

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Claim No. HQ16XO1238

B E T W E E N:

ALAN BATES & OTHERS

Claimants

- and -

POST OFFICE LIMITED

Defendants

GENERIC PARTICULARS OF CLAIM

1. The purpose of these Generic Particulars of Claim is to set out allegations common to each of the Claimants or groups of them, and to identify indicative breaches of duty by the Defendant.
2. The Claimants will each serve a Schedule of Information containing details specific to their individual claims, including identifying the causes of action and indicative breaches on which they rely. Standard form contracts are served herewith marked Appendix A to D. It is anticipated that individuals selected as Lead Claimants will further provide individual Particulars of Claim.
3. These particulars are provided subject to the information likely to be obtained on disclosure and the obtaining (and exchange) of expert evidence, and in the context of the stark asymmetry of information between the Claimants and the Defendant, the Defendant's refusal to allow the Claimants to discuss its Letter of Response with Second Sight (without their solicitors entering into a contract with the Defendant), and the fact that the Defendant has not provided documents requested by the Claimants.

A. INTRODUCTION & KEY FACTS

A.1 The Parties

Defendant

4. The Defendant operates and exercises control over a network of around 11,600 Post Office branches throughout the UK. The Defendant offers products and services to the public via this network of branches including postal services, financial services, branch banking, bill payments, National Lottery, and foreign currency exchange.
5. In each branch it is the Defendant which determines the products and services which must be made available. Over time, the Defendant has increased the number and complexity of the products and services which it has required to be provided through its branch network.

Types of Branch

6. The vast majority of Post Office branches are known as Subpostoffices. In these branches the Defendant appoints a Subpostmaster to run the branch on behalf of the Defendant.
7. There are some branches which are operated in a similar way but subject to franchise agreements between the Defendant and a limited company (usually set up by an individual for the express purpose of contracting with the Defendant). There are also a small number of branches (around 315) which are directly managed by the Defendant as Crown Office branches, and individuals working in these branches are employed by the Defendant subject to express contracts of employment.

Subpostmaster Claimants and Contracts

8. The vast majority of Claimants are or were Subpostmasters.
9. The Defendant contracts with Subpostmasters on standard form contracts which, although they are expressed not to be contracts of employment, reserve to the Defendant a high degree of power, discretion and control.

10. As to the Defendant's standard form contracts with Subpostmasters:
 - 10.1. The majority of Claimant Subpostmasters were engaged by the Defendant on **Subpostmaster Contracts ("SPMCs")** dated 1994, and as subsequently amended (a copy of which is served herewith, marked **Appendix A**).
 - 10.2. A small number of Claimants were engaged on **Temporary Subpostmaster Contracts ("Temporary SPMCs")**, which was a shorter, modified form of the SPMC (a copy of which is served herewith, marked **Appendix B**). This purported to require these Claimants to comply with almost all of the same obligations as a permanent Subpostmaster.
 - 10.3. In pre-action correspondence the Defendant has claimed that a small number of Claimant Subpostmasters were engaged on a further modified version of the SPMC, called the **Community Subpostmaster Agreement**, which is described by the Defendant as being similar to the SPMC but offered to postmasters of part-time rural Post Office branches, and providing for a higher proportion of fixed remuneration than in the SPMC, as opposed to variable remuneration, to account for the lower footfall. The Claimants do not have a copy of a contract entitled Community Subpostmaster Agreement and the Defendant has not provided a copy. Pending disclosure, the Claimants proceed on the basis that if any Claimant was in fact engaged on any Community Subpostmaster Agreement the terms were in all material respects the same as those of the SPMC.
 - 10.4. According to the Defendant's pre-action correspondence, since 2010 the Defendant has introduced **Network Transformation Contracts** (herein, "NTCs"), as a replacement for the SPMC, in respect of which there are two branch models: the "Main branch" model (with a dedicated Post Office counter) and the "Local branch" model (where Post Office services can be transacted from the retail counter). References in these Particulars of Claim to clauses of the NTC are to clauses of the local branch model NTC (a copy of which is served herewith, marked **Appendix C**). The Claimants do not have

a copy of any main branch model NTC and the Defendant has not provided a copy. Pending disclosure, the Claimants proceed on the basis that if any Claimant was in fact engaged on any main branch model NTC, the terms were in all material respects the same as the local branch model NTC.

- 10.5. Any Claimants who may have been engaged by the Defendant on any other variation of Subpostmaster contract will identify the same in his or her Schedule of Information.

Other Claimants

11. A small number of Claimants were engaged in one of the following ways:
 - 11.1. **Crown Office employees:** These Claimants were employees in Crown Office branches, subject to an express contract of employment between the Claimant and the Defendant. The Claimants do not have a copy of a Crown Office employment contract, and the Defendant has not provided a copy;
 - 11.2. **Managers or Assistants:** These Claimants were managers or assistants of Subpostmasters, i.e. engaged by a Subpostmaster to work within one of the Defendant's branches; or
 - 11.3. **Directors and Guarantors:** These Claimants were directors or guarantors of limited companies which contracted with the Defendant as franchisees, under a standard form **Franchise Agreement**, as subsequently amended (a copy of which is served herewith, marked **Appendix D**).

A.2 Horizon

12. Horizon is an electronic point of sale and accounting system introduced by the Defendant in Post Office branches in or around 1999/2000, and thereafter amended from time to time, including an amendment in 2010 known as Horizon Online.
13. All Claimants were users of the Horizon system.

14. As particularised further below, the introduction and imposition of Horizon in 1999/2000:
 - 14.1. significantly changed how Claimants were required and able to work in their branches from the position previously and, in particular, the position which prevailed at the date the terms of the 1994 SPMC were introduced;
14.1A introduced the potential for errors to be made during data entry and/or failed to introduce any or sufficient error repellency (as at paragraph 24.1 below);
 - 14.2. limited Claimants' ability to access, identify, obtain and reconcile transaction records; and
 - 14.3. limited Claimants' ability to investigate apparent shortfalls, particularly as to the underlying cause thereof.
15. Further or alternatively, subsequent changes to it and/or changes to products and services which the Defendant required to be offered had the aforesaid effects on the Claimants.
16. Horizon comprised computer system hardware and software, communications equipment in branch, and central data centres where records of transactions made in branch were processed, recorded and retained. (For the purposes of these Particulars of Claim the term "Horizon" is not used to include training, here treated distinctly – although that is how the term has previously been used e.g. by Second Sight, which carried out a review of "Horizon" by reference to this wider meaning.)
17. Horizon operated such that transactions entered by Claimants or others onto terminals in branches were transmitted to the Defendant's central data centre where they were processed, recorded, reconciled and retained. Claimants were subsequently able to access transaction data, as recorded on the system, for a limited period (42, and after the introduction of Horizon Online, 60 days) and in limited report form by requesting reports to be generated by Horizon. These reports were generated from transaction records held by the central data centre.

