session, for example (1) a cash deposit, (2) a purchase of stamps and (3) the payment of a utility bill. Horizon would not accept a basket of transactions that does not net to zero. This reflects the basic design of the accounting elements of the system as requiring double accounting and reduced greatly the risk of any error in the data for any transaction being replicated in the data that was transmitted and retained in the form of baskets. The central database rejected any basket that would not net to zero and would not allow that basket to be completed at the terminal. A basket that was rejected by Horizon could not be effected or stored on the system. The system user would be notified that the basket had not been

accepted and would, in the ordinary course, check for any mistake and attempt again to complete the transactions.

- (2) If a basket of transactions failed properly to complete its transmission to the central database (because, for example, of a power loss), the system would reject any partial transmission and request the full basket from the branch terminal. If a second attempted transmission failed, the procedure outlined in paragraph [...] above/below] would be followed. This reduced greatly the possibility of baskets of transactions failing to be recorded.
- (3) At the point of a basket being accepted by Horizon, it was assigned a unique sequential number (a “JSN”) that identified the terminal on which the basket of transactions was completed and allowed it to be identified in time and relative to the other baskets transmitted by that terminal. This reduced greatly the risk of the transaction record being affected by duplicate entries and/or entries that did not reflect any basket of transactions that was in fact executed on a terminal.
- (4) As pleaded at paragraph [...] above/below] initial data integrity checks were applied to make sure that data packet errors do not affect the data as recorded and stored in the central database. [IS THIS SEPARATE FROM THE POINT ABOVE? SHOULD THERE BE A REFERENCE TO ENCRYPTION AND/OR DIGITAL SIGNATURES?]
- (5) The data transmitted from the branch and accepted by the central database was subject to further checks before being duplicated and recorded within an audit store (the “**Audit Store**”). The Audit Store was a segregated piece of hardware. It retained transaction data for 7 years.
- (6) Each basket was also supplied with a digital signature, i.e. a unique code calculated by using industry standard cryptography. If the data in the basket were to change after the digital signature was generated, this would be apparent upon the checks referred to herein.
- (7) Before baskets of transaction data were copied to the Audit Store, checks are carried out to confirm [WHAT IS CHECKED AT THIS STAGE?].

- (8) Baskets that were copied to the Audit Store were stored together in groups to which a digital seal is then applied (the “**Audit Store Seal**”). If the baskets and/or the data within the baskets were altered after the application of the Audit Store Seal, this would be apparent when the baskets were extracted from the Audit Store.
 - (9) Upon data being extracted from the Audit Store, checks were carried out to ensure the following:
 - (a) The Audit Store Seals remained intact.
 - (b) The digital signatures on individual baskets remained intact.
 - (c) The JSNs were correct, i.e. no baskets were missing and no basket had been inserted or duplicated.
 - (10) Horizon and its audit processes were themselves subject to external audit. Ernst and Young carries out an annual audit [OF WHAT, EXACTLY?].
 - (11) Fujitsu carried out [daily?/ automatic?] checks for system errors [what further checks?] and operates [INDUSTRY STANDARD?] processes for identifying, investigating and resolving system errors.
42. In addition to these technological controls, Post Office applied the following procedures and practices that served to increase the reliability of the data stored in the central database as an accurate record of the transactions that were effected on branch terminals:
- (1) Prior to data being copied to the Audit Store, Post Office compared its own transaction record against that held by Post Office Clients taking data from branches. For example, [WHAT IS THE BEST ONE?]. If an error in Horizon resulted in the corruption of transaction data, this should have been revealed by the comparison.
 - (2) There were detailed procedures in place to address the risk of data loss resulting from interrupted sessions, power outages or telecommunications failures in branches. These were set out [WHERE AND IN WHICH MANUAL ARE THESE SHOWN?] and Horizon guides the system user through the recovery process (which included competing any transactions that were cut short). If followed correctly, these procedures should have prevented any data errors arising from interrupted sessions, power outages and telecommunications failures.

- (3) The display of the transactions being effected on-screen at the branch terminal allowed the user of the system to identify any inconsistency between the information shown on the screen and the transaction that he or she had entered into the system. If, for example, a hypothetical bug in the terminal were to cause a key-stroke on number 5 to be recorded as an input of number 6, it is highly unlikely that this would not be detected rapidly by system users (given the large number of system users and the huge number of transactions effected on Horizon). [ARE THERE CONTRACTUAL OBLIGATIONS OR IS THERE MANUAL GUIDANCE ABOUT NOTIFYING PO OF ANY PROBLEM WITH HORIZON?]
- (4) The accounting and record-keeping obligations placed on Subpostmasters reduced the risk of any errors going undetected. For example, the requirement to produce daily cash declarations increased the likelihood of detecting any error that would result in Horizon overstating or understating the cash position of a branch. If a Subpostmaster detected an error at an early stage, it would have been more likely to have been localised and remedied, allowing the correction of the data held in the central database (in most instances, by way of a Transaction Correction).
- (5) Fujitsu operated [INDUSTRY STANDARD] processes for investigating and resolving any potential system errors drawn to its attention by Post Office and/or system users.
43. Finally, the training provided by Post Office (and the obligations placed on Subpostmasters in relation to training), as to which see paragraphs [...] below, increased the likelihood of the system users entering transactions into the system correctly and/or identifying at an early stage any error in the operation of the branch terminal and/or the data transmitted to the central database.
44. As to paragraph 24.2, Post Office admits that, like all other IT systems, Horizon was not (and is not) a perfect system which never had any bugs, errors or defects. However, as is explained in paragraph [XX] above, it had (and has) robust systems in place to identify them, fix them and correct their consequences (if any).
45. As to paragraph 24.3, [HERE WE SHOULD PLEAD THAT BUGS ETC HAVE ON OCCASION CREATED DISCREPANCIES AND SHORTFALLS AND THAT (1) THE BUGS HAVE ALL BEEN FIXED, (2) ANY CONSEQUENT DATA ERRORS HAVE

ALL BEEN CORRECTED – PLUS (3) ANYTHING ELSE HELPFUL SAID IN SCHEDULE 6 OF THE LETTER OF RESPONSE]. [WHAT DO WE SAY TO THE DATA PACKET ERROR REF AT THE END?]

46. As to paragraph 24.4, [HERE WE SHOULD SAY THAT (1) WHENEVER THE CONSEQUENT DATA ERRORS HAVE INCLUDED DISCREPANCIES AND THUS SHORTFALLS (I.E. HORIZON-GENERATED SHORTFALLS) THESE HAVE BEEN REVERSED AND (2) WHERE IN THE MEANTIME AMOUNTS REPRESENTING SUCH HORIZON-GENERATED SHORTFALLS HAVE BEEN PAID BY POSTMASTERS, THEY HAVE BEEN COMPENSATED – PLUS ANYTHING ELSE HELPFUL SAID IN SCHEDULE 6 OF THE LETTER OF RESPONSE. THEN CAN WE/SHOULD WE ADD A FINAL SUB-PARA THAT SO FAR AS POST OFFICE IS AWARE, NONE OF THE CLAIMANTS HAVE BEEN AFFECTED BY ANY OF THESE BUGS ETC, OR WOULD SAYING THIS RAISE BURDEN OF PROOF PROBLEMS?]

Remote access to branch transaction data

47. Paragraph 25 appears to be concerned with the alteration of transaction data affecting branch accounts without the consent of the relevant Subpostmaster. Accordingly, Post Office assumes that it is not concerned with Transaction Corrections, Transaction Acknowledgments or remittance transactions (transactions recording in Horizon the cash and/or stock remitted into branches), since these transactions must be accepted by or on behalf of the Subpostmaster before forming part of his or her branch account. As to the circumstances in which such transaction data could be altered without the consent of the Subpostmaster: [TO BE REVIEWED BY POST OFFICE TECHNICAL PEOPLE, DELOITTE AND FUJITSU. DO THE FOLLOWING PARAS REPRESENT A FAIR DESCRIPTION OF THE POSITION FROM 1999 TO THE PRESENT DAY?]
- (1) Neither Post Office nor Fujitsu had the ability to log on remotely to a Horizon terminal in a branch so as to conduct transactions.
 - (2) A Post Office employee with “global user” authorisation could, when at a branch, have used a terminal within the branch to add a transaction into the branch’s accounts. The purpose of “Global User” authorization was to allow access to the systems for during training and/or audits. [WERE FORMAL PROCEDURES IN PLACE FORBIDDING THE USE OF GLOBAL USER AUTHORISATIONS]

(OR GLOBAL USER AUTHORISATIONS TO CHANGE BRANCH DATA?) WITHOUT SPECIFIC AUTHORISATION, FROM SPECIFIED PEOPLE AT POST OFFICE (AND IF SO, WHO WERE THOSE PEOPLE?). Any transactions effected by a Global User were recorded against a Global User ID and was [readily] identifiable as such.

- (3) Fujitsu (and not Post Office) had the ability to inject transactions into branch accounts (since the introduction of Horizon Online in 2010, transactions of this sort have been called “**Balancing Transactions**”). These transactions did not involve any removal or amendment of the transactions entered at the branch. Their intended purpose was to allow Fujitsu to correct errors, bugs or defects in Horizon by introducing a new transaction to cancel out the effect of an error, bug or defect on a branch’s transaction data. [WERE FORMAL PROCEDURES IN PLACE FORBIDDING THE USE OF BALANCING TRANSACTIONS (OR BALANCING TRANSACTIONS TO CHANGE BRANCH DATA?) WITHOUT SPECIFIC AUTHORISATION, FROM SPECIFIED PEOPLE AT FUJITSU AND/OR AT POST OFFICE (AND IF SO, WHO WERE THOSE PEOPLE?). They were rarely used. To the best of Post Office’s information and belief, only one Balancing Transaction has been ever been effected, and this was not in a branch operated by a Claimant. A Balancing Transaction was [readily] identifiable as such. [IS IT RECORDED IN A WAY THAT CAN BE SEEN BY A POSTMASTER CAN SEE, THOUGH. IS THAT RIGHT? AND WHAT ABOUT THE EQUIVALENT TRANSACTION THAT WAS POSSIBLE IN ORIGINAL HORIZON?]
- (4) There were a small number of Fujitsu specialists (no more than [HOW MANY AT ANY ONE TIME? WERE THEY PARTICULARLY SENIOR? WERE THEY SECURITY VETTED?]) who had certain privileged user access rights which they could in theory have used to amend or delete a branch’s transaction data for a branch. The intended purpose of privileged user rights was system support, not the alteration of branch transaction data. To have abused those rights so as to alter branch transaction data and conceal that this had happened would have been an extraordinarily difficult thing to do, involving complex steps which would have required months of planning (including the writing of sophisticated computer programmes and circumvention of control measures) and an exceptional level of

technical expertise [IF THERE HAD BEEN NO ATTEMPT TO COVER THE THING UP, WOULD IT HAVE BEEN MUCH EASIER TO CHANGE TRANSACTION DATA BY USING PRIVILEGED ACCESS RIGHTS? IF SO, IS THIS A PROBLEM?]. [WERE FORMAL PROCEDURES IN PLACE FORBIDDING THE USE OF PRIVILEGED USER RIGHTS (OR PRIVILEGED USER RIGHTS TO CHANGE BRANCH DATA) WITHOUT SPECIFIC AUTHORISATION, FROM SPECIFIED PEOPLE AT FUJITSU AND/OR AT POST OFFICE (AND IF SO, WHO WERE THOSE PEOPLE?)].

Post Office had never consented to the use of privileged user rights to alter branch data and, to the best of its information and belief, these rights have never been used for this purpose.

- (5) Post Office cannot conceive of a reason why any of the persons identified in subparagraphs [XX] above would have sought to add, inject, amend or delete any transactions in any branch accounts so as to create a false Shortfall. Post Office would never have consented to any of them making changes to branch accounts to generate false Shortfalls, it would have been practically impossible for any of them to generate significant Shortfalls without detection and, even if they had been able to do so, they would have been wholly unable to take the benefit of such Shortfalls for themselves.

48. As to paragraph 26, the statements referred to therein are admitted. The Post Office representatives who were responsible for the making of these statements [WHO WERE THEY?] made them believed that they were true. They were not aware of Fujitsu's ability to effect Balancing Transactions or the theoretical possibility that Fujitsu privileged user rights could be used to circumvent Horizon's data integrity controls and amend branch data. [CORRECT? IS IT CORRECT FOR ALL THE MEMBERS OF THE MEDIATION TEAM? IS IT CORRECT FOR ALL THE OTHER STATEMENTS THAT POST OFFICE HAS MADE ABOUT THE IMPOSSIBILITY OF REMOTE ALTERATION OF DATA IN RECENT YEARS, OR DID SOME OF THE PEOPLE RESPONSIBLE FOR THOSE STATEMENT AT SOME POINT KNOW ABOUT THE POSSIBILITY OF REMOTE ALTERATION AND HAD THEY FORGOTTEN?]

49. As to paragraph 27, it is admitted that by reason of the ability of Fujitsu's part to inject new transactions into branch accounts described in paragraph [XX] above and the

theoretical ability on the part of certain Fujitsu personnel to abuse their privileged user rights so as to amend or delete branch transaction data as described in paragraph [XX] above:

- (1) Horizon could be said to have the functionality to edit or delete transactions as recorded by branches; and
- (2) transactions as they are recorded by branches can be edited.

