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Our ref:
GRM1/AP6/364065.1369
Your ref:
JXH/1684/211361/KL

Dear Sirs

Bates & Others -v- Post Office Limited
Claim number: HX16X01238
Second Sight

We write further to your letter of 17 March 2017 regarding Second Sight and various disclosure requests.

1. Your requests

- 1.1 Before addressing each of your requests for information and documents, it is important to place these requests in context.
- 1.2 Your firm has now been engaged for over 15 months but you are yet to provide our client with a single document in support of your clients' claims. Indeed, you have not even set out the substance of any particular claim made against our client. We have requested that you do this on numerous occasions and you have refused.
- 1.3 No order for disclosure has yet been made, nor could one indeed be made given that the claims against which disclosure would be given have not been particularised, either in correspondence or Court documents. Despite this, you continue to press our client to undertake full-scale disclosure exercises.
- 1.4 Moreover, the claims have not been valued. We anticipate that once the claims are properly valued, having been stripped of inflated and unsustainable figures, their true value will not justify the extensive disclosures that you are seeking.
- 1.5 You make much of the Master Fontaine's wish for the parties to cooperate but you and your clients have not shown any cooperation, in that you have not provided our client with the information it has sought from you time and time again (e.g. in relation to security for costs and the 5 occasions on which we requested the same confirmation on the position of Therium).
- 1.6 All of this is taking place in a context where the majority of the claims are bound to fail as they are time-barred and/or being brought by Claimants who have already been found guilty of dishonesty.
- 1.7 In such circumstances, our client is quite correctly being prudent about incurring substantial costs for arguably negligible benefit and will therefore continue to weigh carefully any requests for information and documents.

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1.8 In terms of the timings of your requests:

- 1.8.1 since 26 January 2017 (at the GLO hearing) it has been known to you that the Generic Particulars of Claim (**GPOC**) would be due on 23 March 2017;
- 1.8.2 however, following the GLO hearing, the matter of access to Second Sight was not raised again until 24 February 2017; and
- 1.8.3 prior to this the last we had heard from you on the matter was in James Hartley's Second Witness Statement on 12 January 2017 (which merely set out the previous correspondence between the parties and did not provide any proposals or seek to progress the matter).

1.9 In the lead up to the deadline for the GPOC, there has been no urgency by you to deal with this matter. As such, you have caused any time pressures which you now face in drafting the GPOC. This pressure should not be shifted to our client via unreasonable demands for quick responses and requests for swathes of documents, which we can only view as prelude to a request for an extension of time for the filing of the GPOC.

1.10 Notwithstanding the above, in the interest of providing a response prior to the GPOC being served, we write to you as requested by close of business today. You will appreciate that our client is not able to provide a full response to all of the matters raised given the limited time available.

2. Access to Second Sight

2.1 Thank you for setting out for the specific topics that you wish to discuss with Second Sight. We note that we requested this information in our Letter of Response and additionally on 18 August 2016, 31 August 2016 and 10 March 2017. Subject to agreeing how to protect privileged material, Post Office agrees these are relevant topics which could be discussed with Second Sight.

2.2 There is also further agreement between the parties that Post Office's privileged information must be protected. As explained in our letter of 30 November 2016, it would not be suitable to place on Second Sight the burden of filtering out privileged material given that they are not lawyers and we would be surprised if they were prepared to take on such a heavy burden. As such, we invite you (again – we refer to our letters of 18 and 31 August 2016) to put forward any proposals you have for how you might engage with Second Sight regarding your proposed topics in a way that protects privilege.

2.3 Our client's Protocol seeks to put in place a workable form of engagement by which Post Office's privileged material is protected through ring-fencing high-risk areas. We note that your proposed topics would not be precluded by the Protocol nor would they obviously fall within one of these ring-fenced areas. Had you accepted the Protocol several months ago when it was first proposed, you could therefore have engaged with Second Sight on your chosen topics far in advance of the GPOC deadline.

2.4 You have yet to explain why the Protocol is "*entirely unreasonable*" (as per your letter of 15 December 2016). Your latest letter merely pointed us to the Second Witness Statement of James Hartley on 12 January 2017 which as you stated only "*summarises the correspondence regarding access to information from Second Sight*". It does not explain why the Protocol is unworkable or unreasonable.

2.5 What we are struggling to understand is why you will not agree to the Protocol as it would allow you access to Second Sight at least on the core topics you have identified. Instead, you have adopted the dogmatic view that you should be allowed entirely unfettered access, without offering any hint of compromise, or alternative form of engagement, even though that stance places our client's privileged material at risk.

2.6 In the absence of any proposed alternative method by which to protect privilege, we maintain that the Protocol represents a reasonable way to proceed and would allow you to discuss the topics that you have raised.

3. Working Group documents

3.1 Our letter of 10 March 2017 did not refuse to provide access to Working Group documents (as you allege) but rather asked you to confirm:

3.1.1 the specific classes of Working Group documents of which you seek disclosure; and

3.1.2 how these documents are relevant to the claims which you are asserting, given that they are primarily about the operational mechanics of the Mediation Scheme.