18. From the data generated by Horizon, the Defendant required Claimants to accept changes to records of branch transactions, ("transaction corrections" issued by the Defendant), unless the Claimant was effectively able to prove that the transaction correction was not correct. The Defendant sometimes issued transaction corrections after the end of the branch trading period in which the transaction had taken place, and/or after the 42 / 60 day period during which Claimants could generate (limited) reports using Horizon.
19. The importance of the accuracy of Horizon was accentuated by the following.
 - 19.1. **Branch Trading Statement:** The Defendant required Claimants to '*balance and complete a Branch Trading Statement*' at the end of each branch trading period (as stated in the Operations Manual at §9.3). Initially this was required on a weekly basis, but the Defendant subsequently changed this to a 4 or 5 weekly cycle (as notified to individual branches by the Defendant). Completion of branch trading statements required balancing of physical cash and stock in hand with a trial balance produced by Horizon. Claimants were required to check and confirm that the cash and stock shown in the accounts matched the cash and stock held in the branch in order for the branch to enter a new trading period and to continue trading the following day.
 - 19.2. **Making good:** When there were discrepancies between trial balances generated by Horizon and the physical cash and stock in hand which appeared to show less cash or stock in hand than shown on Horizon ("an **apparent shortfall**" or an "**alleged shortfall**") the Defendant required Claimants to make good the amount at the time of balancing, unless '*other arrangements are agreed*'. The Defendant required the Claimants to make the amount good, either:
 - a. directly (by adding cash or a cheque from his or her personal funds directly to the branch account), or

b. centrally, (*'to settle the amount centrally'*), by agreeing the amount as a debt to the Defendant repayable either as a single payment or by way of deductions from monthly remuneration from the Defendant.

19.3. **Disputing 'shortfalls':** Claimants seeking to dispute apparent shortfalls did not have an option within Horizon to do so, and were required to contact the Helpline to seek assistance (see paragraph 29 below). Claimants who contacted the Helpline were in any event required to settle any disputed amounts centrally, albeit collection was in some cases suspended, apparently pending an investigation by the Defendant. Claimants were themselves unable to carry out effective investigations into disputed amounts because of the limitations on their ability to access, identify and reconcile transactions recorded on Horizon and the lack of any or adequate report-writing features in Horizon (as repeatedly raised by Mr Bates). There were no provisions, nor was there any or sufficient guidance in the Operations Manual as to the procedure or process for disputing discrepancies or apparent or alleged shortfalls. The Defendant failed to carry out any, or any fair or adequate investigations into disputed amounts.

A.3 Fujitsu

20. The Defendant entered into a contract with Fujitsu Service Limited on 28 July 1999 for the provision of IT services relating to Horizon. The Claimants are unable to particularise details of the arrangement between the Defendant and Fujitsu in circumstances where the only version of the contract which has been disclosed to the Claimants is partial, redacted, does not include other agreements incorporated by reference, and is in any event only the current version as in force since 31 March 2016. The Defendant has declined to disclose any other details of its contract with Fujitsu.

21. Pending full disclosure, the Claimants understand that Fujitsu's role included:

21.1. providing the data transfer service by which transactional data was transferred between branches and the central data centres;

- 21.2. providing a data transfer service between the central data centres and clients of the Defendant e.g. British Gas, Camelot (i.e. the National Lottery), and managing the interface between Horizon and those other systems;
- 21.3. managing coding errors, bugs, and fixes so as to prevent, manage or seek to correct apparent discrepancies in the data (including between the said systems), in a manner which would potentially affect the reliability of accounting balances, statements or other reports produced by Horizon; and
- 21.4. providing a telephone advice service, for and on behalf of the Defendant (or by agreement with the Defendant) as a point of contact in relation to technical problems with the Horizon system or equipment.

22. Prior to disclosure and expert evidence, the Claimants are unable to provide detailed particulars of bugs, errors or defects which were or may have been the cause of any discrepancies or alleged shortfalls attributed to them by the Defendant, but will be able to plead further thereto following disclosure or the provision of information relating thereto by the Defendant. The Defendant has declined to provide obviously relevant disclosure in relation to these matters.

23. However, the Claimants aver that there were a large number of software coding errors, bugs or defects which required fixes to be developed and implemented. There were also data or data packet errors. There was a frequent need for Fujitsu to rebuild branch transaction data from backups, giving rise to the further risk of error being introduced into the branch transaction records. The Claimants understand that Fujitsu maintained a 'Known Error Log' relating to some or all of these issues which was provided to the Defendant but which has not been disclosed.

24. Further, the Claimants aver and rely upon the following:

- 24.1. Insufficient error repellency in the system (including sufficient prevention, detection, identification and reporting of errors), both at the data entry level and at the data packet or system level (including data processing, effecting and reconciling transactions, and recording the same);

24.1A bugs and/or errors and/or defects in Horizon and any data or data packet errors had the potential to produce apparent shortfalls which did not represent a real loss to the Defendant;

24.2. Horizon is imperfect and has the potential for creating errors (as the Defendant has admitted in pre-action correspondence, in the Letter of Response, dated 28 July 2016, at paragraph 1.3);

24.3. bugs and/or errors have on some occasions produced discrepancies and/or apparent shortfalls (as the Defendant has admitted in pre-action correspondence, in the Letter of Response, Schedule 6) and such shortfalls may also have arisen from data or data packet errors; and, further

24.4. the Defendant sought and/or recovered such alleged shortfalls from Subpostmasters (as is presently understood to be admitted by the Defendant in the Letter of Response, Schedule 6, paragraphs 4.1 to 4.5).

25. Further, the Defendant was, by itself and/or via its agent Fujitsu, able to alter branch transaction data directly and carry out changes to Horizon and/or transaction data which could affect branch accounts.

26. However, the Defendant has made public statements in the following terms:

26.1. *"Horizon does not have functionality that allows Post Office or Fujitsu to edit or delete the transactions as recorded by branches"* (Defendant's published reply to Second Sight's Briefing Report Part Two, concerning a review of the Horizon system); and

26.2. *"Transactions as they are recorded by branches cannot be edited"* (Defendant's published reply to the BBC Panorama documentary in relation to Horizon).

27. These statements were untrue, as the Defendant now admits.

28. The Claimants will rely upon these previous untrue denials in support of inferences that (i) the Defendant took insufficient care as to the truth of representations as to the

accuracy and/or reliability of Horizon, (ii) that, in context, the Defendant made the above statements recklessly as to their truth, and (iii) the Defendant has not approached the issue of the cause of apparent shortfalls with an open mind, fairly or with adequate enquiry.