[IS THIS ADMISSION OF FALSITY INEVITABLE, OR CAN WE AND SHOULD WE BE SAYING ONLY THAT PRIVILEGED USER ACCESS RENDERS THESE STATEMENTS FALSE?]

50. As to paragraph 28, which is noted, without prejudice to the burden of proof the alleged inferences are inappropriate and each of them is specifically denied. Further:

- (1) Post Office responded to the allegations of “remote access” to branch data principally in the context of a claim by a particular Subpostmaster that he had in August 2008 observed a Fujitsu worker passing transactions directly into the Horizon system and altering the recorded foreign currency holdings of branches. This was alleged to have taken place in a basement of Fujitsu’s premises in Bracknell. Post Office ascertained No remote access or altering of branch data was possible from that location (which provided a test environment for an un-released version of Horizon and a test version of the then current version).
- (2) In making the statements referred to above, Post Office reasonably relied upon information provided to it by Fujitsu. [TO DISCUSS: WHETHER WE GO FURTHER AND REFER TO THE SPECIFIC FUJITSU ADVICE/INFORMATION THAT WE RELIED ON WHEN MAKING THESE STATEMENTS (AND MAYBE EVEN SAY THAT WE UNDERSTOOD IT IN A WAY THAT MAY NOT HAVE BEEN INTENDED)? THIS COULD HELP IN SHOWING THAT WE WERE NOT DISHONEST, NOR RECKLESS, NOR EVEN UNREASONABLE IN WHAT WE SAID, BUT NOTE THE FOLLOWING:

- THE RELEVANT ADVICE/INFORMATION CONTAINS ELEMENTS THAT COULD BE SAID TO GO THE OTHER WAY

(SEE (A) THE HORIZON CORE AUDIT PROCESS DOCUMENT OF 30/01/14 SUGGESTING THAT ALTERATION IS POSSIBLE WITH THE CREATION OF FURTHER AUDITABLE EVENTS, (B) THE PART OF THE FUJITSU EMAIL OF 17/04/14 SAYING THAT ADDITIONAL DATA CAN BE INSERTED AND (C) THE PART OF THE FUJITSU EMAIL OF DECEMBER 2014 SAYING THAT NEW TRANSACTIONS CAN BE ADDED). SEE ALSO THE FUJITSU EMAIL OF 23/10/08 – THE EMAIL WAS OLD, HOWEVER MISSED?);

- DELOITTE PROVIDED A BRIEFING TO THE POST OFFICE BOARD ON 04/06/14 SAYING THE OPPOSITE (HOW WAS THAT MISSED?); AND
- IS IT DEFINITELY THE CASE THAT THE STATEMENTS WERE MADE IN RELIANCE ON THE ADVICE/INFORMATION CONTAINED IN THE FIRST THREE DOCUMENTS REFERRED TO IN THE FIRST BULLET POINT ABOVE (THE A FUJITSU EMAIL OF 17/04/14 ? WE WOULD BE HAPPY FOR THE POINT TO BE CONFIRMED).

HAVING SAID THAT, IF WE RELY ON FUJITSU AT ALL, ALL THESE POINTS ARE BOUND TO COME OUT QUITE SOON IN ANY EVENT]

A.4 Helpline

51. Paragraph 29 is admitted [CORRECT?]. The Helpline was provided to Subpostmasters and their Assistants (including their Managers) principally to assist them with the operation of Horizon. Helpline operators had four weeks' training plus two weeks floor support, where their performance was monitored by more experienced staff. Post Office's practice was to address calls to the Helpline in accordance with the following processes [CHECK THAT THIS ACCURATELY DESCRIBING THE PRACTICE AT THE DATE WE HAVE CHOSEN AS PER PARA 4 ABOVE AND THAT IT IS CONSISTENT WITH THE FURTHER INFORMATION BEING COLLATED BY BOND DICKINSON]:

- (1) Helpline operators categorised the caller's query using an online system (now called "Dynamics" and previously called "Remedy") and to then provide advice by

reference to the Post Office “Knowledge Base”, an online resource which contained numerous articles and other guidance documents on various matters (but was not scripted).

- (2) If the Knowledge Base did contain sufficient information to allow the operator to address the query, the next step was for the query to be escalated to a second tier of more experienced staff.
- (3) If the second-tier adviser could not respond in a satisfactory way to the query, he or she would seek assistance from the relevant Post Office product team, such as [EXPLAIN/IDENTIFY THE PRODUCT TEAMS. DID THEY INCLUDE FUJITSU (NOW ATOS)? IF NOT, WHERE DID THEY FIT IN? WERE THEY A FOURTH TIER OF HELP?]
- (4) If, after all these steps, no satisfactory response had been given, Post Office would consider whether to organize a visit to the branch and/or further training for the Subpostmaster and/or Assistant concerned.
- (5) Post Office was able and willing to provide further assistance to Subpostmasters whose problems could not be addressed adequately through the Helpline notwithstanding the Subpostmaster’s best efforts to resolve the problem. It is for any Subpostmaster who asserts that inadequate assistance was provided to identify, amongst other things, the steps that he or she took to obtain further advice, assistance and/or training.

52. Paragraph 30 makes allegations to which Post Office cannot meaningfully respond at the pleaded level of generality. Post Office will respond to properly particularised claims if and when they are made, but the general thrust of the allegations is denied. Further:

- (1) The Helpline operated between the following hours in the following periods:
 - (a) between 1999 and 2006, from 8am to 6pm on weekdays other than Wednesdays (the usual day for branch balancing processes), 8am to 10pm on Wednesdays and 8am to 5.30pm on Saturdays;
 - (b) between 2006 and 2008, from 8am to 6pm on weekdays other than Wednesdays (the usual day for branch balancing processes), 8am to 8pm on Wednesdays and 8am to 5.30pm on Saturdays;

- (c) between 2006 and [XX], from 8am to 6pm on weekdays other than Wednesdays (the usual day for branch balancing processes), 8am to 8pm on Wednesdays and 8am to 2pm on Saturdays; and
 - (d) between [XX] and 2016, 6am to 11pm Mondays to Saturdays and 7am to 5pm on Sundays and bank holidays.
- (2) There have been periods where the Helpline was more difficult to contact than in other periods.
 - (3) Helpline operators did not give script-based responses.
 - (4) Helpline operators were not, at any time, instructed to provide misleading information and Post Office notes that they would have had no reason to do so.
 - (5) Post Office notes that there are circumstances in which it can be appropriate to advise a Subpostmaster that a discrepancy should sort itself out.
 - (6) Post Office cannot conceive of a situation in which a Helpline operator would encourage a Subpostmaster to produce and confirm a Branch Trading Statement which the Subpostmaster did not believe to be correct.
 - (7) It was not a Helpline operator's function and he or she would not have been qualified to discuss matters such as those referred to in paragraphs [XX] above. Nor were they in a position to review and advise callers as to the experience of and the incidence of particular problems suffered by all users of Horizon or of the Helpline.
 - (8) [CAN WE SAY ANYTHING IN RESPONSE TO THE THREE SPECIFIC "YOU ARE THE ONLY ONE" CASES IDENTIFIED IN THE RESPONSE TO REQUEST 3 OF THE RFI?]
 - (9) Post Office notes that, in the GPoC, the Claimants have not indicated and, if so, how each of the matters alleged in paragraphs 30.1 to 30.7 is alleged to have caused any Claimants any loss.

A.5 Investigations

- 53. Post Office cannot meaningfully respond to the allegations set out in paragraph 31 for the following reasons:

- (1) The paragraph makes allegations said to apply generally across “investigations, audits or similar enquiry” in circumstances where investigations are fundamentally different processes (involving different Post Office personnel, procedures and guidance) from audits and where the use of the term “similar enquiry” is embarrassing for vagueness and is likely to be misleading.
 - (2) The reference to “investigators” is misplaced and/or so ambiguous as to make the allegations incapable of meaningful response.
 - (3) The information and instructions that are alleged to have been provided to “investigators” are expressed at such a high a level of generality that it is impossible to assert any generic case as to what “investigators” were told and/or otherwise knew in any potentially relevant period.
 - (4) Post Office will, as appropriate, respond to any particularised allegations as to specific enquiries, audits and investigations when such allegations are made.
54. Without prejudice to the foregoing, regarding the “investigators” referred to in paragraph 31:
- (1) An audit was (and is) a process conducted by the [WHAT?] team within Post Office. These persons were not referred to as investigators. An audit was typically ordered where Post Office was concerned that the Subpostmaster and/or one or more Assistants were failing properly to account to Post Office. For example, Post Office could commence an audit of a branch where [...].
 - (2) Post Office could also conduct enquiries into a branch’s operations without undertaking an audit. The persons involved in such enquiries on behalf of Post Office were [...]. These persons were not referred to as investigators. Such enquiries could involve branch visits.
 - (3) The main role of Post Office’s Investigation Division was (and is) to investigate (and/or to assist the police to investigate) suspected criminal offences. Persons in the Investigation Division sent to branches to carry out enquiries were referred to as investigators. In many instances, their enquiries were focused on suspected criminal offences by persons other than Subpostmasters and Assistants (such as cases of third party theft of cash and/or stock from a branch).

55. Save as aforesaid, the general thrust of paragraph 31 is denied [CAN WE SAFELY DENY EACH AND EVERY ALLEGATION IN PARAS 31.1 TO 31.5 – EVEN THE ALLEGATION THAT INVESTIGATORS WERE NOT TOLD ABOUT BUGS ETC OR ABOUT REMOTE ACCESS?]. Further:

- (1) The persons undertaking the audits, enquiries and investigations referred to in paragraph [XX] above were experienced individuals with a good knowledge of the operation of Horizon and of the experience of Horizon users [CORRECT?].
- (2) It is denied that any of those persons identified above were not instructed to seek the true cause of Shortfalls (or rather, it is denied that they were instructed not to seek out the true cause of Shortfall, as appears to be the intended allegation) [CORRECT?].
- (3) It is denied that any of those persons was instructed to disregard possible problems with Horizon as a possible cause of Shortfalls [CORRECT?].
- (4) The alleged “organisational culture or practice” is specifically denied [CORRECT?].

The effect of false accounting and similar misconduct

56. In all cases relating to branches in which the Subpostmaster and/or a [Manager and/or] Assistant falsified accounts and/or made false declarations of cash and/or stock, Post Office will contend as follows:
57. As regards the true accounting position as between Post Office and the relevant branch, the Court should make against the Claimant all presumptions of fact as are consistent with the other facts as proven or admitted.
58. The fact of false accounting and/or false declarations would, in many instances, make it impossible or excessively difficult for Post Office to identify or assist in the identification of the likely cause(s) of a Shortfall. Post Office would typically be unable to place reliance on the branch’s accounts and declarations in seeking to identify the date(s) on which the Loss(es) giving rise to the Shortfall were likely to have arisen or otherwise localise the probable causes of the Shortfall.
59. As regards any enquiries and/or investigations into the causes of a Shortfall, Post Office was required to take relatively limited steps in the discharge of its express and implied

duties to the relevant Subpostmaster. Post Office could not reasonably be expected to devote considerable resources to investigating factual circumstances that were, as a result of dishonest conduct, impossible or excessively difficult properly to investigate. It would be principally for the Subpostmaster to demonstrate that, notwithstanding the false accounts and/or declarations, the cause of the Shortfall was a Loss (or Losses) for which he was not responsible.

60. Post Office was entitled to suspend and/or terminate the appointment of any Subpostmaster who engaged in dishonest conduct and/or breached his contractual obligations in relation to preventing and/or reporting dishonest conduct by his Assistants and/or third parties, as pleaded further immediately below.

A.6 Terminations

61. In the relevant period, Post Office terminated the appointments of Subpostmasters (including certain Claimants) for one or more of the following reasons:
- (1) Failure to make good Shortfalls.
 - (2) Failures properly to prepare and preserve accounts and other records as required by the agreements.
 - (3) False accounting, including the submission of false declarations as to cash and/or stock.
 - (4) Other dishonesty in the conduct of Post Office business.
 - (5) Post Office formed the view that it did not wish to continue to its contractual relationship with the Subpostmaster and so elected to terminate the agreement on notice.
62. As regards Post Office's rights of termination and suspension in response to dishonesty, Post Office relies on the following express terms:
- (1) Clause 19.1 of the SPMC, stating as follows:

Dishonesty is view most seriously and any Subpostmaster or Sub-Office Assistant believed to have carried, or taken part in, an act of dishonesty against Post Office Counters Ltd may be prosecuted. Furthermore, any Subpostmaster so involved renders himself liable to summary

termination of his contract. The case of an Assistant Post Office Counters Ltd may recommend to the Subpostmaster that the Assistant should no longer remain in his employ on Post Office Counters business.

- (2) Appendix 1 of the Temporary SPMC, setting out requirements as to the employment of Assistants (including that Post Office may require a Subpostmaster to cease employing an identified Assistant) and stating at paragraph 3 as follows:

Where the Subpostmaster fails to comply with any of these terms, he may be deemed to be in breach of his Contract which will then be liable to termination.

- (3) Clause 3.1 of the NTC, stating as follows:

The Operator shall:

...3.1.2 act honestly at all times in the operation of the Branch. Any failure by the Operator to comply with this clause 3.1.2 shall be deemed to be a material breach of the Agreement which cannot be remedied.

