

THE POST OFFICE GROUP LITIGATION

IN THE HIGH COURT OF JUSTICE

Claim Nos HQ16X01238, HQ17X02637

QUEEN'S BENCH DIVISION

& HQ17X04248

BEFORE THE HONOURABLE MR. JUSTICE FRASER

B E T W E E N:

ALAN BATES & OTHERS

Claimants

- AND -

POST OFFICE LIMITED

Defendant

THIRD CMC ORDER

UPON the making of an order following a Case Management Conference on 19 October 2017 (the "**First CMC Order**")

AND UPON the making of an order following a Case Management Conference on 2 February 2018 (the "**Second CMC Order**"), adjourned for further hearing on 22 February 2018

AND UPON HEARING Leading Counsel for the Claimants and Leading Counsel for the Defendant at the adjourned Case Management Conference held on 22 February 2018

IT IS ORDERED THAT:

Disclosure for Common Issues Trial - Stage 2

Stage 2 Disclosure

1. Pursuant to paragraph 10(a) of the Second CMC Order, the agreed list of custodians is at Schedule 1 to this order.
2. Pursuant to paragraph 10(b) of the Second CMC Order:
 - (a) the classes of documents to be disclosed and the generic issues to which those classes relate, are those set out at Schedule 2 to this order; and
 - (b) for the purposes of the categories of document in Schedule 2 to this order in which date ranges, or the definition of document type, remain to be inserted (in either case, only where identified therein), the parties shall seek to agree those date ranges and definition of document type by 4pm on 12 March 2018, in default of which those date ranges and definition of document type shall be the subject of a further order.
3. By 4pm on 30 March 2018, the Defendant shall produce, and serve upon the Claimants, a document setting out the top four layers of hierarchy of management positions within the Defendant's organisation at the present time and, so far as is practicable, over time since the allegations forming the subject matter of these proceedings.

Horizon Issues Trial

Horizon Issues and further hearing

4. By 4pm on 12 March 2018, Leading Counsel representing each of the parties shall meet and seek to agree the issues ("**the Horizon Issues**") to be determined at the trial referred to in paragraph 34 of the First CMC Order ("**the Horizon Issues Trial**").
5. A further hearing shall take place on 26 March 2018, at a time to be appointed, for the purposes of determining, in the event that they are not agreed by that date:
 - (a) the list of Horizon Issues; and/or
 - (b) the date ranges and definition of document type referred to in paragraph

2(b) above.

Stage 3 Disclosure: Horizon Issues Trial – initial

6. By 16 March 2018, the Defendant shall: -
 - (a) provide an introductory demonstration to both parties' IT experts of:
 - i. How to operate the Horizon system from the point of view of a Subpostmaster;
 - ii. Whether the Horizon system enables the Defendant to identify apparent or alleged shortfalls (including any receipts/payment mismatches) and process Transaction Corrections;
 - iii. How the Defendant (whether itself or by Fujitsu) is able to edit branch transaction data remotely; and
 - (b) use its reasonable endeavours to arrange an introductory briefing by Fujitsu for both sides' IT experts on the architecture of the Horizon system.
7. By 4pm on 30 March 2018, the Claimants shall submit requests for disclosure of up to 100 technical documents from Fujitsu's '*Dimensions*' system based on the index of documents already provided to the Claimants' solicitors.
8. By 4pm on 13 April 2018, the Defendant shall (a) disclose any documents requested pursuant to paragraph 7 above within its possession or control, and (b) use its reasonable endeavours to have Fujitsu disclose any such requested documents which are in Fujitsu's possession or control (rather than that of the Defendant).
9. Disclosure to be given in accordance with paragraph 8 above is without prejudice to the Defendant's obligation to provide Stage 2 disclosure pursuant to paragraph 10(b) of the Second CMC Order of the categories of documents referred to in paragraph 2(a) above.

10. By 18 May 2018, the Defendant shall use its best endeavours to prepare a document, from the information available to the Defendant, setting out the aggregate volume and value of Transaction Corrections issued annually since 1999.

Further agreement and CMC

11. By 19 April 2018, the parties' solicitors and IT experts shall meet and attempt to agree:
 - (a) the scope of any further information or documents required about the Horizon system; and
 - (b) a process for inspecting the Horizon system (if needed).
12. There shall be a further CMC on 20 April 2018 to consider any further directions needed for the Horizon Issues trial.