A.4 Helpline

29. The Defendant operated the Network Business Support Helpline ("the Helpline") which it provided and recommended to Claimants as a primary source of advice and assistance in relation to Horizon, transactions, errors and issues relating to their trading statements and accounts.
30. The Helpline failed to provide the necessary assistance and support to Claimants and in some cases it was positively unhelpful, for some or all of the following reasons:
 - 30.1. the Helpline was often unavailable to Subpostmasters, either because of its operating hours (e.g. from 8.15am to 6pm on weekdays and 8.30am to 4pm on Saturday, for the greater part of the period covered by applications to the Mediation Scheme) or because it was difficult to get through or reach an operator (the Defendant having admitted that "*there have been periods where the NBSC was more difficult to contact than in other periods*" on page 30 of the Letter of Response);
 - 30.2. when Claimants did get through they were often advised that they would receive a call back, but did not;
 - 30.3. Helpline advisors adopted script based responses and failed to give adequate support or assistance which was specific to the problem at hand and/or did not effectively resolve the particular problem or enable the Claimants to do so;
 - 30.4. Helpline advisors sometimes gave advice which, when followed, resulted in an increase in apparent shortfalls;
 - 30.5. Helpline advisors also sometimes:

- a. gave misleading information as to the possibility of an error in Horizon being the source of an apparent shortfall;
- b. gave misleading information as to the extent to which other individuals were experiencing difficulties with Horizon and/or experienced unexplained apparent shortfalls;
- c. advised Claimants not to worry about discrepancies or apparent shortfalls and suggested that they would sort themselves out; and/or
- d. encouraged Claimants to sign-off cash branch trading statements without resolving the source of a discrepancy and/or in circumstances where the Claimants could not be satisfied that the trial balance or branch statement produced was accurate.

30.6. Many Subpostmasters who contacted the Helpline were expressly told or impliedly led to believe that they were the only one experiencing such difficulties;

30.7. The Defendant did not disclose the matters at paragraphs 23, 24, or 25, or the true position as to the experience of other users, to Claimants who contacted the Helpline or otherwise.

A.5 Investigations

31. Further, in relation to investigations, audits or similar enquiry by the Defendant in respect of incorrect Branch Trading Statements, discrepancies, and apparent or alleged shortfalls:

- 31.1. Investigators were not instructed or notified as to each or any of the errors and related matters in paragraphs 23 and 24, above;
- 31.2. Investigators were not instructed that transactions, entries and/or underlying data in the Horizon system could be remotely altered (as at paragraph 25 or at all);

- 31.3. Investigators were not instructed, notified and/or informed as to the experience of other users and/or provided access to information about the same;
- 31.4. Investigators were not instructed to seek out the true cause thereof, and in practice proceeded on the basis that Claimants were liable for any apparent or alleged shortfall, unless the Claimant could prove otherwise; and/or
- 31.5. Investigators were instructed to disregard possible problems with Horizon as a possible cause of apparent or alleged shortfalls and/or it was the organisational culture or practice to do so and/or investigators (or some of them) in fact did so.

A.6 Terminations

32. The Defendant suspended and/or terminated the appointments of Claimants:
 - 32.1. who did not or could not "*make good*" apparent or alleged shortfalls;
 - 32.2. who challenged whether apparent or alleged shortfalls actually represented any true shortfall at all or real loss to the Defendant;
 - 32.3. who raised the inadequacies of the Horizon system and the difficulties facing Claimants in interrogating the underlying transactions and data; and/or
 - 32.4. who, in the circumstances set out below, completed or approved Branch Trading Statements (generated by Horizon) that were not, on their face, consistent with the stock and cash held by the branch ('incorrect Branch Trading Statements').
33. In each case in which the Defendant relies upon any other reason, the Claimants will put the Defendant to strict proof.

A.7 Context & Effect on Claimants

34. In all the circumstances, some Claimants reasonably felt that they had no effective choice but to proceed, either:

- 34.1. by making good the apparent or alleged shortfall (if they were able to do so);
or
- 34.2. by signing off incorrect Branch Trading Statements.

35. The said circumstances included that:

- 35.1. the express terms of the standard form contracts were replete with power and discretion in the hands of the Defendant, as particularised below;
- 35.2. the Defendant's system required Claimants to sign off branch accounts in order to be permitted to enter a new trading period, the next day;
- 35.3. Claimants were contractually required to offer the services of the Defendant using the Horizon system, which required them to enter a new trading period on that system;
- 35.4. Claimants faced alleged shortfalls which they could not effectively dispute, investigate, or trace the cause of, as set out in paragraph 19.3 above;
- 35.5. the Defendant's position was to require repayment as a condition of their continuing appointment and as set out at Section A.6 above;
- 35.6. many Claimants hoped (and/or were in some cases advised or encouraged to believe) that discrepancies may subsequently be resolved, by pending transactions, transaction corrections or otherwise;
- 35.7. many Claimants had only modest incomes and/or savings and could not afford to pay (or keep paying) the Defendant the amounts of the apparent shortfalls and/or and the only other alternative was termination of their appointment with consequent financial losses;

35.8. there was an acute relational imbalance between the parties.

36. Further or alternatively, when individual Claimants did sign off incorrect Branch Trading Statements, the Defendant's approach was to presume dishonesty, on the basis that the only reason an individual would do so was to cover up his/her own theft. This approach is admitted and averred by the Defendant at paragraph 5.79.2 of its Letter of Response: "*it is a sound and logical inference that one would only submit false accounts to cover up their own theft*". This presumption was unfair, flawed and/or irrational in the circumstances set out above and in breach of the implied terms and tortious duties below.

37. In the circumstances above, the Claimants acted under unfair and/or illegitimate pressure from the Defendant and/or had no realistic practical alternative but to act as they did. They therefore acted under economic duress and/or due to (or in response to) unconscionable dealing by the Defendant. Further or alternatively, they so acted in circumstances in which the Defendant was in material breach of contract to the Claimants and/or had wrongfully failed to disclose material facts to the Claimant, as set out herein.

A.8 The Defendant's Suspense Accounts

38. The Defendant operated one or more suspense accounts in which it held unattributed surpluses including those generated from branch accounts. After a period of 3 years, such unattributed surpluses were credited to the Defendant's profits and reflected in its profit and loss accounts.

39. The Defendant thereby stood to benefit and/or did benefit from apparent shortfalls wrongly attributed to the Claimants which did not represent real losses to the Defendant.

B. CONTRACT TERMS - SUBPOSTMASTERS

40. The Claimants will refer to their respective contracts with the Defendant as properly construed for their full terms and true effect, subject to the matters set out below.

B.1 Factual Matrix

41. The Subpostmaster Contract and all variations of it were standard form contracts drafted by the Defendant, the terms of which were not open to negotiation by individual Claimants.
42. There was an inequality of bargaining position between individual Subpostmaster Claimants and the Defendant amounting to a serious relational imbalance.
43. Claimants taking up appointment as Subpostmasters were required to make long term and expensive commitments in respect of their relationship with the Defendant, typically by:
 - 43.1. purchasing the goodwill of the business from the previous Subpostmaster;
 - 43.2. entering into a contract to purchase or lease premises from which to operate the branch, with associated borrowing from banks or other lenders;
 - 43.3. taking up residential accommodation on those premises or in linked premises;
 - 43.4. entering into employment contracts with assistants;
 - 43.5. investing in the training of those assistants;
 - 43.6. (at least as at 1998) being subject to a 25% deduction by the Defendant from their first year's remuneration; and/or
 - 43.7. incurring refurbishment, fit out and/or decorating costs.
44. The operation of the contractual relationship between individual Subpostmaster Claimants and the Defendant required a high degree of communication, co-operation and predictable performance, based on mutual trust and confidence.
45. Although the Subpostmaster Contract and all variations of it stated that the Subpostmaster is not an employee of the Defendant (SPMC Section 1, paragraph 1; Temporary SPMC paragraph 2.1; NTC Part 2 paragraph 1.2), and in these

proceedings the Subpostmaster Claimants do not claim to have been employees, many aspects of the written contractual terms reflect a contract of employment, including:

- 45.1. the high degree of discretion, power and control to the Defendant (see section B.2, below);
- 45.2. the SPMC included express provision for holiday substitution allowance (SPMC, Section 4), and sick absence substitution allowance (SPMC 7); and
- 45.3. the SPMC required personal service in relation to the provision and notification of any substitute (SPMC Section 3, and Section 4, paragraph 8), evidence of incapacity for work (SPMC Section 10, paragraph 10) and the recruitment of assistants (SPMC Section 15).