- (4) [THE FRANCHISE AGREEMENT DOES NOT HAVE SUCH A TERM, DOES IT?]

63. Post Office will also contend that:

- (1) Any act of dishonesty by a Subpostmaster in the operation of the branch was a material breach of contract that justified suspension and/or termination in accordance with the common law and/or the express provisions of the agreements as to material breach.
- (2) Any Subpostmaster that continued to employ on Post Office business an Assistant who he knew to have acted dishonestly in that regard committed a material breach of contract that justified suspension and/or termination in accordance with the common law and/or the express provisions of the agreements as to material breach.
- (3) Any Subpostmaster that acted dishonestly in the operation of the branch and/or in his dealings with Post Office was in breach of his fiduciary obligations to Post Office as principal.

64. The reasons for which any particular Subpostmaster's appointment was terminated will be provided in response to any particularized allegation from such a Subpostmaster to the effect that such termination was not lawful.
65. For the avoidance of doubt, Post Office had at all times an unqualified right to terminate the appointment of a Subpostmaster on notice and without cause. Post Office relies in this regard on the provisions pleaded at paragraph [...] below.
66. Paragraph 32 is otherwise denied. For the avoidance of doubt, Post Office did not terminate the appointment of any Manager or Assistant (in any case), and it did not terminate the employment of any Crown Office employee for the reasons set out in paragraph 32.
67. Post Office was entitled to require a Subpostmaster to remove an Assistant from the conduct of Post Office business in accordance with the express terms of the agreements, as follows:

- (1) Clause 15.13 of the SPMC, stating as follows:

[INSERT]

- (2) Under part 8 of Appendix 1 to the Temporary SPMC, stating as follows:

Where Post Office Ltd has good reason to believe that it would not be in its best interests for a particular Assistant to be engaged on Post Office business or to have access to any part of the Post Office branch it will be entitled to require the Subpostmaster to refrain from employing that Applicant on Post Office business if not already employed, or to ensure that the Applicant is not further employed on Post Office business is already employed.

- (3) Clauses 2.2, 2.9 and 16.3 of the NTC, stating as follows **[ARE THESE THE BEST REFERENCES? IS THERE ANYTHING IN THE MANUAL THAT MAKES THIS CLEARER?]**:

[INSERT]

- (4) Clauses 7(D)(iv) and 19(E) of the Franchise Agreement, stating as follows **[ARE THESE THE BEST REFERENCES? CAN WE SEE THE RELEVANT PARTS OF THE FRANCHISE MANUAL, PLEASE?]**:

INSERT

68. Paragraph 33 is noted.

A.7 Context and Effect on Claimants

69. Save as set out below, paragraph 34 is denied:

(1) Post Office can neither admit nor deny, and requires the relevant Claimants to prove that they felt that they had no choice other than to either (i) make good Shortfalls or (ii) knowingly sign off incorrect Branch Trading Statements and commit the criminal offence of false accounting.

(2) It is denied that any such feeling was reasonable (whether in the circumstances pleaded by the Claimant or in those pleaded by Post Office). Subpostmasters were able to dispute Shortfalls as pleaded at paragraphs [...] above.

(3) It is denied that it was, under any circumstance, reasonable for a Claimant to sign off incorrect Branch Trading Statements. Any such conduct was in breach of (i) clause 12.3 of the SPMC and/or clause 6.6 of the Temporary SPMC [referring to the Manual] and/or clause 3.6 of the NTC and/or clause 12 of the Franchise Agreement, as relevant to any particular Claimant and/or (ii) the fiduciary duty of the Subpostmaster or Temporary Subpostmaster as agent to account to Post Office as principal.

70. Further, where a Subpostmaster signed off incorrect Branch Trading Statements in the knowledge that such statements were incorrect (or being reckless as to this), such conduct was dishonest and/or in breach of the Subpostmaster's fiduciary duty of loyalty to Post Office. Post Office will, in appropriate cases, rely on convictions and/or admissions from Subpostmasters or Temporary Subpostmasters as to false accounting and/or other statements from Subpostmasters or Temporary Subpostmasters amounting to admissions of deliberate breach of the duties set out in this and the preceding subparagraph.

71. All Subpostmasters are bound by the accounts that they signed off and may not, without proving such accounts to be mistaken, now (i) challenge or (ii) seek to avoid or (iii) seek any relief in relation to the payment(s) made to Post Office in accordance with those accounts (including in making good Shortfalls). The same principle applies to cash and stock declarations made by the Subpostmaster to Post Office.

72. It is denied that the matters set out in paragraph 35, even were they correct, would create any justification for signing off incorrect Branch Trading Statements or be relevant to the legal consequences of such conduct and/or provide any support for a challenge to payments made by Subpostmasters to Post Office in order to make good Shortfalls. As to the subparagraphs of paragraph 35:
- (1) Subparagraph 35.1 is admitted.
 - (2) Subparagraph 35.2 is denied. Paragraph [...] above is repeated.
 - (3) Subparagraph 35.3 is denied. Paragraph [...] above is repeated.
 - (4) Subparagraph 35.4 is denied. Paragraphs [...] and [...] above are repeated.
 - (5) Subparagraph 35.5 is denied. Post Office had in place processes for addressing disputes over Shortfalls, as pleaded at paragraphs [...] above, and did not require payment while those processes were ongoing. Further, in some instances, Post Office permitted a Subpostmaster to remain in position without making good a Shortfall even where it considered the amount to be due. For example, [ANY CLAIMANT WHO STAYED IN PLACE FOR YEARS DESPITE NOT PAYING UP?].
 - (6) The allegation in subparagraph 35.6 cannot meaningfully be the subject of a generic response. It is likely that some Claimants were advised that apparent Shortfalls may be resolved by pending transactions or Transaction Corrections, as such advice may well have been appropriate.
 - (7) The general thrust of subparagraph 35.7 is denied. Post Office cannot admit or deny and requires the Claimants to prove their individual financial circumstances and the relevance of the same to their allegations. Post Office reserves its right to allege, in appropriate cases, that the Claimant stole cash and/or stock that it held as agent for Post Office.
 - (8) Subparagraph 35.8 is denied for the reasons pleaded at paragraph [...] below.
73. As to paragraph 36:

- (1) It is admitted that, in general and subject to any argument or evidence to the contrary, Post Office would assume dishonest conduct where false accounts had been submitted.
 - (2) It is denied that it was unfair, flawed or irrational to infer dishonesty from the submission of false accounts. The natural inference from an agent's decision to prepare false accounts is that the agent is aware that the true accounts (which have not been prepared and/or provided to the principal) would demonstrate a liability to the principal that the agent wishes to avoid. A decision to render false accounts is a breach of the fundamental duty of loyalty owed by an agent to his principal and is dishonest.
 - (3) It is denied that Post Office drawing such an inference amounted to a breach of any duty owed by Post Office to any of the Claimants. It is noted that no duty is pleaded.
74. The factual allegations pleaded in paragraph 37 are denied for the reasons given above. It is denied that the pleaded legal consequences follow from those allegations (even were they correct). Post Office does not understand and cannot plead to the alleged relevance of the legal concepts pleaded in paragraph 37 to any cause of action asserted by the Claimants or some of them. It is noted that no breach of contract by Post Office is particularised. It is noted that no duty to disclose matters to Claimants is pleaded.

A.8 The Defendant's Suspense Accounts

75. At all material times, Post Office operated suspense accounts relating to clients. A typical situation in which the amount held in a suspense account would increase is as follows:
- (1) A client, such as a bank, makes a payment to Post Office that exceeds the payment that Post Office considers is due.
 - (2) Post Office does not reach agreement with the client as to the amount due and the client does not take repayment of the apparent overpayment.
76. Amounts held in suspense accounts and not resolved within 3 years would ultimately be credited to Post Office's profit and loss account.

77. The operation of a suspense account in this way is unremarkable and reflects ordinary business practice. It is to be expected that, in a business carrying out millions of transactions per year, there will be small differences (positive or negative) between the entries shown in the accounts and the amounts received from or provided to the relevant counterparties.
78. Post Office could in principle benefit from a Horizon-Generated Shortfall in the following outline circumstances:
- (1) A Horizon-Generated Shortfall is made good by the Subpostmaster.
 - (2) [WHAT HAS TO HAPPEN IN TERMS OF THE CLIENT-POST OFFICE ACCOUNTING AND PAYMENTS?]
 - (3) Post Office is unable to attribute the apparent overpayment to the transactions, identify the error and correct the position as between Post Office and the Subpostmaster.
 - (4) The amount of the overpayment remains unresolved for 3 years and is ultimately credited to the profit and loss accounts.
79. For the avoidance of doubt, Post Office is not aware of any such benefit ever having accrued to Post Office. Further, Post Office's processes would tend to prevent any such benefit arising:
- (1) Post Office seeks to resolve any overpayments with clients.
 - (2) Clients are typically able to identify the transaction(s) to which the apparent overpayment relates.
 - (3) Post Office compares its own transaction records with those of the client and seeks to identify any error that might explain the discrepancy between the two sets of records.
 - (4) If Post Office discovers through this process that its own record of the transaction(s) is incorrect, it seeks to correct its records.

- (5) In that circumstance, Post Office corrects its account both as regards the client and as between itself and the relevant Subpostmaster(s). It may, for example, issue Transaction Corrections.
- (6) [WHAT ABOUT IF WE KNOW THE OVERPAYMENT IS EFFECTIVELY DOUBLE PAYMENT FOR SOMETHING FOR WHICH WE HAVE RECOVERED FROM THE SUBPOSTMASTER AS A SHORTFALL BUT WE DO NOT REPAY THE CLIENT? DOES THAT HAPPEN?]

80. Save as set out in paragraphs [...] to [...] above, paragraphs 38 and 39 are denied.

B. CONTRACT TERMS - SUBPOSTMASTERS

81. Paragraph 40 is noted. Post Office will rely at trial on the full contractual terms in force at any and all material times between Post Office and the relevant Claimant (if any). These terms will differ from time to time across the relevant period of time as pleaded above at paragraphs [...] above.

B.1 Factual Matrix

82. Post Office asserts that the following matters are important factual matrix to the construction of the SPMC:

- (1) Subpostmasters stood to benefit from the relationship with Post Office in two important respects: first, by obtaining remuneration in accordance with the parties' agreement and, second, by the provision of Post Office services in the Subpostmaster's premises creating increased shortfall and revenue for any retail business operated alongside the Post Office business.
- (2) A Subpostmaster, whether a natural person or a company, contracted with Post Office on a business to business basis and in the expectation of profiting directly and, in many instances, indirectly from the business relationship as pleaded immediately above.
- (3) Subpostmasters were under no obligation and no pressure to contract with Post Office on the terms that it offered.
- (4) Post Office was unable to monitor at first hand the transactions that occur in branches and in relation to which Post Office is liable to counterparties.

- (5) Post Office was unable to monitor at first hand the use of its property (principally, cash and stock) in branches.
 - (6) Post Office was accordingly required to place its trust in the honesty, diligence and competence of the persons who contracted with it in order to operate branches on its behalf and as its agents.
 - (7) Given the variety of transactions and processes required for the operation of a Post Office branch, it would be impracticable for all of the parties' rights and obligations to be set out in a single contractual document. The parties therefore would have to rely upon manuals and other documents containing instructions and guidance, some of which would have the force of contract.
83. Paragraph 41 is admitted.
84. Paragraph 42 is denied. At the time of contracting:
- (1) The Subpostmaster was at no disadvantage relative to Post Office. Each of Post Office and the Subpostmaster was free to contract or not contract with the other and took an unconstrained and self-interested commercial decision in that regard.
 - (2) There was no relationship between the parties that could be subject to a relational imbalance.
85. It is admitted and averred that some Subpostmasters, in order to put themselves in a position to discharge their obligations to Post Office, took some or all of the steps set out in paragraph 43. The extent to which any or all of those steps were, in any individual case, taken by the Subpostmaster with a view to any long term relationship with Post Office (as opposed to other matters such as the furtherance of an associated retail business) will be a matter for each Claimant to plead and prove.
86. Further as to paragraph 43, it was a matter for the potential Subpostmaster to assess the commercial risk and reward involved in contracting with Post Office and putting itself in a position to comply with its obligations to Post Office (along with the commercial risk and reward of operating an associated retail business), including with regard to the express terms of the agreement(s) as to duration and the circumstances in which it could be terminated.
87. Further, in relation to the subparagraphs of paragraph 43:

- (1) [DO THEY MEAN THE RETAIL BUSINESS OR THE POST OFFICE BUSINESS? I DON'T FOLLOW THIS – THIS APPLIES TO SUBPARAS 1 AND 2]
- (2) It is denied that there was any contractual obligation or practical need for a Subpostmaster to take up residential accommodation on the premises used to provide the Post Office services or in linked premises. It was a matter for a Subpostmaster what personal and other arrangements to make in order to be in a position to discharge its obligations to Post Office. Subparagraph 43.3 is accordingly denied.
- (3) As to subparagraph 43.4, it was a matter for a Subpostmaster to decide to what extent to employ Assistants to assist in the discharge of its contractual obligations to Post Office and (subject to clauses 15.3 to 15.4 of the SPMC and/or clauses 5.1 to 5.2 of the Temporary SPMC and/or clause 2.9 of the NTC) to decide on what terms to engage such persons.
- (4) Save as follows, subparagraph 43.5 is admitted: (i) Post Office provided, at its own expense, training to Managers and Assistants in accordance with clauses 2.3 to 2.8 of the NTC [WHAT ABOUT UNDER THE SPMC – I CANNOT SEE EQUIVALENT PROVISIONS] and (ii) Post Office made available further training to Assistants upon request from Subpostmasters and/or in accordance with clauses 2.11 to 2.12 of the NTC. Any Claimant that contends that it spent significant amounts of money on the initial training of Assistants is required to prove the provision of the training and the amounts of money spent on such training.
- (5) [WE NEED INSTRUCTIONS ON THE 25% POINT]
- (6) Subparagraph 43.7 is admitted. [UNDER THE SPMC, THIS LOOKS TO HAVE BEEN THE SPM'S RESPONSIBILITY –SEE SECTION 13; BUT THE COSTS APPEAR TO HAVE BEEN SHARED UNDER THE NTC – SEE PART 7].

