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1 September 2017

**Second Letter**

For the Attention of Mr J Hartley  
 Freeths LLP  
 Floor 3  
 100 Wellington Street  
 Leeds  
 West Yorkshire  
 LS1 4LT

**Bond Dickinson LLP**

Oceana House  
 39-49 Commercial Road  
 Southampton  
 SO15 1GA

Tel: **GRO**  
 Fax: **GRO**  
 DX: 38517 Southampton 3

andrew.parsons@bond-dickinson.com **GRO**  
 Direct: **GRO**

Our ref:  
 AP6/AP6/364065.1369  
 Your ref:  
 JXH/1684/2113618/1 /KL

**By email only**

Email: james.hartley@freeths.co.uk **GRO** imogen.randall@freeths.co.uk **GRO**

Dear Sirs

**The Post Office Group Litigation**  
**Claim Numbers: HQ16X01238 and HQ17X02637**  
**Directions**

We refer to your letter of 6 July 2017 regarding the CMC listed for 19 October 2017 and your proposed directions.

**1. General Directions**

- 1.1 Elements of your proposed directions appear reasonable, but we will not be in a position to discuss and agree detailed directions until (i) we have sight of all the Schedules of Information (SOIs), the second tranche of which is due on 6 September; (ii) we have reviewed your Generic Reply, due on 20 September; and (iii) we understand your position on the matters set out in this letter and our other letter of today's date regarding the SOIs.
- 1.2 It is likely that there are some aspects of this case which are suitable for preliminary determination and we are also considering whether there are any other questions that could be addressed at an early stage. We are working on a possible list of preliminary issues with a view to being able to circulate this as soon as possible after we receive your Generic Reply.
- 1.3 We can also see that there may be some attractions in your methodology for picking lead Claimants, but we believe there are major factual differences between the various claims brought. As such the selection of lead Claimants ought to be selected by reference to the issues which are chosen for preliminary determination.
- 1.4 We doubt that the two strands of disclosure you have proposed – one of which would apply only to our client – would be appropriate. Quite apart from anything else, the scope of the disclosure and its proportionality cannot be assessed until the concerns we have about the claim valuation have been addressed (as addressed at paragraphs 12 to 15 of our letter of today's date on the SOIs) and, in any event, it does not seem to be targeted at any particular objective. Contrary to how you portray it in your letter, the disclosure suggested just for Post Office is in no way a form of staged disclosure – the categories you set out effectively cover all the factual issues in the Amended Generic Particulars of Claim (**Amended GPOC**). However, it may be that your Reply will help narrow the debate on disclosure and we will wait until we have that document before exploring this point further.

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- 1.5 Access to the Known Error Log (**KEL**) can also be considered as part of these wider disclosure issues. The KEL is a not a document, but a live and proprietary database with approximately 4,000 entries. Since the KEL is a constantly rolling document, the current version in use has evolved over time and may not reflect the version in place at time which is relevant to the Claimants' claims. Providing "disclosure" of it is therefore not easy to do and prone to being a disproportionately expensive exercise if not handled carefully. Addressing whether and, if so, how your client should have access to the KEL therefore needs to be considered in the context of any wider directions that are made.
- 1.6 The remainder of this letter is dedicated to a number of issues that we believe should be addressed immediately, before any further procedures are ordered and preliminary issues tackled. We hope that these points, or most of them at least, can be resolved through correspondence before the CMC. If not, appropriate orders will need to be included in the Court's directions so as to deal with them. Some of these points have been raised with you in prior correspondence. With a view to ascertaining whether and on what basis any of the issues will be in dispute at the CMC, we must ask for your full response to the rest of this letter by **15 September 2017**.

## **2. Un-pleaded generic claims**

- 2.1 Both Claim Forms with Claim Numbers HQ16X01238 and HQ17X02637 (**the Claim Forms**) assert claims:
- 2.1.1 under the European Convention of Human Rights and Human Rights Act 1998;
  - 2.1.2 of misfeasance in a public office; and
  - 2.1.3 of unlawful means conspiracy (as previously raised in our letters of 11 and 18 July 2017).
- 2.2 These claims are not pleaded in the Amended GPOC nor addressed in the SOIs. Please confirm that you are discontinuing these claims and that you will by 15 September 2017 amend the Claim Forms accordingly.