46. The Claimants will rely on these and other aspects of the factual matrix as particularised elsewhere in these Generic Particulars of Claim and as may further be established as relevant in individual cases.

B.2 Written Terms

Overview

47. The written terms of the Defendant's contracts with Subpostmasters purported to reserve a high degree of discretion, power and control to the Defendant, with very few express obligations on the Defendant.
48. The Defendant did not provide all the Claimants with a copy of the full terms of the relevant written contract at the date of their appointment or thereafter and/or did not draw their attention to onerous or unusual terms therein.
49. The Claimants will contend that the written terms between the Defendant and Claimants fall to be construed:
 - 49.1. as a whole and in the factual matrix at B.1 above;

- 49.2. *contra proferentem*, against the Defendant, whose standard terms they were;
- 49.3. as a relational contract and/or in the context of the implied terms, as pleaded in Section B.3 below, or such other implied terms as the Court may find;
- 49.4. subject to the unenforceability of those terms not brought fairly and reasonably to the Claimant's attention, as set out in Section B.4 below; and/or
- 49.5. subject to the provisions of the terms of Unfair Contract Terms Act 1977, as set out in Section B.5 below.

50. Further or in the alternative, the express written terms did not represent the true agreement between the parties, in that the terms as to termination without cause did not represent the true agreement between the parties as set out in Section B.6 below:
Autoclenz v Belcher [2011] UKSC 41.

Rules, Instructions and Standards

51. The written terms of the Defendant's contracts with Subpostmasters purported to require Subpostmasters and their Assistants to comply with an extensive and poorly defined list of changeable rules, instructions and standards, with performance judged according to the discretionary satisfaction of the Defendant:
 - 51.1. In the SPMC:
 - a. Section 1, paragraph 13: "*SECTIONS 1-23 contain the general terms of a Subpostmaster's appointment. [The Defendant] issues the Subpostmaster with rules and Postal Instructions which deal with the various classes of Post Office Business to be transacted at his sub-office.*"
 - b. Section 1, paragraph 5: "*...Retention of the appointment as Subpostmaster is dependent on the sub-office being well managed and the work performed properly to the satisfaction of [the Defendant].*"
 - c. Section 1, paragraph 14: "*The rules provided for the instruction and guidance of the Subpostmaster must be kept up to date. They must be carefully studied*

and applied. No breach of the rules will be excused on the grounds of ignorance."

- d. Section 1, paragraph 18: "*Changes in conditions of service and operational instructions, including those which are agreed with the National Federation of Sub-Postmasters, will appear from time to time in Counter News or by amendment to the Contract. Such changes and instructions are deemed to form part of the Subpostmaster's contract.*"
- e. Section 1, paragraph 19: "*All instructions received from the Regional General Manager should be carried out as promptly as possible.*"

51.2. In the Temporary SPMC:

- a. Clause 2.7: "*The Temporary Subpostmaster ... is required ... to accept full responsibility for the proper running of the Branch and the efficient performance of the Services in accordance with any standards required by [the Defendant] and notified to him from time to time.*"
- b. Clause 6.6: "*The Temporary Subpostmaster must comply with any instructions issued by [the Defendant] from time to time, including without limitation those contained in the Counter Operations manual with regard to the running of the Branch, the performance of the Services, etc.*"

51.3. In the NTC:

- a. Part 1, paragraph 1.1 "*The Operator agrees to operate the Branch on behalf of [the Defendant] in accordance with the express terms of the Agreement (including for the avoidance of doubt the Manual)", and the definition of Manual at Part 5 paragraph 1.1 as follows:*

The following list includes the manuals, guidelines and instructions which currently come under the definition of "Manual":

- *Local Post Office Operations Manual*

- *Horizon online administration and equipment operations manual*
- *National lottery operations manual (where branch offers this product)*
- *Ordering stock and operations manual (where branch offers this product)*
- *Post Office outreach services operations manual (where applicable)*
- *Post Office paystation operations manual*
- *Security operations manual*
- *Horizon system user guide (online)*
- *Horizon online help (online)*
- *Branch Focus*
- *Post Office branch standards*
- *Post Office Ltd's Accessibility Guide*
- *Branch Conformance Standards*
- *Post Office cash and secure stock remittance services manual (online)*
- *FOS project operations manual*
- *FOS project training workbook (x2)*
- *Mailwork specification (where applicable)*
- *Any other instructions to operators or updates to such instructions issued by [the Defendant] from time to time"*

b. Part 5, paragraph 1.3: "[the Defendant] may amend the list of documents set out in this Part 5 and may amend the contents of any manual or documents on that list by giving written notification (which may be by electronic means) to the Operator. In the Agreement, unless otherwise specified, a reference to the Manual is a reference to it as amended, consolidated or extended by [the Defendant] from time to time."

c. Part 5, paragraph 1.5: "In addition to the Manual, [the Defendant] may issue to the Operator instructions which deal with various classes of Products and Services to be transacted at the Branch and the design and operational standards required to run the Branch."

d. Part 5, paragraph 1.6: "All such instructions must be complied with immediately (unless otherwise notified by [the Defendant]) and must be kept

up to date by incorporation of updates issued by [the Defendant]. They must be carefully studied by the Operator, its Manager and Assistants. No breach of instructions will be excused on the grounds of ignorance."