3.2 You have not provided this information. Instead, and rather regrettably, you have chosen to make inaccurate complaints about our client's conduct. Please therefore respond to the above points.

4. Documents returned by Second Sight

4.1 In relation to your request that we provide the index of the 35,844 documents which were returned by Second Sight, we are unable to do so since this index itself contains reference to privileged material.

4.2 In any event, undertaking a review of 35,844 documents outside of a normal disclosure exercise would be unreasonable and disproportionate. We invite you to explain why these documents should be reviewed and, where appropriate, disclosed at this early stage of the litigation process. If you say these documents are essential to the preparation of the GPOC, please also explain why it is only now that you are raising this matter and, for example, why it was not raised with the provision of the revised draft GPOC on 23 January 2017 or at the GLO hearing on 26 January 2017. At both of these stages it ought to have been known that further information was required.

5. Documents provided to Second Sight

5.1 We will provide an update in due course in relation to the encrypted hard-drive.

6. Other Disclosure requests

6.1 Our letter of 13 October 2016 explained in detail how locating the documents you have sought would require an extensive disclosure exercise, one which in particular could not be completed within the 4 day deadline which you now set.

6.2 Many of the requests made in your letter (as set out below) are repeats of previous ones with no attempt made to explain why the documents are needed to finalise the GPOC, to narrow the request, or to explain why the request for documents is only being made now (when the need for these documents ought to have known when the revised draft GPOC were prepared).

6.3 As previously stated, a full disclosure exercise would be required to locate many of the documents you have requested, a very substantial undertaking which at this stage is not reasonable nor proportionate, particularly when no value has been placed on the Claimants' claims. We address each request below.

No.	Document Request	Response
1	Schedule of Horizon updates, modifications and software versions since installation and the issues which each of the versions addressed	We refer to our letter of 13 October 2016, which responded to the same request. A full disclosure exercise would be required to locate these documents and no explanation of why it would be reasonable and proportionate to undertake and provide

No.	Document Request	Response
		early disclosure of these documents has been provided.
2	Post Office internal notes, memoranda, correspondence, emails and briefing documents regarding errors, bugs or problems in Horizon, which Post Office had identified as being a cause or potential cause of discrepancies or shortfalls in branch accounts or transactions	<p>We refer to our letter of 13 October 2016, which responded to the same request.</p> <p>This request appears to have been narrowed slightly to require disclosure of the documents which relate to "<i>being a cause or potential cause of discrepancies or shortfalls in branch accounts or transactions.</i>" However, a full disclosure exercise would still be required to locate these documents as the only way to identify the required information would be a manual review of documents.</p>
3	Helpline documents for Choudry, Andre and Adedayo	<p>We do not understand how this category of documents will assist with drafting the GPOC so we assume that this request is not time sensitive.</p> <p>Mr Choudry and Miss Andre were both applicants to the Mediation Scheme and would have received their Helpline logs during the course of this. Please confirm that you have made enquiries of your clients for these documents.</p> <p>We are making enquiries into Mrs Adedayo.</p>
4	Known Error Log	You have not explained the need at this stage for disclosure of this document or how it will assist with finalising the GPOC. If this document is instead required to identify issues in individual branches then these claims should be set out before disclosure is sought.
5	Documents relating to Post Office's disclosure to Second Sight that, in 2011 and 2012, it had discovered "defects" in Horizon online that had impacted 76 branches	<p>We refer to our letter of 13 October 2016, which addressed this request. We have also already provided documents relating to this request on 31 August 2016.</p> <p>A full disclosure exercise would be required to locate further documents and no explanation of why it would be reasonable and proportionate to undertake and provide early disclosure of these documents has been provided.</p> <p>In addition, Second Sight addressed this matter in their July 2013 Interim Report (to which you have access).</p>
6	2008 Fujitsu and Post Office emails	To be discussed following a decryption of the hard drive (if possible).
7	Emails disclosed to Second Sight	To be discussed following a decryption of the hard drive (if possible).
8	Documents referred to in Protocol	<ul style="list-style-type: none"> • NDAs for the individuals at Second Sight – each of which contains confidentiality provisions and cover the first phase of Second Sight's work before the Mediation Scheme commenced. • Privileged material side letter dated 19 October 2012 which made clear the basis on which privileged material was being provided to Second Sight, namely that such material should remain confidential. • Engagement letter (provided to you on 31 August

No.	Document Request	Response
		2016), Side letter dated 1 July 2014 and the Agreement to Complete Work dated 15 April 2015 which set out Second Sight's scope of work in relation to the Mediation Scheme. These documents include further confidentiality obligations.

6.4 We are concerned by the wide-ranging requests for substantial disclosure to be provided 2 days before you are due to file the GPOC. In circumstances where we have been corresponding on this claim for 15 months and the revised draft GPOC was provided 2 months ago, there has been plenty of opportunity to address the disclosure of documents before now.

Yours faithfully

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