## **3. Discontinued claims**

- 3.1 In your letters of 20 June 2017 and 14 July 2017, you state that the claims of the following Claimants are to be discontinued.
- 3.1.1 Conrad Chau (41)
  - 3.1.2 Usman Kiyani (101)
  - 3.1.3 Mario Lummi (109)
  - 3.1.4 Dermot Lynch (110)
- 3.2 Please file Notices of Discontinuance for these Claimants by 15 September 2017.

## **4. Standing to bring claims**

- 4.1 Your professional duties require you to have undertaken proper due diligence on your clients before committing to act on their behalf and that you may only advance claims that are properly arguable (as referred to in IB (5.7) of the SRA Code of Conduct). We had therefore trusted that,

before bringing any claims on their behalf, you would have established to your satisfaction that all the Claimants could authorise you to bring these claims and that they were claims the Claimants could properly bring. In other words, we felt sure that you would have established that all the Claimants for whom you act (or purport to act) were proper legal entities or persons (as the case may be) that owned and had standing to bring the claims that are being asserted.

- 4.2 On review of the SOIs, there are several categories of Claimant who do not appear to have standing to bring claims against Post Office and/or for whom you appear to have no authority to act. In relation to each category discussed below, please either provide evidence of their standing to bring a claim or file a Notice of Discontinuance for that Claimant, in each case by 15 September 2017.
- 4.3 Dissolved Companies. We have so far identified one Claimant which is a dissolved company (Hums Group Ltd – 325). As a dissolved company, it cannot bring legal proceedings. Please either provide evidence that this Claimant has been restored to the Register or file a Notice of Discontinuance for it by 15 September 2017.
- 4.4 Companies without claims. From the Group Register, we have identified that 5 Claimants (listed in Schedule 1 to this letter) are companies that appear to have been incorporated after the date the Group Register states that they began to operate a branch for Post Office. It therefore appears that these companies did not exist for a period during which their claims are said to have arisen and are not therefore proper Claimants. Please either produce evidence explaining why these Claimants have standing to bring claims or file Notices of Discontinuance for them by 15 September 2017.
- 4.5 Bankrupt Claimants. From the SOIs so far provided, we have identified 20 Claimants who have claimed bankruptcy related losses (listed in Schedule 2 to this letter). We assume that these Claimants either have been or are bankrupt. If this is the case, prima facie they have no right to bring legal proceedings pursuing causes of action relating to the period before their bankruptcy.
- 4.6 We are aware that in some cases, trustees in bankruptcy may have assigned claims to the relevant Claimants. However, we do not know which Claimants have received assignments and which have not.
- 4.7 By 15 September 2017, please:
  - 4.7.1 Identify the Claimants who have been made bankrupt or gone into some similar insolvency process.
  - 4.7.2 Identify which of those Claimants have had their causes of action against Post Office assigned to them and provide evidence of the assignments.
  - 4.7.3 As regards the Claimants for whom there is no evidence of any assignments, please file Notices of Discontinuance.
- 4.8 Deceased Claimants. From the Group Register and your previous correspondence, we are aware that 7 claims are brought by personal representatives of an estate and 1 claim has been brought by a Claimant who has passed away since service of the Claim Form. The Claimants we have identified in this category so far (which is not an exhaustive list) are listed in Schedule 3 to this letter. In respect of each of these 8 Claimants and any other Claimants in a similar position whom we have not identified, we ask that by 15 September 2017, you:
  - 4.8.1 provide details of the personal representative of each deceased Claimant (where this is not stated on the Claim Forms);
  - 4.8.2 provide copies of the grant of probate or grant of letters of administration, as appropriate, to demonstrate that all the personal representatives have standing to bring the respective claims against Post Office; and



- 4.8.3 where the claim has not been brought in the name of the personal representative, file and serve amended Claim Form(s) so to remove the name of the deceased Claimant and replace it with the name of the personal representative.

## 5. Untenable claims on their specific facts

- 5.1 From our review of the SOIs so far provided, it appears that there may be cases that, on any view, are unsustainable. It is in the interests of all parties that unmeritorious cases are removed from the Group at an early stage so to avoid wasting costs on unnecessary case management, disclosure and evidence.
- 5.2 We set out below some examples of such cases. We are highlighting cases of this sort in the hope that you will either discontinue these claims or explain why you say they are tenable. If you do not do so, our client will consider whether to make an application to strike them out. We should be grateful for your prompt engagement on these matters and for a full reply by 15 September 2017 so that these matters may be considered at the CMC as appropriate.