- e. Part 2, paragraph 3.2.1, 3.2.2: "*The Operator shall..." "maintain the highest standards in all matters connected with the Branch and Branch Premises, including implementing and maintaining the standards specified in the Manual" and "comply with all instructions given to it by [the Defendant] with regard to standards and quality in the operation of the Branch";*

Classes of Business

- 52. The written terms of the Defendant's contracts with Subpostmasters purported to provide a discretion for the Defendant to unilaterally change the required classes of business to be undertaken at the branch, with no or minimal notice to the Subpostmaster:

52.1. In the SPMC:

- a. Section 1, paragraph 6: "*The Subpostmaster is informed at the time of his appointment of the classes of business he is required to provide. He must also undertake, if called upon to do so later, any other class of business not required at the time of his appointment but which [the Defendant] may subsequently and reasonably require him to do, except that [the Defendant] may not require him to undertake Mailwork where the Subpostmaster did not undertake to do so as part of the terms of his appointment.*";
- b. Section 1, paragraph 7: "*If [the Defendant] alters the services to be provided or withdraws a service the Subpostmaster has no claim to compensation for any disappointment which may result from the change.*"

52.2. In the Temporary SPMC:

- a. Clause 2.3: "...[The Defendant] shall in its absolute discretion decide which of the products and services listed above are to be made available by the

Temporary Subpostmaster from time to time at the Branch and will notify the Temporary Subpostmaster accordingly through the configuration of the Horizon terminal at the Branch."

b. Clause 3.2: *"If it is deemed necessary at anytime to alter the Services, to withdraw any part of the business conducted at the Branch, or to introduce an alternative method of payment, the Temporary Subpostmaster has no claim to compensation for any disappointment that may result from the change."*

52.3. In the NTC:

a. Part 2, paragraph 1.7: *"[The Defendant] has the right to enter into contracts or arrangements with Clients for the handling of Products or the supply of Services by the Network (including the Branch) on such terms as [the Defendant] considers fit. [The Defendant] retains the discretion as to where within the Network particular products and services are offered"*

Agency

53. The written terms of the Defendant's contracts with Subpostmasters purported to appoint Subpostmasters as agents of the Defendant, as follows:

53.1. In the SPMC: Section 1, paragraph 1 *"The contract is a contract for services and consequently the Subpostmaster is an agent and not an employee of [the Defendant]."*

53.2. In the Temporary SPMC: Clause 2.1; *"This Contract is a temporary contract for services between [the Defendant] and the Temporary Subpostmaster and consequently, the Temporary Subpostmaster is an agent and not an employee of [the Defendant]".*

53.3. In the NTC: Part 2, paragraph 1.2: *"The Agreement is a contract for services and the Operator is an agent and not an employee of [the Defendant]. The Operator acknowledges that no relationship of employer and employee exists between [the Defendant] and the Operator, or between [the Defendant] and any Assistant."*

Accounts and Liability for Loss

54. The written terms of the Defendant's contracts with Subpostmasters included terms which the Defendant (wrongly) applied and operated so as to hold Subpostmasters strictly liable for all cash and stock and apparent or alleged shortfalls, and with wide ranging responsibility for losses:

54.1. In the SPMC:

- a. Section 12, paragraph 4: "*The Subpostmaster must ensure that accounts of all stock and cash entrusted to him by [the Defendant] are kept in the form prescribed by [the Defendant]...*"
- b. Section 12, paragraph 12: "*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. Deficiencies due to such losses must be made good without delay.*"
- c. Section 12, paragraph 13: "*The financial responsibility of the Subpostmaster does not cease when he relinquishes his appointment and he will be required to make good any losses incurred during his term of office which may subsequently come to light.*"

54.2. In the temporary SPMC:

- a. Clause 6.1: "*The Temporary Subpostmaster is strictly responsible for the safe custody of all [the Defendant's] property, including (but not limited to) cash, stock of all kinds and papers and documents, whether held by himself or by his assistants. He is expressly forbidden to make use of the cash balance due to [the Defendant] for any purpose other than the requirements of the Services and he must on no account apply to his own private use, for however short a period, any portion of the official funds entrusted to him.*"
- b. Clause 6.2: "*Deficiencies due to any losses of cash or stock must be made good by the Temporary Subpostmaster without delay.*"

c. Clause 6.5: "*The responsibility of the Temporary Subpostmaster for cash and stock will continue after termination of this Contract in respect of losses, gains, errors, acts or omissions occurring during his appointment.*"

54.3. In the NTC:

- a. Part 2, paragraph 3.6.6: "*The Operator shall: account for and remit to [the Defendant] all monies collected from Customers in connection with Transactions in accordance with the Manual. Any cash which [the Defendant] provides to the Operator or which the Operator collects as a result of Transactions does not belong to the Operator and shall be held by the Operator (at the Operator's risk) on behalf of, and in trust for, [the Defendant] and the Clients. Any such cash shall not form part of the assets of the Operator. The Operator acknowledges that it is expressly forbidden from making use of any such amount due to [the Defendant] for any purpose other than the operation of the Branch and it must on no account apply to its own private use, for however short a period, any portion of funds belonging to [the Defendant] entrusted to it. Any breach of this clause 3.6.6 and/or any misuse of [the Defendant's] cash by the Operator or its Personnel shall be deemed to be a material breach of the Agreement which cannot be remedied and may render the offender liable to prosecution.*"
- b. Part 2, paragraph 4.1: "*The Operator shall be fully liable for any loss of or damage to, any Post Office Cash and Stock (however this occurs and whether it occurs as a result of any negligence by the Operator, its Personnel or otherwise, or as a result of any breach of the Agreement by the Operator) except for losses arising from the criminal act of a third party (other than Personnel) which the Operator could not have prevented or mitigated by following [the Defendant's] security procedures or by taking reasonable care. Any deficiencies in stocks of Products and/or any resulting shortfall in the money payable to [the Defendant] must be made good by the Operator without delay so that, in the case of any shortfall, [the Defendant] is paid the full amount when due in accordance with the Manual*";

- c. Part 2, paragraph 4.2: "*The Operator's responsibility for such items shall begin from the time at which the Post Office Cash and Stock are received by the Operator and shall end when the Post Office Cash and Stock are given to Customers in the proper conduct of the Branch or are returned to [the Defendant] or, in the case of cash or financial instruments are collected by a cash in transit provider or are paid into a bank. Whilst the Post Office Cash and Stock are in the Operator's possession, it shall keep them in a place of security."*
- d. Part 2, paragraph 4.3: "*The Operator shall retain financial responsibility (in accordance with the Agreement) following the termination of the Agreement, and it will be required to make good any losses (including losses arising from Transaction corrections and stock losses) incurred during its operation of the Branch which may subsequently come to light.*"
- e. Part 2, paragraph 13.1: "*The Operator shall reimburse [the Defendant] in full on demand for all losses, claims, demands, proceedings, liabilities, costs and expenses (including reasonable legal costs and expenses) incurred by [the Defendant] as a result of: (13.1.1) any negligence or breach of the Agreement by the Operator or its Personnel; (13.1.2) any misuse or infringement of any Intellectual Property of any third party by the Operator or its Personnel; and/or (13.1.3) any claim brought under the EA and/or its regulations in respect of the Branch*".

55. For the avoidance of doubt, on a proper construction of section 12, paragraph 12 of the SPMC (and similar clauses said to impose such liability), the Subpostmaster is not so strictly liable and is only liable for actual losses caused by the negligence, carelessness or error of the Subpostmaster, or his assistant, as to which the contractual burden of proof was on the Defendant. Thus, for example, the Subpostmaster would not be liable for an apparent shortfall in branch accounts:

- 55.1. which did not represent a real loss to the Defendant;

- 55.2. which was not established by the Defendant, after due enquiry, to be such a real loss;
- 55.3. in circumstances where the loss was caused or contributed to by the Defendant's own breach of duty;
- 55.4. where it was not established to be due to the Subpostmaster's own negligence, carelessness or error or that of his Assistants.