88. As to paragraph 44:

- (1) Save as admitted and averred in this Generic Defence, the relationship between individual Subpostmasters and Post Office is governed by the express and implied terms of the contracts between them.

- (2) It is denied, if alleged, that the practical need for communication, cooperation and mutual trust and confidence is relevant to the legal analysis of the parties' relationship, save to the extent that the same is relied upon in order to support the implication of a contractual term (in which circumstance proper particulars as to the grounds for implication should be pleaded).
89. It is admitted and averred that the SPMC, Temporary SPMC and NTC all state expressly that Subpostmasters are not employees of Post Office. Subpostmasters are not and have not at any material time been employees of Post Office. Further:
 - (1) It is denied that the terms pleaded at paragraph 45 alter the fact that Subpostmasters were engaged by Post Office as its agent (subject to the terms of the agreements) and not as employees.
 - (2) Post Office relies also in this regard on the absence of any general requirement for personal service: see clause 1.5 of the SPMC, clause 2.7 of the Temporary SPMC and clause 3.1.4 of the NTC.
 - (3) Save as set out above, paragraph 45 is denied.
90. Paragraph 46 is noted.

B.2 Written Terms

91. As to paragraph 47:
 - (1) It is admitted and averred that the parties, by the contracts between Post Office and Subpostmasters, granted Post Office a high degree of discretion, power and control.
 - (2) It is denied that Post Office is, under the agreements with Subpostmasters, subject to very few express obligations. In the absence of any particularised allegation in this regard, Post Office does not plead further in this Generic Defence.
 - (3) Paragraph 47 is otherwise denied.
92. In relation to the Claimants' knowledge of the terms of the written contract between them and Post Office:
 - (1) In accordance with Post Office practice at all relevant times every Subpostmaster was provided with a copy of the written terms of the agreement with Post Office

and was required to sign a document recording his agreement to its terms. Post Office therefore denies the general thrust of the allegation in paragraph 48.

- (2) If any Subpostmaster alleges that he did not obtain a copy of the written terms of his agreement, Post Office will respond to that allegation on the facts of that case.
- (3) The allegation that Post Office did not draw a Claimant's attention to "onerous or unusual terms" is unparticularised and cannot properly be pleaded to in this Generic Defence. Without prejudice to that contention, it is denied that any of the terms alleged by the Claimants to be onerous and unusual were such. It is further denied that Post Office was under any obligation to draw a Claimant's attention to any such terms.

93. Paragraph 49 is denied. Specifically:

- (1) The agreements are to be construed as a whole and in light of the relevant matrix of fact. Post Office relies upon its pleading of the matrix of fact (at the generic level) at paragraph [redacted] above.
- (2) It is denied that the agreements are to be construed presumptively against Post Office in accordance with the principle of *contra proferentem* or any like principle. The Claimants have not identified any ambiguity in the written terms that they contend should be resolved (as a last resort) in accordance with any such principle. Subparagraph 49.2 is denied.
- (3) It is denied that the agreements are "relational contracts" in the sense alleged by the Claimants or any sense. It is further denied that the classification of the agreements as such would affect their construction or effects. It is denied that the express terms of the agreement should be construed in accordance with the alleged implied terms. Any term that it is alleged should be implied must be consistent with the express terms properly construed.
- (4) It is denied that any of the terms identified by the Claimants is unenforceable.
- (5) It is admitted that the conditions for the application of the Unfair Contract Terms Act 1977 are met. It is denied that any of the terms identified by the Claimants is affected by the application of that Act.
- (6) Save as set out above, the subparagraphs of paragraph 49 are denied.

94. Paragraph 50 is denied. The Claimants have not identified any grounds on which to allege that the written terms did not represent the true agreement between the parties (whether in relation to the right to terminate on notice or at all).

Rules, Instructions and Standards

95. It is admitted and averred that, in accordance with the terms of the SPMC, the Temporary SPMC and the NTC, pleaded at paragraph 51, Subpostmasters were required to comply with (and were required to procure compliance by Assistants with) the rules and instructions set out in the documents to which the provisions referred and/or as were notified to Subpostmasters in accordance with the agreements. It is admitted and averred that the pleaded terms form part of the pleaded agreements in each case. Save as set out in this paragraph, paragraph 51 is denied as an inaccurate characterization of the rules, instructions and standards.
96. It is noted that the Claimants have not pleaded any rules, instructions or standards that they contend caused or contributed to any breach of contract or other legal wrong. If and to the extent that the Claimants rely upon alleged failings in rules, instructions or standards and/or the meaning and effect of the terms incorporating the same, they should provide proper particulars.
97. Post Office cannot plead generically as to the thousands of pages of potentially relevant documents and will plead and rely upon such parts of the operating manuals, rules, instructions and standards as are pertinent to the claims asserted by individual Claimants.
98. [SHOULD WE PLEAD ANY KEY PROVISIONS IN THIS REGARD? DID WE RELY ON THE MANUALS IN DECISIONS TO TERMINATE, FOR EXAMPLE?]

Classes of Business

99. It is admitted and averred that the pleaded terms formed part of the relevant agreements and had the effect of providing a discretion to Post Office to change the classes of business required to be undertaken at branches (and on the terms as to notice set out in the agreements, if any). Paragraph 52 is otherwise denied.

Agency

100. It is admitted and averred that, in accordance with the SPMC, the Temporary SPMC and the NTC, Subpostmasters accepted appointment as agents of Post Office. Further, save to the extent of any modification by the terms of the agreements:
- (1) The legal relationship between Post Office and Subpostmasters is that of principal and agent.
 - (2) Subpostmasters owe an overarching duty of loyalty to Post Office as principal.
 - (3) Subpostmasters owe fiduciary duties to Post Office in relation to the discharge of functions on Post Office's behalf and/or handling Post Office resources and/or generating liabilities for Post Office, including as to the control of Post Office stock and cash, the effecting and recording of Post Office transactions, the preparation and presentation of accounts, the supervision of Assistants and the maintenance of complete and accurate records.
101. For the avoidance of doubt, Post Office will rely upon the following principles:
- (1) Any dispute as to the accuracy of accounts prepared and approved by Subpostmasters is to be determined in accordance with the rule that an agent is bound by his account unless he can show it to have been mistaken.
 - (2) Post Office may assert an estoppel to prevent a Subpostmaster denying the truth of cash and stock declarations that he or she made to Post Office.
 - (3) A Subpostmaster is estopped from re-opening and/or seeking to amend the account between himself and Post Office where, by reason of delay or otherwise, it would now be inequitable for the account to be re-opened.

Accounts and Liabilities for Loss

102. It is admitted and averred that terms pleaded at paragraph 54 form part of the relevant agreements and that they, in general terms, impose on Subpostmasters wide ranging and general responsibility for losses.
103. It is denied that such terms were applied as alleged. The pleaded allegations are imprecise with regard to the nature of the alleged liability and do not reflect the terms of the agreements.

104. Under the SPMC:

- (1) In accordance with clause 12.12, Subpostmasters were, subject to the possibility of relief, responsible for all Losses caused by their Assistants.
- (2) In accordance with clause 12.12, Subpostmasters were, subject to the possibility of relief, responsible for all Losses due to their own negligence, carelessness or error.
- (3) Subpostmasters could apply for relief in accordance with clauses 12.17 and 12.18
- (4) In accordance with the final sentence of clause 12.12, Subpostmasters were liable for all Shortfalls resulting from Losses for which they were responsible in accordance with that clause and the relief provisions (where applicable).

105. Under the Temporary SPMC:

- (1) [I CANNOT SEE ANY RELIEF PROVISIONS]
- (2) [WHAT WAS THE POSITION IN PRACTICE?]

106. Under the NTC:

- (1) In accordance with clause 4.1, Subpostmasters were not liable for losses arising from the criminal acts of third parties other than persons engaged by the Subpostmaster that could not have been prevented or mitigated by following Post Office's security procedures or by taking reasonable care.
- (2) In accordance with the final sentence of clause 4.1, Subpostmasters were liable for all Shortfalls resulting from Losses for which they were responsible in accordance with that clause and the Manual (as defined).

107. Further, in relation to accounting to Post Office, Subpostmasters owed the fiduciary duties pleaded at paragraphs [...] above and were and are bound by their accounts unless they can show such account to be mistaken.

108. In relation to paragraph 55, Post Office pleads only to the allegation as it relates to clause 12.12 of the SPMC. It does not plead to the unparticularised and vague allegation as to "similar clauses". On the proper construction of clause 12.12:

- (1) Subject to the possibility of relief, the Subpostmaster was responsible for all Losses that he could not show (i) resulted from his actions, rather than those of his Assistants(s) and (ii) were caused without negligence, careless or error.
 - (2) The Subpostmaster was liable for all Shortfalls resulting from Losses for which he or she was responsible in accordance with that clause and the relief provisions (where applicable).
109. If and to the extent that the Subpostmaster alleges that a Loss shown in the accounts submitted to Post Office is not a “real loss”, Post Office relies on the principles pleaded at paragraph [...] above.
110. Further, if a Subpostmaster alleges that amounts for which he was held liable were not amounts due under clause 12.12 of the SPMC, he bears the burden of proving that assertion.
111. It is denied that Post Office owed any obligation (save to the extent required on the facts by the duties pleaded at paragraph [...] [THE DUTIES OF COOPERATION]) to enquire as to whether or not a Loss would “represent a real loss” to Post Office:
 - (1) Subpostmasters were liable under clause 12.12 of the SPMC for Shortfalls, rather than Losses.
 - (2) Clause 12.12 of the SPMC contains no words tying the concept of a “loss” to economic detriment to Post Office.
 - (3) Clause 12.12 of the SPMC contains no words that might create a duty to enquire.
 - (4) No grounds for the implication of terms are pleaded.
112. It is denied that clause 12.12 of the SPMC could not, as a matter of construction, be relied upon where a “loss” was caused or contributed to by any breach of duty by Post Office:
 - (1) The clause contains no words referring to any such limitation.
 - (2) The limitation is vague and imprecise and is not rendered sufficiently clear by any words in the clause or elsewhere in the SPMC.
 - (3) No grounds for the implication of terms are pleaded.

113. Save as set out above, paragraph 55 is denied.

Assistants

114. It is admitted and averred that the contracts between Subpostmasters and Post Office provide that Subpostmasters are liable for the acts of their Assistants. Subpostmasters, as agents to Post Office and generally, are responsible for the acts and omissions of persons whom they choose to employ and trust with Post Office business, including access to and control over Post Office stock, cash and transactions.

115. It is denied that Post Office bears no or only minimal obligations as to training Assistants. Post Office admits and relies upon the express terms pleaded at paragraph 56. The obligations pleaded in that paragraph are not minimal. Specifically:

- (1) Post Office was required under the agreements to provide initial training to Assistants and/or to provide to Subpostmasters training materials that were adequate for the provision of initial training of Assistants. Post Office relies on section 7 of the Operations Manual (incorporated by reference in the SPMC from 1994 to 2006), specifically the words pleaded at paragraph 56.1(b), [insert] clause of the SPMC as amended from July 2006, and clause 2.3 of the NTC.
- (2) Further, the effect of the implied terms pleaded at paragraph [...] was to require Post Office to render such cooperation to Subpostmasters as was necessary to the discharge of their obligations as to the training of Assistants. If and to the extent that adequate training could not be provided without the cooperation of Post Office and a Subpostmaster requested assistance in this regard, Post Office would be required to (i) provide guidance to the Subpostmaster in relation to training and/or (ii) provide training materials to the Subpostmaster for use in training and/or (iii) cooperate in the provision of training by the Subpostmaster and/or (iv) provide training directly to Assistant, as the circumstances of each situation may require.
- (3) Post Office discharged its obligation in this regard throughout the relevant period. For instance (but without limitation) Post Office provided additional training in relation to new products, provided *ad hoc* training in response to queries and concerns raised by Subpostmasters and, where it perceived an urgent need for training for Assistants and/or Managers, exercised its right under clause 2.11 of the NTC to deliver remedial training.