### Kamran Ashraf (10) and Siema Kamran (93)

- 5.3 Your clients Kamran Ashraf and Siema Kamran operated the Hampstead Heath branch between 2001 and 2003. Siema Kamran was the subpostmaster. According to their SOIs, she was largely absent from the branch and her husband, Kamran Ashraf, was her assistant and operated the branch on her behalf.
- 5.4 The SOIs for both Claimants confirm that Mr Ashraf stole money from the Post Office branch to pay off trading losses in their newsagent business and that he inflated the branch accounts to cover up the theft. Mr Ashraf pleaded guilty to, and was convicted of, theft. His case has not been referred to the CCRC and he is not claiming malicious prosecution.
- 5.5 The above facts, which have been stated by your clients and attested by Statements of Truth, show clear dishonest behaviour by Mr Ashraf. They are also matters for which Mrs Kamran bears responsibility, including by reason of the following contractual clauses:
- 1.5 *"The Subpostmaster is not obliged to attend the Post Office® branch personally but he is required, whether he is there or not, to accept full responsibility for the proper running of his Post Office branch..."*
- 12.3 *"The Subpostmaster is expressly forbidden to make use of the balance due to Post Office Ltd for any purpose other than the requirements of the Post Office service; and he must, on no account apply to his own private use, for however short a period, any portion of Post Office Ltd funds entrusted to him. He must also be careful to keep the Post Office money separate from any other monies. Misuse of Post Office Ltd cash may render the offender liable to prosecution and, or, the termination of his Contract of Appointment."*
- 12.2 *"The Subpostmaster is responsible for all losses caused through his own negligence, carelessness or error, and also for losses of all kinds caused by his Assistants."*
- 15.2 *"Assistants are employees of the Subpostmaster, and the Subpostmaster will consequently be held wholly responsible for any failure, on the part of his Assistants..."*
- 5.6 As we understand from the SOIs that your client has provided:
- 5.6.1 Your clients accept that the shortfall in their branch was real, being caused by Mr Ashraf's theft.
- 5.6.2 No complaint can be made against Horizon or Post Office's training or support in circumstances where the cause of the shortfall in the branch was theft.



5.6.3 Post Office's decision to terminate Mrs Kamran's engagement as subpostmaster was justified given Mr Ashraf's admitted dishonesty.

5.6.4 Mr Ashraf is not asserting malicious prosecution and admits his theft so there can be no complaint made about the fact he was prosecuted.

5.7 In the circumstances, we are aware of no grounds on which a claim by these Claimants can be sustained against our client. We believe that their claims are an abuse of process, not least because the subject matter of the claims directly overlap with Mr Ashraf's conviction, and that they have no real prospect of success.

5.8 By 15 September 2017, we invite you to discontinue these claims or provide an explanation as to why you believe they would survive a strike out and/or summary judgment application pursuant to CPR 3.4(2) and/or 24.2.

Wendy Cousins (47)

5.9 Similarly to the claims brought by Kamran Ashraf and Siema Kamran, Wendy Cousins' SOI confirms that she pleaded guilty to theft and she does not deny that theft in her SOI. Her case has not been referred to the CCRC and she is not bringing a claim for malicious prosecution.

5.10 In these circumstances, the conclusions set out in paragraphs 5.6 and 5.7 above would seem to be applicable to her.

5.11 By 15 September 2017, we invite you to discontinue this claim or provide an explanation as to why you believe it would survive a strike out and/or summary judgment application.

Lee Castleton (240)

5.12 Lee Castleton has recently had his claim added to the Group Action but has not yet served an SOI. However, his case is known to Post Office, having already been heard by the High Court under Claim Number HQ05X02706, in which Mr Castleton was found liable for the shortfalls in his branch and his counterclaim against Post Office was dismissed. After a trial, HHJ Havery QC found that:

*"...the conclusion is inescapable that the Horizon system was working properly in all material respects, and that the shortfall of £22,963.34 is real, not illusory."*

*"I am satisfied that the substantial unexplained deficiencies incurred in weeks 42 to 51 and in week 52 up to the close of business on 22nd March 2004 are real deficiencies and as such are irrefutable evidence that Marine Drive was not properly managed at the material time. I conclude that [Post Office] was entitled under clause 10 of section 1 to determine Mr. Castleton's contract summarily for non-performance of his obligation under clause 5 of that section. Moreover, the losses must have been caused by his own error or that of his assistants."*

5.13 Although we do not yet have details of Mr Castleton's specific claims in the Group Action, the matters covered in the Amended GPOC directly overlap with the matters covered in the earlier proceedings. Your client is not permitted to re-open the settled Court judgment on these matters and Mr Castleton's claim would appear to be res judicata. On this basis, the claim is an abuse of process and has no prospects of success.