Assistants

56. The written terms of the Defendant's contracts with Subpostmasters purported to make the Subpostmaster liable for the acts of his or her Assistants, but provided no, or minimal obligations on the Defendant in relation to training of Assistants:
 - 56.1. In the SPMC (1994 to 2006):-
 - a. Section 15, paragraph 2: "*Assistants are employees of the Subpostmaster. A Subpostmaster will be held wholly responsible for any failure, on the part of his Assistants, to apply Post Office rules, or to provide a proper standard of service to the public. He will also be required to make good any deficiency, of cash or stock, which may result from his assistants' actions.*"
 - b. in Section 7 of the Operations Manual (incorporated by reference): "*Training of operators and assistants. A trainer from the Post Office National Training team will complete initial training of the Operator or the first Manager and a certain number of Assistants. This will include transactional training for key products and services, FSA and Mails compliance and any Equipment used on a daily basis.*"
 - c. express provision for Post Office to provide training in relation to Mailwork, as set out at paragraph 65.1 below.

56.2. In the SPMC as amended in July 2006:-

- a. Section 15, paragraph 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 to: (2.1) apply Post Office ® rules or instructions as required by [the Defendant]; (2.2) complete any training necessary in order to properly provide Post Office ® Services; and (2.3) comply with the obligations set out below. The Subpostmaster will also be required to make good any deficiency of cash or stock which may result from his Assistants' actions or inactions.*"
- b. Section 15, paragraphs 7.1: "*[The Defendant] will: (7.1.1) provide the Subpostmaster with relevant training materials and processes to carry out the required training of his Assistants on the Post Office ® Products and Services; (7.1.2) inform the Subpostmaster as soon as possible where new or revised training will be necessary as a result of changes in either the law or Post Office ® Products and Services; and (7.1.3) where appropriate ... update the training materials (or processes) or provide new training materials (or processes) to the Subpostmaster. However, it is the Subpostmaster's responsibility to ensure the proper deployment within his Post Office ® branch of any materials and processes provided by [the Defendant] and to ensure that his Assistants receive all the training which is necessary in order to be able to properly provide the Post Office ® Products and Services and to perform any other tasks required in connection with the operation of the Post Office ® branch.*"
- c. Section 15, paragraph 7.2: "*Where [the Defendant] has obligations to third parties in relation to certain Post Office ® Products and Services (including, but not limited to, financial transactions (such as bureau de change, and sales of insurance) and communications products, and provision of mail services), the Subpostmaster undertakes to use his best endeavours to ensure that his Assistants will not cause [the Defendant] to be in breach of such obligations.*"

- d. Section 15, paragraph 7.3: “[The Defendant] *may request from time to time that where it has obligations as described above the Subpostmaster should conduct specific training (whether through written/distance learning that may require confirmation of completion or via presentations) in relation to certain Post Office ® Services (such as, but not limited to, money laundering). Failure by the Subpostmaster to arrange for such training to be properly applied will be deemed to be a breach of this Contract by him.*”
- e. Section 15, paragraph 7.4: “(7.4.1) *The Subpostmaster must formulate a training policy for all his Assistants, in order to fulfil his obligations in relation to the safekeeping of any Postal Packets.* (7.4.2) *This training policy should include the following elements: the levels of training required to fulfil the obligations referred to above at 7.4.1; the levels of training required according to the differing responsibilities of, and work undertaken by, the Assistants, in relation to Postal Packets; details of the minimum level of training required; an explanation of how the training is provided; the frequency with which training is provided; and details of how training is given, recorded and monitored.* (7.4.3) *The Policy must also ensure compliance with all other regulatory and legislative requirements.* (7.4.4) *The Subpostmaster must regularly monitor the implementation of and compliance with the training policy in his Post Office ® branch.*”

56.3. In the Temporary SPMC:-

- a. Clause 5.1: “*The Temporary Subpostmaster must provide and train at his own expense, suitable assistants needed to provide the Services and must comply with all statutory obligations placed on an employer.*”
- b. Clause 5.2: “*The Temporary Subpostmaster must comply with the provisions of Appendix 1 to this Contract in relation to assistants and prospective assistants …*”, and at Appendix 1, Section 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, to: (a) apply Post*

Office® rules or instructions as required by [the Defendant]; (b) complete any training necessary in order to properly provide Post Office® Services; and (c) comply with the obligations set out below. The Subpostmaster will also be required to make good any deficiency of cash or stock which may result from his Assistants' actions or inactions."

- c. There was no express obligation on the Defendant to provide training or training materials to Subpostmasters under the Temporary SPMC.

56.4. In the NTC:-

- a. Part 2, paragraph 2.3: "*Where [the Defendant] considers it necessary, it shall initially train the first Manager and such number of Assistants as [the Defendant] shall determine, in the operation of the System at the Branch.*"
- b. Part 2, paragraph 2.4: "*The Operator shall ensure that the first Manager cascades the training to all other Assistants and to any replacement Manager in order to ensure that all subsequent Managers and all other Assistants receive sufficient initial training from properly trained Managers.*"
- c. Part 2, paragraph 2.5: "*[the Defendant] may require the Manager and/or the Assistants to undertake further training at any reasonable location and time during the Term if [the Defendant] (2.5.1) reasonably considers such training to be essential; or (2.5.2) wishes to train them in new and improved techniques which have been devised and which the Operator will be required to use in operating the System.*"
- d. Part 2, paragraph 2.6: "*The Operator shall ensure that Managers and Assistants attend the training provided by [the Defendant] under clauses 2.3 and 2.5.*"
- e. Part 2, paragraph 2.7: "*Any failure by the Operator to comply with its obligations pursuant to this clause 2 shall be deemed to be a material breach of the Agreement ...*".

f. Part 2, paragraph 2.8: "*The Operator shall be responsible for the costs of the Manager and/or Assistants attending the training referred to in clauses 2.3 and 2.5 (including, as appropriate, salary, travel accommodation and subsistence), but the cost of delivering the training shall be met by [the Defendant].*"

Helpline

57. The NTC included an obligation on the Post Office, at paragraph 1.6.1, as follows:

"[The Defendant] shall provide a helpline to enable the Operator to consult with [the Defendant] about running the Branch (details of the helpline are contained within the Manual)".

58. The SPMC and Temporary SPMC did not include any similar express provision.

Access to Branch Accounts and Records

59. The written terms of the Defendant's contracts with Subpostmasters provided the Defendant with the express power to access branch accounts and records:

59.1. In the SPMC:

a. Section 12, paragraph 4: "*The Subpostmaster ... must immediately produce these accounts, and the whole of his sub-office cash and stock for inspection whenever so requested by a person duly authorised by the Regional General Manager.*"

59.2. In the Temporary SPMC:

a. Clause 4.5: "*The Temporary Subpostmaster must allow representatives of [the Defendant] access to the Branch at all times, on production of correct identification.*"

59.3. In the NTC:

- a. Part 2, paragraph 2.1: "... but this shall not restrict any access by [the Defendant] and/or its authorised representatives to the Branch and [the Defendant's] information systems."