116. The Subpostmaster is ultimately responsible for providing or procuring the provision of such training as is necessary to enable the Assistant to discharge his or her functions properly and assist the Subpostmaster in discharging his or her obligations to Post Office. Post Office relies on clauses 15.7.1, 15.7.3 and 15.7.4 and Appendix 1, Section 2 of the SPMC (as amended in July 2006), clause 5.1 of the Temporary SPMC and clauses 2.2.3 to 2.2.8 of the NTC.
117. Further, it follows from the Subpostmaster's obligations as pleaded immediately above and at paragraphs [...] of this Generic Defence that where a Subpostmaster considered that an Assistant was not, without further training, able properly to discharge his or her functions in relation to Post Office business, the Subpostmaster was required to:
- (1) notify Post Office that the Assistant was not, at that time, so able;
 - (2) where further training may resolve the situation, provide or procure the provision of such training, as appropriate;
 - (3) or, where further training could not resolve the situation (and/or had failed to do so), to cease to engage the Assistant on Post Office business.
118. There was in the Temporary SPMC no express obligation on Post Office in relation to its provision of training and/or training materials. In practice, Post Office typically [WHAT HAPPENED?].
119. Save as set out at paragraphs [...] above, paragraph 56 is denied.
120. Paragraphs 57 and 58 are admitted.

Access to Branch Accounts and Records

121. Paragraph 59 is admitted. The contractual terms pleaded in paragraph 59 are admitted and relied upon.
122. Post Office also had a common law right (as principal) to inspect and/or obtain copies of the accounts and records retained by the Subpostmaster (as agent) in relation to its business.

Suspension

123. The SPMC, Temporary SPMC and the NTC all provided a right for Post Office to suspend the Subpostmaster.
124. As regards the SPMC, Post Office relies upon the terms pleaded at paragraph 60.1 (which are admitted and averred).
125. As regards the Temporary SPMC, Post Office relies upon:
- (1) A common law right (as principal) to direct the Temporary Subpostmaster (as agent) to desist from carrying out business on its behalf.
 - (2) Further or alternatively, an implied term (implied as being necessary for the business efficacy of the agreement and/or as being so obvious as to go without saying) that Post Office may suspend a Temporary Subpostmaster in circumstances where he or she is suspected of misconduct and such misconduct is under investigation.
- [WOULD THIS COVER THE CIRCUMSTANCES IN WHICH SUCH SUSPENSION OCCURRED?]**

126. As regards the NTC, Post Office relies upon the terms pleaded at paragraph 60.3 (which are admitted and averred).

Termination - Notice

127. Under the agreements, Post Office was entitled to terminate a Subpostmaster's appointment on notice and without cause. The Subpostmaster too was entitled to terminate the agreement on notice and without cause, subject to the same notice period. Post Office relies upon the following terms:
- (1) Clause 1.10 of the SPMC, providing as relevant: "*Should the Subpostmaster desire to resign his office he must give three calendar months' notice in writing... The Agreement...may be determined by [Post Office] on not less than three months' notice*".
 - (2) Clause 2.4 of the Temporary SPMC, providing as relevant: "*The Contract will...continue thereafter until the expiry of not less than 7 days' written notice to terminate, which may be given by either party to the other at any time...*".
 - (3) Clause 2.16.1 of the NTC, providing as relevant: "*...the Agreement will continue until: (16.1.1) either Party gives the other not less than 6 months' written notice (unless otherwise agreed by the parties in writing) ...*".

128. Post Office was further entitled to terminate without notice for cause. Post Office relies in this regard on the following terms:

- (1) Clause 1.10 of the SPMC, providing as relevant: “*The Agreement may be determined by [Post Office] at any time in case of Breach of Condition...*”.
- (2) Clause 2.4 of the Temporary SPMC, providing: “*[Post Office] may terminate this Contract immediately on giving the Temporary Subpostmaster written notice in the event that the Temporary Subpostmaster commits any breach of this Contract or commits an act of bankruptcy or in the event that, as a result of any security checks carried out by [Post Office], or any references taken up by [Post Office], it is not satisfied that the Temporary Subpostmaster meets the standards required of a subpostmaster.*”
- (3) Clause 2.16.2 of the NTC, providing: “*In addition to any other rights of termination contained in other Parts, [Post Office] may terminate the Agreement immediately on giving written notice to the Operator if the Operator:*

16.2.1 commits any breach of the provisions of the Agreement or any other contract or arrangement between the Parties and fails to remedy the breach (if capable of remedy) within 14 days of a written notice from [Post Office] specifying the breach and requiring the same to be remedied. Any references in these Standard Conditions to a breach of a particular obligation being deemed to be material and/or irremediable are not intended to be exhaustive and shall not prevent [Post Office] from exercising its rights under this clause in respect of any other breach of the Agreement which is material and/or irremediable;

16.2.2 fails to provide the Products or Services to the standards required by [Post Office] as set out in the Manual and fails to remedy the failure (if capable of remedy) within 14 days of a written notice from [Post Office] specifying the failure and requiring the same to be remedied;...

16.2.13 itself, or the Manager or a director of the Operator, is charged with any criminal offence (other than a Road Traffic Offence not involving imprisonment);...

16.2.15 fails to properly account for any money due to, or stock of, [Post Office] or the Clients;

16.2.16 fails to pay any sum due to [Post Office] under the Agreement by the due date.

- (4) Clause 16.3 of the NTC, providing: “*If any Manager or Assistant does not at all times attain a standard acceptable to [Post Office] and the Operator is unable or refuses to provide a*

substitute Manager or Assistant who does meet the standard, [Post Office] shall have the right upon notice in writing to the Operator to immediately terminate the Agreement.”.

129. Save as set out in paragraphs [...] immediately above, paragraph 61 is denied.

Termination – Compensation for loss of office

130. Under the agreements, Subpostmasters are not entitled to any compensation for loss of office. Post Office relies on the following:

- (1) Clause 1.8 of the SPMC, providing as relevant: *“The terms of appointment of Subpostmaster do not entitle the holder to be paid...compensation for loss of office”.*
- (2) Clause 2.6 of the Temporary SPMC, providing as relevant: *“The Temporary Subpostmaster is not entitled to any of the following from [Post Office]: compensation for loss of office”.*
- (3) Clause 2.17.11 of the NTC, providing as relevant: *“The Operator acknowledges that he shall not be entitled to receive any compensation or other sums in the event of the termination or suspension of the Agreement”.*

Termination – Subsequent appointments

131. As regards the appointment of a new Subpostmaster (if any) to operate the branch after the cessation of the appointment of the earlier Subpostmaster (whether that appointment came to end at the instigation of Post Office or the Subpostmaster), the agreements reflected Post Office’s commercial freedom as to whether or not to contract with a prospective purchaser of a Subpostmaster’s private retail business and, in particular, whether or not to appoint such a person as a Subpostmaster and whether to continue to provide a Post Office branch at the relevant location. Post Office relies on the following terms:

- (1) Clause 1.9 of the SPMC, providing as follows: *“If on resignation of his appointment the Subpostmaster disposes of his private business and/or premises in which the sub-office is situated, the person acquiring the private business and/or the premises or exchanging contracts in connection with the purchase of the private business and/or premises will not be entitled to preferential consideration for appointment as Subpostmaster”.*

- (2) Clause 9 of the Temporary SPMC, providing as relevant: “*In the event of termination of this Contract: (i) any successor to the private business and/or Premises will have no claim to the post of subpostmaster, the filling of which is a matter entirely for [Post Office]...*”
- (3) Clause 2.19 of the NTC, providing as relevant: “*On termination of the Agreement, the appointment of any New Operator shall be entirely at the discretion of [Post Office]. [Post Office] may, but shall not be obliged to, consider any application for the operation of a Post Office branch at the Branch Premises made by a genuine prospective purchaser of the Basic Premises and the property interest at the Branch Premises, but any such prospective purchaser shall not be given any preferential treatment in the application or appointment process.*”.

132. Save as set out in paragraphs [] immediately above, paragraphs 62 is denied.

B.3 Relational Contract and Implied Terms

Relational Contract

133. Paragraph 63 is denied. Specifically:

- (1) It is denied that the agreements are “*relational contracts*” in the sense alleged by the Claimants or any material sense. Without prejudice to the generality of that contention, Post Office relies on the fact that the agreements were terminable on relatively short notice without cause.
- (2) It is denied that the classification of the agreements as such would affect their construction or effects. There are no special rules or principles of construction that apply to “*relational contracts*”.
- (3) Irrespective of whether or not the agreements are “*relational contracts*”, the implied term at paragraph 63 should not be implied because it is neither so obvious as to go without saying nor necessary to the business efficacy of the agreements. Further, to imply such broad and general obligations into a framework of very detailed and wide-ranging express terms would do violence to the parties’ bargain.
- (4) Post Office will, as appropriate, address **Yam Seng Pte Ltd v International Trade Corp**n [2013] EWHC 11 and related case-law in submissions.

Implied terms

134. Paragraph 64 is denied. Specifically:

- (1) Paragraph [...] immediately above is repeated. The Claimants' reliance on the alleged status of the agreements as "*relational contracts*" as the basis for implying terms is wrong in law. Save for terms implied at law (which category is not asserted by the Claimants), no term is to be implied unless it is so obvious as to go without saying and/or is necessary to the business efficacy of the agreement.
- (2) Save to the extent that the Claimants' proposed implied terms overlap with those pleaded at paragraph [...] below, they are denied as being neither so obvious as to go without saying nor necessary to the business efficacy of the agreements. Where it may assist in clarifying the issues for Post Office to do so, it pleads further below to the specific implied terms alleged by the Claimants and without prejudice to the generality of the contention that the alleged terms are neither so obvious as to go without saying nor necessary to the business efficacy of the agreement.

135. [NONE OF THE FOLLOWING IS NECESSARY, IN MY VIEW, ALTHOUGH WE MAY BE FORCED TO PLEAD TO THE SPECIFIC TERMS IF WE DO NOT. THERE IS A GENERAL POINT THAT I HAVE NOT PLEADED (BECAUSE I WOULD RATHER KEEP IT BACK FOR ARGUMENT) – IF POST OFFICE HAD ALL THE POWER (AS THE CLAIMANTS PLEAD), WHY ON EARTH WOULD IT ACCEPT ALL THESE VERY ONEROUS OBLIGATIONS?]

136. The term alleged at subparagraph 64.1 is vague and would be inconsistent with the express terms of the agreements in relation to training and support.

137. The term alleged at subparagraph 64.3 would be inconsistent with the express terms of the agreements in relation to the duty to account and with the common law obligations and rights of the Post Office as principal and the Subpostmaster as agent.

138. The terms alleged at subparagraphs 64.8 to 64.10 are too specific and inherently contentious to have gone without saying and are more extensive and more specific than is necessary to give business efficacy to the agreements, particularly in light of the existence of the implied term pleaded at paragraph [...] below.

139. The terms alleged at subparagraphs 64.5 to 64.7 and 64.11 to 6.12 are too specific, complex and inherently contentious to have gone without saying and are more extensive

and more specific than is necessary to give business efficacy to the agreements, particularly in light of the existence of the implied term pleaded at paragraph [...] below. It is denied that Post Office accepted (or would ever have accepted) such onerous obligations without this being made express.

140. Further in relation to the term alleged at subparagraph 64.12:

- (1) The term would represent a radical departure from the legal rules and principles that apply to a relationship of principal and agent, particularly as to the agent's duties in relation to accounting to its principal. Paragraphs [...] above are repeated.
- (2) Any such departure from the rights and obligations incidental to the agency relationship would have been made express in the agreements.
- (3) The term would not be reasonable and would not make commercial sense. Without prejudice to the generality of that contention, the term is unreasonable and/or is contrary to good commercial sense because (i) the Subpostmaster (or his or her Assistants) and not Post Office effected transactions in branch and had first-hand knowledge of the circumstances of such transactions and the facts relevant to the occurrence of Loss, (ii) the alleged term would make it impossible or inordinately difficult for Post Office to recover in respect of Shortfalls where the Subpostmaster has failed to make accurate cash and stock declarations and/or failed to prepare and retain proper accounts and/or acted dishonestly (or failed to prevent dishonest conduct by his Assistants).

141. The term alleged at subparagraph 64.13 would contradict the express terms of the agreements. Paragraph [...] above is repeated. Further:

- (1) It is too vague and potential contentious to have gone without saying.
- (2) It would not be reasonable and would not make commercial sense. Without prejudice to the generality of that contention, the alleged term would be incompatible with the need for Post Office to protect its property and ensure the proper conduct of Post Office business.

142. The term alleged at subparagraph 64.14 would contradict the express terms of the agreements. Paragraph [...] above is repeated. It is also too vague and potentially contentious to have gone without saying.

- (1) The term alleged at subparagraph 64.15 is too broad and inherently contentious to have gone without saying. Without prejudice to the generality of that contention, if the parties had intended to create a relationship of employment (or a relationship with the same or similar core characteristics as a relationship of employment), the agreements would have stated this expressly. In fact, the agreements expressly negate any such relationship. Paragraphs [...] are repeated.
 - (2) The terms alleged at paragraph 64.17 and 16.18 would contradict the express terms of the agreement by which Post Office is granted clear discretionary powers without any constraint of reasonableness: see, for example, the terms pleaded at paragraphs [...]. Further, the alleged terms are too broad and potentially contentious to have gone without saying.
143. The term alleged at paragraph 64.19 is too broad and inherently contentious to have gone without saying. It is also inconsistent with the parties' express choice of a relationship of principal and agent and express negation of any relationship of employment (and the accompanying obligations for employers).
144. Paragraph 65 is noted. It is denied that the matters pleaded in that paragraph provide support (or sufficient support) for the Claimants' case on the alleged implied terms.
145. Post Office avers that the agreements contained the following implied terms (implied as being so obvious as to go without saying and/or necessary to the business efficacy of the agreements):
- (1) Each party shall refrain from taking steps that would inhibit or prevent the other party from complying with its obligations under the contract (the "Stirling v Maitland Term").
 - (2) Each party shall provide the other with such cooperation as is necessary to the performance of that other's obligations under the agreement (the "Necessary Cooperation Term").