5.14 By 15 September 2017, we invite you to discontinue this claim or provide an explanation as to why you believe it would survive a strike out and/or summary judgment application.

Margaret Bateman (18) and Michael Rudkin (156)

5.15 The above Claimants are seeking to bring malicious prosecution claims when it appears from their SOIs that Post Office has not brought proceedings (either civil or criminal) against them.

- 5.16 Margaret Bateman is claiming malicious prosecution but states in her SOI that she "*took legal advice on this and settled the case before proceedings were issued.*"
- 5.17 According to Michael Rudkin's SOI, Post Office brought a prosecution against his wife, not Mr Rudkin.
- 5.18 By 15 September 2017, we invite you to resubmit the SOIs for these Claimants omitting the claims for malicious prosecution.

Ralph Oliver (126)

- 5.19 Ralph Oliver is not claiming concealment in his SOI, yet his contract with Post Office was terminated in August 2008. His claim is time-barred and it would appear that section 32 of the Limitation Act 1980 is not being relied upon to extend the limitation period.
- 5.20 By 15 September 2017, we invite you to discontinue this claim or provide an explanation as to why you believe it would survive a strike out application.

The above is not an exhaustive list but illustrative of the matters that need to be addressed before the CMC. This is needed so as to enable the parties and the Court to identify those issues which need full investigation and those which can be disposed with summarily. It is also needed to enable the Group Litigation to be managed in a proportionate and efficient manner. We trust that the parties can work in a co-operative manner so as to limit the issues which require the Court's attention at the CMC.

Yours faithfully

*Bond Dickinson LLP*

**Bond Dickinson LLP**

**SCHEDULE 1**  
**COMPANY CLAIMS**

<b>Claimant</b>	<b>Date Claimant commenced role at Branch</b>	<b>Date incorporated</b>
Bains & Hayre Limited (214)	February 2010	25 March 14
B Joshi Limited (224)	1 October 1999	3 January 2003
Convenience Store Limited (252)	14 June 1991	10 August 1998
Hums Group Ltd (325)	1 November 2013	11 November 2014
Ibstock Community Enterprises Limited (329)	1 January 1995	19 August 1996



**SCHEDULE 2**  
**BANKRUPT CLAIMANTS**

Mr Tabasam Ahmed (5)
Ms Nicola Arch (8)
Mrs Isabella Armstrong-Wall (9)
Mr Kamran Ashraf(10)
Mr Thomas Brown (32)
Ms Deirdre Connolly (45)
Ms Donna Gosney (65)
Mrs Lynette Hutchings (80)
Mr Keith Jones (88)
Mrs Siema Kamran (93)
Ms Wendy Martin (112)
Mr Francis Maye (114)
Mr Vijay Parekh (132)
Mr Lee Phelps (140)
Mr Alan Riddell (152)
Mrs Carol Riddell (153)
Mr Mohammed Sabir (157)
Mr Ennosel Joseph Dominic Savio (160)
Mr Hughie Noel Thomas (177)
Mr Graham Ward (186)

**SCHEDULE 3**  
**DECEASED CLAIMANTS**

Mrs Marion Holmes the personal representative of Peter Holmes (deceased) (75)
Ms Enid Mummery (122)
Mrs Wendy Ann Owen the personal representative of Mr John Owen (deceased) (130)
Mrs Jasvinder Barang the personal representative of Rajbinder Singh Barang (deceased) (215)
Menna Garland-Ellis and Jonathan Garland the personal representatives of Mr Michael Garland (deceased) (296)
Mrs Janet Smith the personal representative of Mr David Smith (deceased) (477)
Mrs Sonya Sultman the personal representative of David Graham (deceased) (488)
Mr David Thornton the personal representative of Amy Thornton (deceased) (497)