IT Experts

13. The parties and their IT experts are reminded that experts have a right, pursuant to CPR r.35.14, to file written requests to the Court for directions for the purpose of assisting them in carrying out their functions.
14. By 22 June 2018, the parties' IT experts are to commence their meetings and discussions pursuant to CPR r.35.12, for the purposes of both CPR r.35.12(1)(a) (identifying and discussing issues) and r.35.12(1)(b) (where possible, reaching agreed opinions on those issues). Those discussions shall continue as necessary.
15. By 4pm on 18 July 2018, the Claimants shall serve a provisional / outline document setting out the nature of their allegations in relation to the Horizon Issues.
16. By 4pm on 31 August 2018, the parties' IT experts shall produce a first joint statement pursuant to CPR r.35.12(3), identifying the issues:
 - (a) upon which they agree; and

- (b) upon which they disagree, together with a summary of their reasons for disagreeing.

17. The Claimants shall serve their IT expert report(s) by 4pm on 14 September 2018.

18. The Defendant shall serve its IT expert report(s) by 4pm on 2 November 2018.

Supplemental reports following judgment in the Common Issues Trial

19. By 4pm on 18 January 2019, the parties shall exchange any supplemental IT expert report(s) upon which they wish to rely.

20. By 4pm on 20 February 2019, the parties' IT experts shall produce a second joint statement pursuant to CPR r.35.12(3), identifying the issues:

- (c) upon which they agree; and
- (d) upon which they disagree, together with a summary of their reasons for disagreeing.

Pre-trial review

21. There shall be a Pre-Trial Review listed for 22 February 2019, time estimate 1 hour.

General

22. Defined terms in previous orders shall have the same meaning in this Order, save as set out expressly herein.

23. In relation to any CMC in this Order:

- (a) The parties shall inform the Managing Judge 7 days before any CMC whether or not the CMC is required.
- (b) Paragraphs 35, 36 and 38 of the First CMC Order shall apply.

24. The parties shall have liberty to apply in respect of any provision in this Order.

25. The costs of this CMC shall be Common Costs in the case.

Dated this

February 2018

SCHEDULE 1

Custodians for Stage 2 Part 1 Disclosure

The email accounts of the following custodians shall be extracted and searched by the Defendant as part of Stage 2 Part 1 Disclosure.

1. Alan Lusher	27. Keith Skelton
2. Alison Bolsover	28. Ki Barnes
3. Andrew Winn	29. Lesley Frost
4. Angela Van Den Bogerd	30. Lynn Hobbs
5. Bryan Flynn	31. Margaret Guthrie
6. Brian Trotter	32. Mark Dinsdale
7. Carol Ballan	33. Mark Sealey
8. Craig Knowles	34. Mark Wright
9. Craig Winks	35. Mike Wakley
10. Dave Barrett	36. Mike Wiatrowicz
11. Dave Mellody	37. Neil Donohue
12. David Hazell	38. Nigel Allen
13. David Longbottom	39. Paul Holland
14. David Southall	40. Paul Williams
15. Debbie Hall	41. Peter Johnson
16. Faith Lavender	42. Rajinder Gihir
17. Frances Taylor	43. Rebecca Goddard
18. Gerry Hayes	44. Richard Barker
19. Glenn Chester	45. Robert Sinclair
20. Graham Padget	46. Ruth Hazell
21. Idris Jones	47. Simon Drinkwater
22. Jon Longman	48. Sue Muddeman
23. Judy Balderson	49. Tony Biolchi
24. Junaid Tanveer	50. Wendy Grant
25. Karen Averiss	51. Yvonne Cere
26. Karen Derbe	

The above list of custodians shall be reviewed by the parties if the volume of data in any email account is disproportionately large. In this event, the parties shall seek to agree whether the affected custodian(s) should remain within this stage of disclosure and/or whether alternative search methods could be used.

SCHEDULE 2

Model C Extended Disclosure

pursuant to paragraph 10(b) of the Order of the Court dated 2 February 2018 and Part 2 of Schedule 2 thereto

The disclosure in this part shall be given in accordance with Model C of the draft Practice Direction referred to in the Second CMC Order. A reasonable and proportionate search is to be undertaken for the classes of document set out below. For the avoidance of doubt, they shall comply with the Core Duty at paragraph 3.1(2) of the draft PD.