B.4 Onerous and Unusual Terms

146. Paragraph 66 is denied. Specifically:
- (1) It is denied that any of identified terms was onerous or unusual in the relevant business context and, in particular, in the appointment of an agent.

- (2) It is denied that the principle in **Interfoto Picture Library Limited v Stiletto Visual Programmes Limited** [1989] QB 433 has any application to the identified terms. The terms formed part of written agreements entered into in a business-to-business context and in the anticipation of a substantial commercial relationship.
- (3) If and to the extent that any Subpostmaster may contend that he did not obtain or have access to a copy of his or her written agreement and/or was unaware of or did not have access to its terms before agreeing to them, that is a matter for him or her to assert and prove.
- (4) [CAN WE PLEAD HERE THAT THE SUBPOSTMASTERS ALL SIGNED A DOCUMENT REFERRING TO THE TERMS?]

B.5 Unfair Contract Terms

147. Paragraphs 67 and 68 are denied. Specifically:

- (1) It is denied that reliance by Post Office on any of the terms identified by the Claimants would involve Post Office claiming to be entitled to (i) render a contractual performance substantially different from that which was reasonably expected of it or (ii) render no performance at all in respect of the whole or any part of its contractual obligations.
- (2) Section 3(2) of the Unfair Contract Terms Act 1977 (“UCTA”) accordingly does not apply.
- (3) It is noted that the Claimants have pleaded no particulars of the allegation in paragraph 68. Post Office reserves its rights to plead further to properly particularised allegations if and when they are made.
- (4) If and to the extent that any of the terms identified by the Claimants fall within section 3(2) of UCTA, they are fair and reasonable and so may be relied upon.

B.6 The True Agreement

148. Paragraphs 69 to 71 are denied. Specifically:

- (1) It is denied that the *dicta* in **Autoclenz v Belcher** [2011] UKSC 41 at [35] apply to the present case. Without prejudice to the generality of that contention,

Subpostmasters are not and are not alleged to be employees, and the agreements in this case are “*ordinary contracts*” and/or “*commercial contracts*” that fall within the principles set out in **Autoclenz** at [20] to [21]. Further, it is not alleged that any of the terms of the agreements were not actually relied upon by Post Office and/or were inserted into the written agreements for the sake of form only.

- (2) Post Office intended that the parties’ agreements be as set out in the written terms.
- (3) If the Claimants allege to have had some other intention, it is for them to plead and prove such intention and the grounds on which they allege that it was shared by Post Office, providing particulars of the alleged terms and when and how it is said those terms were agreed. The pleading at paragraphs 69 to 71 is inadequate and demurrable.
- (4) It is denied, for the avoidance of doubt, that the principle in **Autoclenz** (even if applicable) would permit of the process of re-drafting the agreements that the Claimants set out in paragraphs 70 to 71. The principle in **Autoclenz** is exceptional and cannot be used to circumvent the rules on construction and the implication of terms.

C. CONTRACTUAL TERMS – OTHERS

C.1. Crown Office Employees

Implied Terms

- 149. Paragraph 72 is admitted, save as follows. The appropriate implied term as to the exercise of a contractual discretion in an employment context is that the discretion be exercised honestly, in good faith, for the purpose for which it was conferred and not arbitrarily, capriciously or irrationally / perversely (rather than “*unreasonably*” as the Claimants contend).
- 150. As to paragraph 73, the Claimants have not identified with sufficient particularity the alleged discretions on which the implied terms in paragraph 72 are said to have operated. Post Office reserves its right to plead back in relation to such discretions as the Claimants may identify with proper particulars.

C.2 Managers and Assistants

Rights of Third Parties

151. Paragraph 74 is denied. Section 1(b) of the Contracts (Rights of Third Parties) Act 1991 does not apply as alleged. Specifically:

- (1) The obligation placed on Post Office at clause 15.7.1 of the SPMC was intended to confer a benefit on the Subpostmaster (through enabling him or her better to train his or her Assistants and so properly to discharge his or her obligations to Post Office).
- (2) Clause 2.3 to 2.7 of the NTC were not intended to confer a benefit on Managers and/or Assistants but were intended to confer benefits on the Subpostmaster and/or Post Office (through enabling the Subpostmaster better to discharge his or her obligations through a Manager and/or Assistants and/or through providing Post Office with a direct means of imparting knowledge to Managers and/or Assistants that may assist in the discharge of Post Office business).
- (3) The allegation that the alleged implied terms were intended to benefit Managers and/or Assistants is unparticularised and is not understood. Even on the Claimants' case, such terms were intended to confer benefits on Subpostmasters. The allegation is denied.
- (4) Subparagraph 74(d) is not a proper plea and is liable to be struck out. No such terms have been identified.
- (5) It is noted that the Franchise Agreement (to which the Claimants do not specifically refer) expressly excludes any third party seeking to enforce any of the terms of the agreement that expressly or impliedly confers a benefit on him pursuant to the Contract (Rights of Third Parties) Act 1999. [I CANNOT SEE THE USUAL EXCLUSION OF THE ACT IN THE AGREEMENTS APART FROM THE FRANCHISE AGREEMENT. IS THIS RIGHT?]

C.3 Franchise Agreements

152. Paragraph 75 is denied, save as follows:

- (1) It is admitted that, where a corporate Subpostmaster was engaged, Post Office required a personal guarantee from shareholders and/or directors.

- (2) It is admitted that, in general terms, a company appointed as a Subpostmaster would bear similar initial costs to those borne by a natural person taking such an appointment. Paragraphs [...] above are repeated in relation to paragraphs 41 to 44.

Express Obligations of the Defendant

153. Post Office will rely on the full terms and effects of the Franchise Agreement in relation to its obligations under that agreement. Paragraphs 76 and 77 are admitted.

Relational Contracts

154. Paragraphs [...] above are repeated, *mutatis mutandis*, in relation to the allegation that the Franchise Agreement is a relational contract. Paragraph 78 is accordingly denied.

Implied terms

155. Paragraphs [...] above are repeated, *mutatis mutandis*, in relation to the implication of terms into the Franchise Agreement Paragraph 79 is accordingly denied.

D. CONCURRENT DUTY IN TORT

156. Subparagraphs 80.1 and 80.2 are inadequately particularised and, insofar as they are understood, are denied. If and to the extent that the Claimants wish to assert specific duties in tort, such duties must be pleaded in terms appropriate to tortious duties.
157. Subparagraphs 80.3 and 80.4 are denied. The imposition of a duty of care in tort would not be just and reasonable, would be inconsistent with the contractual relationships between, on the one hand, Post Office and Subpostmasters and, on the other hand, Subpostmasters and Managers / Assistants. If and to the extent that a Manager or Assistant suffered a legal wrong, its recourse is against the Subpostmaster as its employer.
158. [THIS REQUIRES FURTHER THOUGHT – WE MAY ULTIMATELY WISH TO CONCEDE A LIMITED DUTY IN TORT].
159. Subparagraph 80.5 is denied. The imposition of a duty of care in tort would not be just and reasonable and would be inconsistent with the legal relationships between, on the one hand, Post Office and corporate Subpostmasters and, on the other hand, those companies and their directors and/or guarantors. The imposition of the pleaded duty of care would

undermine the concept of corporate personality and the limited duties that a contracting party owes to the other party's guarantor(s).

E. AGENCY

160. Paragraph 81 is admitted.

161. Paragraph 82 is denied. Specifically:

- (1) The agreements make clear that the Subpostmaster is an agent of Post Office and owes the fiduciary and other common law duties that accompany that status. The Subpostmaster undertook expressly a duty to account, and Post Office did not.
- (2) Post Office did not agree to become an agent of any of the Claimants in any regard. It is noted that no agreement to this effect is pleaded.
- (3) Post Office did not hold or deal with cash or other assets on behalf of Claimants, and it did not effect transactions on their behalf or commit them to transactions with third parties. Post Office did not undertake any of the characteristic roles of an agent and did not agree to be subject to any of the characteristic duties of an agent.
- (4) It follows that no such relationship of agency was agreed and none should be implied.

162. Paragraph 83 is denied. Paragraph [...] immediately above is repeated.

163. Paragraph 84 is denied. Post Office was not an agent and was under no such duties.

F. FIDUCIARY DUTIES

164. Paragraphs 85 and 86 are denied. Post Office operated the accounting systems on its behalf and pursuant to legal relationships with third parties to which Post Office, but not the Claimants, was a party. As between Post Office and Subpostmasters, the rights and obligations in relation to the accounting system were contractual and/or arose from the status of Post Office as principal and the status of Subpostmasters as agents.

165. Paragraph 87 is denied. Paragraphs [...] above are repeated in relation to the allegation of agency.

166. Paragraphs 88 and 89 are denied. Paragraphs [...] above are repeated.

G. GENERIC BREACHES OF CONTRACT / TORT / FIDUCIARY DUTY

167. The Claimants' pleading of breach is so general and unparticularised as to hinder Post Office's ability to provide meaningful responses.
168. Post Office can plead only in very general terms to allegations that turn on matters of fact and degree that would have to be alleged and established in individual cases.
169. The facts relevant to various of the allegations of breach will have changed substantially over the relevant period. For instance, the products and services (and related training, guidance materials and contractual obligations) offered in branches differed substantially over the relevant period. For instance, an allegation that training was inadequate can only meaningfully be addressed once it is grounded in the detail of the training provided (and available) and in the circumstances in which such training was provided.
170. Without prejudice to the generality of that contention, Post Office pleads as follows.
171. Paragraphs 90 and 91 are denied. Post Office did not breach its duties as alleged or at all.
172. The general thrust of paragraph 92 is denied:
- (1) Post Office provided at all times adequate training to Subpostmasters, both initially and thereafter (including in response to requests for training). A reasonably competent and diligent Subpostmaster would, with the benefit of such training (in addition to the other assistance and support provided and/or available to Subpostmasters), have been able properly to discharge his or her obligations to Post Office.
 - (2) Paragraphs [...] above are repeated in relation to the training of Assistants.
 - (3) It was a matter for the Subpostmaster to understand and apply the content of the Operating Manuals (if necessary by obtaining help and support from Post Office). The Operating Manuals were such as to facilitate compliance by a reasonably competent and diligent Subpostmaster.
 - (4) If and to the extent that any Subpostmaster considered himself or herself unable properly to discharge the obligations to Post Office, it was incumbent on him or her to contact Post Office and seek further training and/or make use of the assistance offered by the Helpline.

173. Paragraph 93 is denied. The Helpline provided adequate support (in the context of the training and other assistance available to Subpostmasters). Paragraphs [...] above are repeated. A reasonably competent and diligent Subpostmaster would, with the benefit of the Helpline (in addition to the training and other assistance and support provided and/or available to Subpostmasters), have been able properly to discharge his or her obligations to Post Office.
174. Save as set out below, paragraph 94 is denied:
- (1) The Claimants have failed to identify the transaction types to which the allegation in paragraph 94.1 relates. Post Office reserves its right to plead to proper particulars if and when they are provided.
 - (2) In the absence of a reasonable request for further data, transaction data relating to the preceding 42 days (or 60 days after the introduction of Horizon online) was made available to Claimants. The Claimants have not identified any prejudice that resulted from this being the default period for which access was provided.
 - (3) Post Office provided more extensive transaction data where a Subpostmaster provided good reasons for requiring access to such data and complied with its duty of Necessary Cooperation in this regard. The Claimants have not identified any circumstances in which more extensive data was requested, was denied and would, if provided, have protected the Claimants from any alleged prejudice.
 - (4) Subparagraph 94.4 is not understood. The Claimants were required to maintain transaction and accounting records in addition to the accounts submitted to Post Office. Paragraphs [...] above are repeated. The Subpostmaster, including with the help of his or her Assistants, should have been in the position, including by reference to those records and accounts, to identify the likely causes of a Shortfall and, if appropriate, to seek to argue that the Shortfall resulted from Losses for which he or she was not responsible under the relevant agreement.
 - (5) Subparagraph 94.5 is **IS THIS CORRECT?**
175. Paragraph 95 is impermissibly vague and unparticularised and liable to be struck out. Paragraphs [...] above are repeated in relation to alleged bugs and/or other errors in Horizon and/or Horizon Online. It is for the Claimants to allege and prove any bugs or errors on which they wish to rely.

176. Paragraph 96 is denied. Specifically:

- (1) Post Office was not under any duty as is alleged to have been breached at subparagraph 96.1
- (2) As to subparagraph 96.2, Post Office provided such cooperation as was required of it in accordance with the implied terms pleaded at paragraph [...] above. Paragraphs [...] above are repeated in relation to the duties of Subpostmasters as regards Shortfalls.
- (3) Subparagraph 96.3 is denied. Paragraphs [...] above are repeated in relation to the duties of Subpostmasters as regards Shortfalls. Post Office did not fail to disclose to any Subpostmaster a matter that it knew to have caused or contributed to a Shortfall for which the Subpostmaster was held liable and which was inconsistent with the Subpostmaster being liable for the Shortfall. [CONFIRM].
- (4) Subparagraph 96.4 is denied. Paragraph [...] above is repeated as regards the question of whether or not a Shortfall represented a “*real loss*”. It is denied that Post Office was required to investigate whether or not a Shortfall had resulted or would ultimately reflect or result in economic detriment to Post Office.