Suspension

60. The written terms of the Defendant's contracts with Subpostmasters (but not temporary Subpostmasters) included a purported right to suspend the Subpostmaster on bases including any "irregularities" as follows:

60.1. In the SPMC:

- a. Section 19, paragraph 4: "A Subpostmaster may be suspended from office at any time if that course is considered desirable in the interests of [the Defendant] in consequence of his: (a) being arrested, (b) having civil or criminal proceedings brought against him, (c) where irregularities or misconduct at the office(s) where he holds appointment(s) have been established to the satisfaction of [the Defendant], or are admitted, or are suspected and are being investigated."
- b. Section 19, paragraphs 5 and 6: "Where a Subpostmaster is suspended his remuneration in respect of any period of suspension will be withheld so long as such suspension continues"; "On the termination of the period of suspension whether by termination of contract or reinstatement, the Subpostmaster's remuneration in respect of the period may, after consideration of the whole of the circumstances of the case, be forfeited wholly or in part...".

60.2. There was no contractual right to suspend in the Temporary SPMC;

60.3. In the NTC:

- a. Part 2, paragraph 15.1: "[The Defendant] may suspend the Operator from operating the Branch (and/or, acting reasonably, require the Operator to suspend all or any of its Assistants engaged in the Branch from working in the

Branch), where [the Defendant] considers this to be necessary in the interests of [the Defendant] as a result of: (15.1.1) the Operator and/or any Assistant being arrested, charged or investigated by the police or [the Defendant] in connection with any offence or alleged offence; (15.1.2) civil proceedings being brought against the Operator and/or any Assistant; or (15.1.3) there being grounds to suspect that the Operator is insolvent, to suspect that the Operator has committed any material or persistent breach of the Agreement, or to suspect any irregularities or misconduct in the operation of the Branch, the Basic Business or any Post Office® branches with which the Operator and/or any Assistant is connected (including any financial irregularities or misconduct)."

b. Part 2, paragraph 15.2: *"During the period of any suspension, whether under clause 15.1 or otherwise, [the Defendant] may: (15.2.1) suspend payment of all sums due to the Operator under the Agreement; (15.2.2) with the agreement of the Operator appoint a temporary substitute for the Operator to operate the Branch from the Branch Premises, in which case any Fees in relation to Transactions carried out at the Branch will be paid by [the Defendant] direct to such temporary substitute; and (15.2.3) to the extent such costs have been agreed with the Operator, deduct its costs incurred in appointing a temporary substitute together with other costs and expenses incurred by [the Defendant] as a result of the suspension from any payments due to the Operator under the Agreement. [The Defendant] shall initially meet the cost of appointing the temporary substitute but shall be entitled to recoup some or all of such cost from the Operator in accordance with clause 15.2.3 or otherwise. Following the end of the period suspension, [the Defendant] may, in its discretion taking into account the relevant circumstances, agree to pay the Operator all or part of such sums as have been suspended in accordance with clause 15.2.1."*

c. Part 2, paragraph 15.3: *"Following the Operator's suspension, whether under clause 15.1 or otherwise, the Operator shall at its own cost and expense promptly take all reasonable steps to enable [the Defendant] to maintain access for Customers during the period of suspension to Products and Services."*

Termination - Notice

61. The written terms of the Defendant's contracts with Subpostmasters purported to permit the Defendant to terminate without notice, for a variety of reasons:

61.1. In the SPMC:

a. Section 1, paragraph 10: "... *The Agreement may be determined by [the Defendant] at any time in case of Breach of Condition by [the Subpostmaster], or non-performance of his obligation or non-provision of Post Office Services, but otherwise may be determined by [the Defendant] on not less than three months notice.*"

61.2. In the Temporary SPMC:

a. Clause 2.4: "*This Contract will commence on [date] and 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, subject to [the Defendant's] rights of summary termination as set out in clause 2.5 below.*"

b. Clause 2.5: "*[The Defendant] may terminate this Contract immediately on giving the Temporary Subpostmaster written notice in the event that the Temporary Subpostmaster commits any breach of this Contact or commits an act of bankruptcy or in the event that, as a result of any security checks carried out by [the Defendant], or any references taken up by [the Defendant], it is not satisfied that the Temporary Subpostmaster meets the standards required of a subpostmaster.*"

61.3. In the NTC:

a. Part 2, paragraph 16.1: "*Following the Commencement Date the Agreement will continue until: (16.1.1) either Party gives to the other not less than 6 months' written notice (unless otherwise agreed between the Parties in writing), which cannot be given so as to expire before the first anniversary of the Start Date; or (16.1.2) it is terminated at any time in accordance with its terms.*"

b. Part 2, paragraph 16.2: *"In addition to any other rights of termination contained in other Parts, [the Defendant] may terminate the Agreement immediately on giving written notice to the Operator if the Operator:*

16.2.1 commits any material 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 [the Defendant] specifying the breach and requiring the same to be remedied.

Any references in these Standard Conditions to a breach of a particular obligation by the Operator being deemed to be material and/or irremediable are not intended to be exhaustive and shall not prevent [the Defendant] 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 [the Defendant] as set out in the Manual and fails to remedy the failure (if capable of remedy) within 14 days of a written notice from [the Defendant] specifying the failure and requiring the same to be remedied; ...

16.2.16 fails to pay any sum due to [the Defendant] under the Agreement by the due date".

Termination – Compensation for loss of office

62. The written terms of the Defendant's contracts with Claimants purported to provide that Subpostmasters had no right to any compensation for loss of office, irrespective of whether loss of office and damage suffered thereby was due to breach or other unlawful act by the Defendant:

62.1. In the SPMC: Section 1, paragraph 8: *"The terms of the appointment of Subpostmaster do not entitle the holder to be paid ... compensation for loss of office."*

62.2. In the Temporary SPMC: Clause 2.6: *"The Temporary Subpostmaster is not entitled to any of the following from [the Defendant]: compensation for loss of office; ..."*

62.3. In the NTC: Part 2, paragraph 17.11: "*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

62.4. The written terms of the Defendant's contracts with Claimants purported to reserve to the Defendant an absolute and unfettered discretion as to the appointment of prospective purchasers of the Claimants' businesses as Subpostmasters:

62.5. In the SPMC: Section 1, paragraph 9: "*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.*"

62.6. In the Temporary SPMC: Section 9: "*In the event of termination of this Contract: (1) any successor to the private business and/or Premises will have no claim to the post of subpostmaster ...;*"

62.7. In the NTC: Part 2, paragraph 19: "...*On termination of the Agreement, the appointment of any New Operator shall be entirely at the discretion of [the Defendant]. [The Defendant] 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 Business and the property interest at the Branch Premises, but any such prospective purchaser shall not be given preferential treatment in the application or appointment process.*"

B.3 Relational Contract and Implied Terms

Relational Contract

63. By reason of matters aforesaid, in particular the matters pleaded at 43 and 44 above, the relationship between Claimants and the Defendant was properly characterised as a "*relational contract*" (per Leggatt J in *Yam Seng Pte Ltd v International Trade Corp*n [2013] EWHC 111), and as such, the Defendant was subject to a duty of good faith, and obligations of fair dealing, transparency, co-operation, and trust and confidence, governing the Defendant's exercise of all powers and discretions under the contract and relating to the relationship arising thereby between the parties.