ISSUE FOR DISCLOSURE	PLEADING REF (Info only)	CLASS OF DOCUMENT (MODEL C)
Products and services offered by Post Office.	GPOC 4 – 5, 15 GDef 24 - 25 Reply 20	<ol style="list-style-type: none">Indexes, organisational charts, schedules or diagrams of the suite of products and services offered by Post Office since 1999Written policies and process documents relating to the rolling out of products and services to postmasters since 1999.
Post Office's standard contract terms	GPOC 8 – 10 GDef 28– 31	<ol style="list-style-type: none">Suite of standard contractual documents used by PO when appointing postmasters, since 1999.Suite of product or service-specific contracts between Post Office and postmasters and guidelines, referred to in the reports of Second Sight.Contractual variations issued to the branch network since 1999.Written policies and process documents relating to the process of varying a postmaster's contract.Standard and template documents, letters, notes and memos issued to postmasters relating to the variance of their contracts.

ISSUE FOR DISCLOSURE	PLEADING REF (Info only)	CLASS OF DOCUMENT (MODEL C)
Appointment of postmasters	GPOC 42 – 46 GDef 78 - 82	<p>8. Written policies and process documents relating to:</p> <ul style="list-style-type: none"> a. the advertising for vacancies (permanent and temporary) b. the postmaster application processes c. the on-boarding process (including the provision of contracts) d. checks on postmasters prior to appointment e. upfront payments made by postmaster to Post Office; and f. deductions from postmasters' remuneration upon a postmaster joining Post Office <p>9. Standard and template documents, letters, notes and memo issued to postmasters before or shortly after appointment as a postmaster.</p>
Operation of Horizon	GPOC 12 – 17, 22 – 24, 25-28 GDef 33 - 38, 57-60 Reply 9, 36, 41	<p>10. Technical documents regarding Horizon stored by Fujitsu in its Dimensions systems (subject to Post Office using its best endeavours to give disclosure of those documents that are under Fujitsu's control).</p> <p>11. Known Error Log (subject to a suitable means of inspection being agreed).</p> <p>12. Branch Operating Manual (including previous versions or equivalent historic document).</p> <p>13. Operating instructions and rules issued to all postmasters.</p> <p>14. Minutes of meetings of Post Office's Board of Directors (or historic equivalent) (a) between 1999 and 2001 at which the roll-out of Horizon, its operation and any associated operational risks were considered or discussed, and (b) between 2010 and 2011 at which the same was considered or discussed with respect to Horizon Online, limited in each case to matters associated with financial reconciliations, shortfalls, discrepancies or losses.</p>

ISSUE FOR DISCLOSURE	PLEADING REF (Info only)	CLASS OF DOCUMENT (MODEL C)
Fujitsu	GPOC 20 – 21 GDef 47 - 50 Reply 9.6(e), 44 and 45	15. Contract between Post Office and Fujitsu (ICL) for Horizon and all written contractual variations to it.
Information available to postmasters regarding transactions	GPOC 14.2 and 19.3 GDef 35, 76(6), 92 - 93 Reply 11, 14.2 - 14.4, 15, 16.1	16. Technical documents regarding Horizon stored by Fujitsu in its Dimensions systems (subject to Post Office using its best endeavours to give disclosure of those documents that are under Fujitsu's control) 17. Branch Operating Manual (including previous versions or equivalent historic document). 18. Any written policies or process documents regarding the completion of branch accounts in the period immediately before Horizon was introduced. 19. Any guidance notes or written advice issued to postmasters on accessing transaction information through Horizon.
Information available to Post Office regarding transactions	GPOC 55 GDef 76(4)-(6), 92 - 93 Reply 46, 47	20. Written policy and process documents <i>[DATE RANGE to be agreed pursuant to paragraph 2(b) to this Order]</i> relating to: a. The ability of Post Office (whether itself or by Fujitsu) remotely to detect the occurrence of potential shortfalls or other branch account discrepancies, when the same occurred and whether those discrepancies were caused by bugs, errors and/or defects in the Horizon system; b. the ability of Post Office and/or Fujitsu to conduct transactions, (by entering, deleting or otherwise altering the same) in postmasters' branches remotely; c. Balancing Transactions. 21. Any written policies or process documents regarding the recovery of shortfalls from postmasters. 22. Reports to Post Office's Board of Directors (or historic equivalent) between <i>[DATE RANGE to be</i>