177. Paragraph 97 is denied, save that it is admitted that Post Office ordinarily (but not in all instances) requires Subpostmasters to make good Shortfalls in accordance with the agreements.

178. Paragraph 98 is denied. Post Office was not under any vague and general duty of investigation. Paragraphs [...] above are repeated in relation to the Claimants’ case on investigations.

179. Paragraph 99 is denied. Further:

- (1) The allegation that Post Office applied pressure to cause a Subpostmaster to resign is inadequately pleaded and liable to be struck out. It is not alleged that any such pressure was illegitimate and/or amounted to a breach of any pleaded duty.
- (2) The allegation at subparagraph 99.1 is inadequately pleaded and liable to be struck out. The Claimants have not identified the alleged breaches said to be material and have not pleaded any link between those breaches and the suspension, terminations and resignation.

- (3) Post Office was not under any duty such as those alleged to have been breached in subparagraphs 99.2 and 99.3. In any event, Post Office complied with its duty of Necessary Cooperation in carrying out reasonable enquiries and investigations, taking into account all material circumstances and, in particular, the cooperation that it was able to obtain from the relevant Subpostmaster and/or his or her Assistants. In circumstances where a Subpostmaster failed to provide cooperation to Post Office and/or had failed to retain key records and/or had made false cash or stock declarations and/or had falsified accounts or other records and/or had otherwise acted dishonestly, the extent of cooperation and enquiry required of Post Office may be relatively limited.
- (4) It is denied that Post Office's allocation of the burden of proof was wrong as alleged at subparagraph 99.4. It was in accordance with the agreements and was reasonable and appropriate in the circumstances, taking into account all material circumstances and, in particular, the cooperation that Post Office was able to obtain from the relevant Subpostmaster and/or his or her Assistants.
- (5) It is denied that Post Office was required to establish fault on the part of a Subpostmaster in the sense of his or her having caused a Shortfall by his or her negligence, recklessness or deliberate act. Paragraphs [...] above are repeated. Subparagraph 99.5 is accordingly denied.
- (6) It is denied that Post Office's reliance on the inference pleaded at subparagraph 99.6 was flawed and unreasonable. It is a reasonable inference that Post Office was entitled to draw in appropriate cases and as part of its overall assessment of the material facts and circumstances.

180. Save that it is admitted that Post Office, in some instances, pursued civil and/or criminal proceedings in relation to Shortfalls, paragraph 100 is denied for the reasons given in paragraphs [...] above.

181. Paragraph 101 is denied:

- (1) The alleged breach is not linked to any alleged duty pleaded to have been owed by Post Office to any Claimant. It is accordingly demurrable.
- (2) Post Office was under no duty to any Claimant in relation to the appointment of a new Subpostmaster. Paragraphs [...] above are repeated.

- (3) In any event, Post Office did not act unreasonably in relation to the appointment of new Subpostmasters. Post Office was entitled to decide for itself (and by reference to its own interests) with whom to contract and to appoint as its agent for any particular branch, should it wish to continue providing a Post Office branch in the relevant location.

182. Paragraph 102 is denied. Paragraphs [...] above are repeated.

183. Paragraph 103 is denied for the reasons pleaded at paragraphs [...] above.

184. Paragraph 104 is inadequately particularised and cannot meaningfully be responded to in its present form. Without prejudice to the generality of that contention:

- (1) The Claimants have not identified which, if any, breaches are alleged to have been in bad faith and the grounds on which such allegation is made.
- (2) The Claimants have not identified which, if any, of Post Office's contractual discretions are alleged to have been exercised arbitrarily, capriciously or unreasonably. The Claimants have not pleaded the basis for any such allegation.
- (3) The Claimants have not identified which, if any, steps alleged to have been taken by Post Office are said to have been in breach an implied duty of trust and confidence. The Claimants have not pleaded the basis for any such allegation.
- (4) The Claimants have not identified what, if any, steps by Post Office are said to have been taken without reasonable care and skill. The Claimants have not pleaded any particulars of negligence.
- (5) Subparagraph 104.4 is so vague and general as to be incapable of response.
- (6) Save as set out above, paragraph 104 is denied.

185. Paragraph 105 is denied. Post Office was not under the pleaded duty and did not make any of the alleged misstatements or misrepresentations.

H. ACTIONABLE MISREPRESENTATION AND DECEIT

186. Paragraph 106 is noted. It is denied that Post Office is liable as alleged.

187. Post Office cannot meaningfully respond to allegations of indicative misrepresentations. The facts relevant to the truth or falsity of a representation and reliance on that representation will differ from one case to another. Post Office pleads generally to the allegations without prejudice to that proposition. Paragraph 107 is accordingly noted but not accepted.

H.1 Representations

188. Save as set out below and subject to the point made at paragraph [...] immediately above, paragraph 108 is denied:

- (1) The fact of a Shortfall is apparent on the face of the accounts submitted by a Subpostmaster to Post Office. It is not a matter in relation to which Post Office makes any representation. The Subpostmaster is bound by his account as pleaded at paragraphs [...] above.
- (2) Post Office did not make the representations pleaded at subparagraph 108.2. Shortfalls were addressed in accordance with the parties' contractual obligations and pursuant to the Subpostmaster's status as an agent of Post Office and not on the basis of representations made by Post Office to Claimants.
- (3) The alleged representation at subparagraph 108.3 is true. In any event, the proper construction and effects of the parties' agreements was a matter for each of them, and Post Office did not provide legal advice to Subpostmasters in this regard. Post Office was entitled to adopt a position as to the meaning and effects of its contracts without the same amounting to a representation to its counterparty (or anyone else) in that regard.
- (4) The alleged representation at subparagraph 10.4 was not made. It is admitted that large numbers of Subpostmasters contract or attempt to contact the Helpline but denied that this provides any support for any of the allegations made by the Claimants.
- (5) The representation in subparagraph 108.5 was not made. [ARE WE CONFIDENT ENOUGH TO SAY THAT?] If and to the extent that a Claimant wishes to argue that a Shortfall was a Horizon-Generated Shortfall, that is a matter that must be distinctly alleged and proven. Post Office's admission is that information

technology bugs or errors could, in principle, cause a Shortfall (and not that a bug or error was in fact a likely or even plausible cause of any particular Shortfall).

- (6) It is admitted that Post Office made the representation in subparagraph 108.7. Paragraphs [...] above are repeated.

189. Post Office can neither admit nor deny any reliance on the part of the Claimants as pleaded at paragraph 109, and they are required to prove the same.

H.2 Falsity

190. Save as expressly admitted in paragraph [...] above, paragraph 110 is denied.

H.3 Lack of due care

191. The allegations in paragraph 111 are made at a very high level of generality. Post Office can respond only at the same level of generality. Any individual claim will turn on the specific facts of the alleged failings.

192. The general thrust of paragraph 111 is denied. Specifically:

- (1) Post Office considered every Shortfall and challenge to the same on their facts.
- (2) It is denied that Post Office acted, in all the circumstances, without due care in considering that, absent evidence to the contrary effect, it was inherently unlikely that any particular Shortfall had been caused by a bug or error in Horizon or Horizon Online.
- (3) Post Office was right to attach substantial importance to the safeguards and other material factors pleaded at paragraphs [...] above.
- (4) It was reasonable for Post Office to draw adverse inferences from a Subpostmaster's failure properly to account and/or decision to falsify accounts or make false declarations and/or failure to prepare or retain proper accounting records and/or failure to cooperate with Post Office's investigations and/or procure cooperation from his or her Assistants.
- (5) Post Office's erroneous statements in relation to the ability remotely to change transaction data in branches were made without negligence. Without prejudice to the generality of that contention, Post Office avers that it was reasonable for it to

rely on information provided to it by Fujitsu in this regard, which was that such remote alteration was not possible. It was reasonable for Post Office to rely on that information given, in particular, the nature of Fujitsu's role and expertise. [WE WILL BE ASKED TO PROVIDE THE COMMUNICATIONS].

H.4 Negligent Misstatement

193. Save as follows, paragraphs 112 and 113 are denied:

- (1) Post Office was not under the pleaded duty.
- (2) The Claimants are required to prove any reliance that they assert. It is noted that the Claimants would have been aware that, if a Subpostmaster failed to comply with his or her obligations in relation to preparing, submitting and retaining accounts and related records and/or failed properly to cooperate with Post Office, Post Office would not ordinarily be in a position to identify the specific cause of a Shortfall save to attribute it to the Subpostmaster.
- (3) [IT IS PROBABLY DIFFICULT TO PLEAD THAT WE WOULD NOT HAVE APPRECIATED THAT CS WOULD RELY ON OUR STATEMENTS IN RELATION TO SHORTFALLS AND HORIZON, BUT THIS IS A MATTER TO DISCUSS.]

H.5 Misrepresentation Act 1967

194. Paragraph 114 is denied. Specifically:

- (1) Save as expressly admitted above, it is denied that Post Office made any misrepresentations.
- (2) Paragraph [...] above is repeated as regards the possibility of altering branch transaction data. Post Office had reasonable grounds for the representations that it made.
- (3) It is denied that any of the steps pleaded at points (i) to (iv) in subparagraph 113.2 amounted to the entering into of a contract between Post Office and the relevant Subpostmaster. The Subpostmaster took the pleaded steps in the discharge of its obligations to Post Office under the existing agreements between the parties.

- (4) As to point (v) in subparagraph 113.2, it is denied that the Claimants relied upon any alleged misrepresentation in entering into a settlement agreement. The parties entered into commercial compromises in good faith, and no challenge to the same can now be pursued without abuse of process and/or breach of the settlement agreement. Post Office will enforce the settlement agreement and/or rely on such estoppels as are necessary.
- (5) [WE NEED TO PLEAD MORE SPECIFICALLY TO THE ALLEGATION AS REGARDS SETTLEMENT AGREEMENTS. WE WILL NEED TO SEE THE STANDARD FORM SETTLEMENT AGREEMENT AND DISCUSS THE TYPICAL PROCESS BY WHICH IT WAS AGREED]

H.6 Deceit

195. The Claimants have no proper basis to make allegations in deceit, and the same are liable to struck out. Without prejudice to that assertion, paragraph 115 is denied:

- (1) It is denied that Post Office knew or was reckless as to the matters listed in subparagraph 115.1. Post Office considered the Shortfalls that it attributed to Subpostmasters to be real and to be properly attributable to Subpostmasters under the agreements.
- (2) Subparagraph 115.2 is not understood. It is denied pending its pleading in clear terms. [I HAVE NO IDEA WHAT IT IS MEANT TO SAY].
- (3) It is denied that Post Office knew or should have known that it bore the (unparticularised) contractual burden. It is denied that it bears the burden of showing the Subpostmaster's account to be mistaken and/or showing that a Shortfall was caused by an Assistant or was caused by a Subpostmaster's error, negligence or carelessness. Subparagraph 115.3 is denied.
- (4) Subparagraph 115.4 is not understood. It is denied pending its pleading in clear terms. [I HAVE NO IDEA WHAT IT IS MEANT TO SAY].
- (5) Subparagraph 115.5 is admitted (in that Post Office had the knowledge alleged). Paragraphs [...] above are repeated in relation to Horizon and the nature and extent of Post Office's admission as to the possibility of Horizon-Generated Shortfalls.

- (6) Subparagraph 115.6 is denied. Post Office believed its enquiries, audits and investigations to be carried out even-handedly, fairly and properly, and it asserts the correctness of that belief. Paragraphs [...] above are repeated.
- (7) Subparagraph 115.7 is denied. None of the personnel involved in the process of enquiring into Shortfalls was instructed to exclude the possibility that the Shortfall had resulted from an error or bug in Horizon.
- (8) Subparagraph 115.8 is denied. Paragraph [...] above is repeated in relation to the ability to alter branch transaction data.

H.7 Reliance

196. As to paragraph 116:

- (1) Post Office is unable to admit or deny and requires the Claimants to prove reliance in fact on any of the representations that it alleges.
- (2) It is denied that any representations by Post Office can have been material to any decision to accept a Transaction Correction. It was incumbent on a Subpostmaster to accept or dispute Transaction Correction as he or she considered appropriate taking into account information that was known to him and/or her or could be obtained from Post Office, the relevant Assistants or any other relevant third party. The Subpostmaster is bound by his account in relation to any contention that a Transaction Correction was erroneous.
- (3) Point (ii) is not understood and is not specifically pleaded to in this Generic Defence.
- (4) It is denied that the Claimants may in these proceedings call into question the settlement agreements between the parties. Paragraph [...] above is repeated. Point (ii) is accordingly not available to the Claimants.
- (5) Point (iv) is impermissibly vague and general and is not addressed specifically.
- (6) Save as set out above, paragraph 116 is denied.

I. HARRASSMENT

197. Paragraphs 117 to 119 are denied:

- (1) None of the pleaded steps amounted to or contributed to any harassment of the Claimants.
- (2) Post Office was entitled to make demands for payment, propose Transaction Corrections, seek admissions of liability for Shortfalls, threaten or pursue civil and/or criminal proceedings and pursue such proceedings as it did.
- (3) The matters of which the Claimants complain (i) are the ordinary incidents of commercial life and, in particular, an agent's operation of a substantial business enterprise on behalf of its principal or (ii), in the case of criminal proceedings, resulted from the Claimant's own wrongdoing and/or the reasonable suspicion of such wrongdoing.
- (4) Post Office acted in all material regards in accordance with its own good faith assessment of its rights and obligations under the agreements and as principal and without actual or constructive knowledge that its conduct amounted to harassment.

J. DURESS & UNCONSCIONABLE DEALING

198. Paragraphs 120 to 122 are inadequately particularised and are liable to be struck out.

Without prejudice to the generality of that contention:

- (1) The transactions that the Claimants seek to rescind on the basis of duress and/or unconscionable dealing are not properly identified.
- (2) There is no pleading of the circumstances that are said to have made Post Office's conduct unconscionable. Post Office was entitled to assert its rights as it understood them to be and to hold Subpostmasters' to the contractual bargain and to their fiduciary duties as agents.
- (3) Post Office can neither admit nor deny and requires the Claimants to prove the assertions as to their own knowledge and situations in subparagraphs 121.4, 121.5 and 121.8.
- (4) Post Office denies having taking unconscionable advantage of the Claimants and/or having put the Claimants in a position in which they acted under economic duress.

- (5) [CAN WE PLEAD ANYTHING POSITIVE AS TO HOW WE DEALT WITH ANYONE THAT WAS OBVIOUSLY IN A BAD WAY FINANCIALLY AND/OR WAS CLEARLY DISTRESSED?]

199. Save as set out above, paragraphs 120 to 122 are denied.

K. MALICIOUS PROSECUTION

200. Post Office accepts, in relation to paragraphs 123 to 124, that the threatened claims in malicious prosecution are not to be pleaded at this stage. For the avoidance of doubt, Post Office will deny all such claims and reserves its right to apply for strike out of the same.

L. UNJUST ENRICHMENT

201. The Claimants' entitlement to claim in unjust enrichment is denied. The matters relied upon in support of that claimed entitlement are denied as pleaded in the relevant parts of this Generic Defence.
202. Paragraphs 125 to 127 are accordingly denied. For the avoidance of doubt, the burden of proof would be on a Claimant to prove that he was not in fact liable in respect of any Shortfall for which he was held responsible.
203. Further, in appropriate cases, Post Office will rely upon the following outline defences:
- (1) Post Office will rely upon its right in equity to treat the account stated as final.
 - (2) Post Office will assert that it would be inequitable in all the circumstances to re-open the account as between Post Office and any Subpostmaster who seeks to question that account.
 - (3) Post Office will argue change of position in circumstances where Post Office resolved its transactions with third parties in reliance on the Subpostmasters' accounts as stated and the Subpostmaster failed within any reasonable period to challenge and/or falsify those accounts.

M. LOSS AND DAMAGE

Loss generally

204. Post Office is not liable to the Claimants for any of the claimed loss and damage.
Paragraph 128 is denied.
205. Paragraph 129 is noted.
206. In general:
- (1) The Claimants are required to prove any claimed loss and damage.
 - (2) If and to the extent that any loss and damage is proven, the Claimants are required that such loss resulted from a breach of contract or other legal wrong on the part of Post Office.
 - (3) Post Office will assert, in appropriate cases, that the losses claimed are irrecoverable as a result of failures to mitigate. For example, [ANY THAT ARE VERY OBVIOUS FAILURES?]
 - (4) Post Office reserves its right to contend, once they are particularised, that some or all of the claimed losses are too remote.
207. It is not possible meaningfully to respond to the pleaded heads of loss for the following reasons:
- (1) The Claimants have not identified the duties the breach of which is said to give rise to liability for the pleaded losses. It may be that the Claimants are in some instances seeking losses that are not available as a matter of law.
 - (2) The Claimants have failed to identify with any specificity the type of causal connection between the alleged breaches and the alleged losses.
 - (3) The types of loss are pleaded at a very high level of generality. It may be that liability for some, but not all, of the types of loss covered by each heading are irrecoverable in law or for reasons of remoteness.
 - (4) Issues such as causation in fact, remoteness and quantification of loss cannot meaningfully be addressed in the absence of pleaded facts of individual claims.
208. Post Office pleads back on loss without prejudice to this proposition and without intending to limit its ability to address such particularised allegations of loss as may be

brought against it (including by raising such defences as are available in fact and law but also including by seeking to narrow the issues between the parties).

Losses resulting from termination

209. As regards losses resulting from termination of the Subpostmaster's appointment, Post Office will rely in appropriate cases upon the provisions in the parties' agreements excluding liability for loss of office, as follows:

- (1) Clause 1.8 of the SPMC, stating as follows:

The terms of the appointment of Subpostmaster do not entitle the holder to be paid sick or annual leave, pension or to compensation for loss of office.

- (2) Clause 2.6 of the Temporary SPMC, stating as follows:

*The Temporary Subpostmaster is not entitled to any of the following from Post Office Ltd:
Compensation for loss of office:...*

210. Clause 17.11 of the NTC, stating as follows: [I DON'T THINK THIS ONE FLIES – IT SEEMS TO BE DEALING WITH SOMETHING ELSE (ALTHOUGH I AM NOT SURE WHAT).]

The Operator acknowledges that he shall not be entitled to receive any compensation or other sums in the event of the termination or suspension of the Agreement.

- (1) [I CANNOT SEE ANYTHING SIMILAR IN THE FRANCHISE AGREEMENT]

211. Further, in all cases where the Subpostmaster's appointment was terminated without notice, Post Office will rely upon its express right to terminate without cause on notice and contend that any damages should be limited to the notice period. In each case, had Post Office not terminated without notice, it would have terminated on notice in accordance with its express contractual right to do so.

M.1 Financial Loss

212. Paragraph 130 is noted. It is denied that Post Office is liable in relation to any such loss.

213. None of the alleged losses pleaded at paragraphs 131 to 133 are recoverable from Post Office because any such losses did not result from any breach of contract (or other legal wrong) by Post Office. Where Post Office suspended or terminated a Subpostmaster's appointment without notice, it had the right to do so under the agreements. It is denied that any claim for loss resulting from termination on notice can be pursued.

214. [TO PLEAD LIMITATION OF LIABILITY TO PERIOD OF NOTICE FOR WRONGFUL DISMISSAL CLAIMS]

M.2 Stigma and/or reputational damage

215. [TO ADD GENERAL PLEA ON THESE LOSSES. I AM STILL RESEARCHING THIS ISSUE.]

216. In any event:

- (1) None of the claimed loss is attributable to any breach or other legal wrong on the part of Post Office.
- (2) It is denied that Post Office suspending or terminating a Subpostmaster (or requiring the exclusion of an Assistant) created the impression of dishonesty on their part. Post Office was entitled to take those steps in the absence of dishonesty (and, as regards termination, without any cause).
- (3) Post Office did not publicise the fact of dishonesty (or its suspicions of the same) on the part of Subpostmasters or Assistants. The Claimants are required to prove that any loss resulting from the public's knowledge in this regard is attributable to any step taken by Post Office.

217. Paragraphs [...] above are repeated.

M.3 Distress and related ill-health

218. It is admitted that many Claimants suffered as alleged but denied that any losses resulting from such distress or ill-health are attributable to any breaches by Post Office.

219. [TO PLEAD CAUSATION AND REMOTENESS SQUARELY]

M.4 Bankruptcy

220. It is admitted that some Claimants entered into bankruptcy processes. [CHALLENGE THEIR TITLE TO SUE FOR THESE LOSSES?].

221. Post Office denies that is liable for any of the pleaded losses. [FURTHER RESEARCH NEEDED]

M.5 Prosecutions

222. Paragraphs 138 and 139 are admitted as very general statements of fact relating to some Claimants. Post Office denies that is liable for any of the pleaded losses.

M.6 Exemplary Damages

223. The claim in paragraph 140 is denied and is liable to be struck out. No proper particulars of deliberate and/or cynical disregard of the Claimants' rights have been pleaded. Post Office did not act so as to make itself liable to exemplary damages. [DENY ENTITLED TO EXEMPLARY DAMAGES FOR BREACH OF CONTRACT?]

M.7 Interest

224. The Claimants are entitled to no damages and so no interest as claimed at paragraph 141. If, contrary to that plea, the Claimants are entitled to damages, it is admitted that the Claimants would be entitled to interest as alleged. [I DO NOT THINK WE CAN DENY THE ENTITLEMENT TO INTEREST, EVEN INCLUDING AS TO COMPOUND INTEREST IF THEY PROVE UNJUST ENRICHMENT].

N. LIMITATION AND OTHER GENERAL DEFENCES

N.1 Limitation

225. Post Office will rely upon the expiry of the applicable limitation periods in relation to each of the Claimants' claims. Without prejudice to the generality of that plea, Post Office will rely upon:

- (1) A six-year limitation periods in relation to claims in tort and contract under sections 2 and 5 of the Limitation Act 1980 and in respect of all equitable claims.
- (2) A three-year limitation period in relation to claims for personal injury under section 11 of the Limitation Act 1980.

N.2 Estoppels and similar defences

226. In appropriate cases, Post Office will rely upon some or all of the following estoppels and/or similar defences:

- (1) Post Office may assert an estoppel to prevent a Subpostmaster denying the truth of cash and stock declarations that he made to Post Office and/or the truth of accounts that he prepared.
- (2) A Subpostmaster is to be prevented from re-opening and/or seeking to amend the account between himself and Post Office where, by reason of delay or otherwise, it would now be inequitable for the account to be re-opened or amended.
- (3) A Subpostmaster is to be prevented from re-opening and/or seeking to amend the account between himself and Post Office where the parties reached a compromise as to the amount(s) due and/or the terms of payment and/or it is otherwise appropriate to treat the account between the parties as being settled.

N.3 False accounting and failure to maintain records

227. Post Office repeats paragraph [...] above.

228. Further, Post Office will rely, in appropriate, on adverse inferences to be drawn from any failures to maintain accounting records (including Branch Trading Statements and paper transaction records) as were required from time to time under the agreements and/or the relevant manuals and/or directions from Post Office. [WOULD FALSE

ACCOUNTING BE A REPUDIATIRY BREACH AND COULD WE TREAT THAT
BREACH AS JUSTIFYING ANY SUMMARY TERMINATIONS – OR IS THAT
PLEADED ALREADY, IN THE CONTRACT SECTION?]

N.3 Set off

229. Post Office will set off in law and/or equity such sums are found to be due it against any amounts for which it is found to be liable to Claimants on the Counterclaims described in its Generic Counterclaim herein.

N.4 Abuse of process

230. Claimants who are parties to settlement agreements should be restrained from the abuse of process inherent in asserting claims covered by those agreements.
231. [WHAT ABOUT CLAIMANTS WHO HAVE ALREADY SUED US AND LOST OR ABANDONED THEIR CLAIMS?]
232. Save as aforesaid, the GPoC is denied.
233. The Claimants are not entitled to the relief sought or any relief.

GENERIC COUNTERCLAIM

234. The Generic Defence is repeated.
235. [PLEAD SHORTFALLS DUE FROM SOME POSTMASTERS] In cases in which Post Office has not to date recovered those Shortfalls from Subpostmasters in full, it will claim the amounts of such shortfalls or the unrecovered portion thereof as debts in accordance with its contractual rights as pleaded at paragraphs [...] above. [DO WE JUST CLAIM THEM AS CONTRACTUAL DEBTS? CAN WE/SHOULD WE CLAIM AN ACCOUNT, OR RESTITUTION?]
236. Post Office further relies upon the following terms in relation to the payment of shortfalls after the termination of the relevant agreements:
- (1) Clause 12.13 of the SPMC, providing as follows: [...].
 - (2) Clause 6.5 of the Temporary SPMC, providing as follows: [...].
 - (3) Clause 4.3 of the NTC, providing as follows: [...].
237. [DO WE HAVE ANY OTHER CLAIMS AGAINST POSTMASTERS, E.G. FOR THEFT OR FOR FALSE ACCOUNTING OR FOR DAMAGES SUFFERED BY POST OFFICE FOR BREACH OF CONTRACT? E.G. ANY FOR WHICH WE MAY BE LIABLE TO CLAIMANTS AS A RESULT OF NOT BEING ABLE TO INVESTIGATE THEIR DISPUTES BECAUSE OF THEIR FALSE ACCOUNTING]

ETC? OR MANAGEMENT AND OTHER TIME DEALING WITH THEIR
DEFAULTS?]

238. [DO WE HAVE ANY CLAIMS TO PURSUE UNDER THE FRANCHISE
AGREEMENTS? OR UNDER ANY GUARANTEES OR AGAINST DIRECTORS IN
TORT FOR FALSE ACCOUNTING OR THEFT?]

239. [DO WE HAVE ANY CLAIMS AGAINST THE MANAGERS OR ASSITANTS FOR
THEFT OR FALSE ACCOUNTING?]

240. Post Office will claim interest on all amounts found to be due to it in accordance with s.
35A of the Senior Courts Act 1981 at such rates and for such periods as the Court may see
fit to award. [no

AND POST OFFICE CLAIMS:

(1) [XX]

(2) [XX]

(3) [XX]

(4) Interest thereon

Anthony de Garr Robinson QC

Owain Draper

[statement of truth]