ISSUE FOR DISCLOSURE	PLEADING REF (Info only)	CLASS OF DOCUMENT (MODEL C)
		<i>agreed pursuant to paragraph 2(b) to this Order</i> relating to Post Office's network-wide approach to identifying, tracking or managing discrepancies, shortfalls or losses, or to Postmasters' ability to dispute shortfalls.
Transaction Corrections	GPOC 18 GDef 39 – 41 Reply 21, 32	23. Branch Operating Manual (including previous versions or equivalent historic document). 24. Operating instructions and rules issued to postmasters in relation to Transaction Corrections. 25. Post Office written policies, process documents, and formal internal guidance documents (not emails) regarding the issuing of Transaction Corrections.
Declaring, Making Good and Disputing Shortfalls	GPOC 19.1 – 19.3 GDef 44 - 46 Reply 9.3, 22	26. Branch Operating Manual (including previous versions or equivalent historic document). 27. Guidance notes issued to postmasters on how to complete overnight cash declarations and Branch Trading Statements. 28. Guidance notes issued to postmasters on how to make good, settle centrally and dispute shortfalls, including, but not limited to, outside of the 42 / 60-day period. 29. Written policies regarding postmasters making good and settling centrally shortfalls. 30. Written policies or process documents regarding the reports which could be run, or steps taken by postmasters to investigate shortfalls.

ISSUE FOR DISCLOSURE	PLEADING REF (Info only)	CLASS OF DOCUMENT (MODEL C)
Training	GDef 17, 61(2), (4), (5) Reply 42 - 43	<p>31. Written policies and process documents relating to the provision of training when a new postmaster joins Post Office, from 1999.</p> <p>32. Written policies on when further training is offered due to the introduction of new products and services.</p> <p>33. <i>[DOCUMENT TYPE to be agreed pursuant to paragraph 2(b) of this Order]</i> (not emails) issued to Post Office trainers on how to train a postmaster to deal with and dispute a shortfall.</p> <p>34. Training materials and other standard / template documents used for new postmasters.</p> <p>35. Written policies or process documents relating to ongoing training which is provided due to the needs of postmasters or the introduction of new practices, systems or services.</p>
Helpline	GPOC 29 - 30, 57 – 58 GDef 61 - 62 Reply 18 - 19	<p>36. NBSC Knowledge Base (subject to a suitable method of inspection being agreed).</p> <p>37. Formal notices issued to postmasters regarding the operating hours of helplines.</p>
Investigations	GPOC 31 GDef 63 - 64 Reply 23 - 24	<p>38. Written policies and procedures regarding the investigation of shortfalls in branches (excluding investigations into suspected criminal misconduct).</p> <p>39. Written policies and procedures for initiating and progressing audits.</p> <p>40. Instructions or guidance (excluding emails) given to auditors on dealing with discrepancies, shortfalls and losses identified or suspected in branch.</p>

ISSUE FOR DISCLOSURE	PLEADING REF (Info only)	CLASS OF DOCUMENT (MODEL C)
Termination	GPOC 32 – 33 GDef 65 - 66	41. Written policies and process documents relating to: a. the suspension of postmasters; and b. the termination of postmaster's contracts (and any connected appeals process).
Suspense Accounts	GPOC 38 - 39 GDef 73 - 74 Reply 29 -33	42. Written policies and process documents in relation to the operation by Post Office of any "suspense" account associated with branch accounting, including, specifically, the account or accounts in which unattributed surpluses generated from branch accounts (such as, for example, perceived overpayments by banks in respect of particular transactions) were placed and, after a period of 3 years, credited to Defendant's profits and reflected in its profit and loss accounts.
Assistants	GPOC 43, 56 and 74 GDef 79, 95 and 116	43. Written policies and process documents relating to the appointment and registration of assistants. 44. Training materials provided to postmasters for the training of assistants.

Notes:

1. Some classes of document are relevant to more than one Issue for Disclosure and are repeated above, but for the avoidance of doubt they only need to be disclosed once.
2. Where reference is made to a document being issued to postmasters, this means a document issued to postmasters (or subpostmasters) in general and not a specific document issued to a particular postmaster.