Implied Terms

63A. In the course of its businesss, the Defendant supplied services to the Claimants, comprising (i) Horizon, as at paragraph 16 above; (ii) the Helpline at paragraph 29; and (iii) training and/or materials provided in relation to the foregoing. Pursuant to the Supply of Goods and Services Act 1982, it was an implied term that the Defendant would carry out the said services with reasonable care and skill (s.13).

64. Further or alternatively, in the context of the factual matrix and the proper operation of the contracts, there were implied duties arising (i) by reason of the contract being a relational contract, and/or (ii) by reason of business necessity and/or obviousness, requiring the Defendant:

64.1. to provide adequate training and support (particularly if and when the Defendant imposed new working practices or systems or required the provision of new services);

64.1A. to provide a system which was reasonably fit for purpose, including any or adequate error repellency (as at paragraph 24.1 above);

64.2. properly and accurately to effect, record, maintain and keep records of all transactions effected using Horizon;

- 64.3. properly and accurately to produce all relevant records and/or to explain all relevant transactions and/or any alleged or apparent shortfalls attributed to Claimants;
- 64.4. to co-operate in seeking to identify the possible or likely causes of any apparent or alleged shortfalls and/or whether or not there was indeed any shortfall at all;
- 64.5. to seek to identify such causes itself, in any event;
- 64.6. to disclose possible causes of apparent or alleged shortfalls (and the cause thereof) to Claimants candidly, fully and frankly;
- 64.7. to make reasonable enquiry, undertake reasonable analysis and even-handed investigation, and give fair consideration to the facts and information available as to the possible causes of the appearance of alleged or apparent shortfalls (and the cause thereof);
- 64.8. to communicate, alternatively, not to conceal known problems, bugs or errors in or generated by Horizon that might have financial (and other resulting) implications for Claimants;
- 64.9. to communicate, alternatively, not to conceal the extent to which other Subpostmasters were experiencing relating to Horizon and the generation of discrepancies and alleged shortfalls;
- 64.10. not to conceal from Claimants the Defendant's ability to alter remotely data or transactions upon which the calculation of the branch accounts (and any discrepancy, or alleged shortfalls) depended;
- 64.11. properly, fully and fairly to investigate any alleged or apparent shortfalls;
- 64.12. not to seek recovery from Claimants unless and until:
 - a. the Defendant had complied with its duties above (or some of them);

- b. the Defendant has established that the alleged shortfall represented a genuine loss to the Defendant; and
- c. the Defendant had carried out a reasonable and fair investigation as to the cause and reason for the alleged shortfall and whether it was properly attributed to the Claimant under the terms of the Subpostmaster contract (construed as aforesaid);

64.13. not to suspend Claimants:

- a. arbitrarily, irrationally or capriciously;
- b. without reasonable and proper cause; and/or
- c. in circumstances where the Defendant was itself in material breach of duty;

64.14. not to terminate Claimants' contracts:

- a. arbitrarily, irrationally or capriciously;
- b. without reasonable and proper cause; and/or
- c. in circumstances where the Defendant was itself in material breach of duty;

64.15. not to take steps which would undermine the relationship of trust and confidence between Claimants and the Defendant;

64.16. to exercise any contractual, or other power, honestly and in good faith for the purpose for which it was conferred;

64.17. not to exercise any discretion arbitrarily, capriciously or unreasonably;

64.18. to exercise any such discretion in accordance with the obligations of good faith, fair dealing, transparency, co-operation, and trust and confidence;

64.19. to take reasonable care in performing its functions and/or exercising its functions within the relationship, particularly those which could affect the accounts (and therefore liability to alleged shortfalls), business, health and reputation of Claimants.

65. The Claimants will rely on the following facts as indicative of the business necessity and/or obviousness of terms required for the Defendant to provide adequate training and support to Subpostmasters in essential elements of their role:

65.1. The SPMC included the following express terms in respect of training and support to Subpostmasters in respect of Mailwork, at Section 24, paragraph 5:

5. [The Defendant] *for its part will provide for:*

5.1 *Training in all aspects of Mailwork to include not only new entrant training [but] also on-going training.*

...

5.3 *Sufficient levels of operational and administrative support to allow the Subpostmaster to fulfil his obligations under the terms of the contract.*

65.2. The Franchise Agreement also included the express terms set out at clauses 4 and 5 of the Franchise Agreement, pleaded at paragraphs 76 and 77 below.

B.4 Onerous and Unusual Terms

66. Further or alternatively, each of the terms set out at section B.2 above, with the exception of those concerning Agency, Helpline and Access to Branch and Records, were onerous or unusual terms and were unenforceable by the Defendant, unless the Defendant can show that those terms were brought fairly and reasonably to the Claimant's attention (*Interfoto Picture Library Limited v Stiletto Visual Programmes Limited* [1989] QB 433), as to which the Defendant is put to strict proof. The Claimants will plead further, in response to any terms relied upon by the Defendant in its Defence, in the Claimants' Reply.

B.5 Unfair Contract Terms

67. Where terms are relied on by the Defendant as purportedly entitling the Defendant (i) to render a contractual performance substantially different from that which was reasonably expected of it, in respect of the whole or any part of its contractual obligations, or (ii) to render no performance at all, the said terms are unenforceable except in so far as each such term satisfies the requirement of reasonableness (Unfair Contract Terms Act 1977 s3(2) and s17).
68. The Claimant will contend that the provisions identified as onerous and unusual (above) are such terms. The Claimants will plead further, in response to any terms relied upon by the Defendant in its Defence, in the Claimants' Reply.

B.6 The True Agreement

69. There was an acute imbalance in the relative bargaining power of the Defendant and the Claimants, and the written terms of the SPMC (and variations of it) did not represent in truth what was agreed (applying the dicta of Lord Clark SCJ in *Autoclenz v Belcher* [2011] UKSC 41, at paragraph 35).
70. In reality, and in the circumstances set out at paragraph 43 above, neither party intended that the Claimants' investments in goodwill or otherwise in the business should or would be forfeited on 3 months' notice:
 - 70.1. without substantial cause or reason, established after a fair investigation and consideration;
 - 70.2. if the Defendant was itself in material breach of contract;
 - 70.3. vindictively, capriciously or arbitrarily; or
 - 70.4. in response to reasonable correspondence about (i) any apparent breach by the Defendant, or (ii) alleged shortfalls and the difficulties faced by Subpostmasters in investigating alleged shortfalls (such as in the case of Alan

Bates and his letters dated 19 December 2000, 18 July 2001, 7 January 2002, and 13 February 2002).

71. In the premises, the true agreement was that:

- 71.1. the Defendant would not terminate as set out in paragraph 70 above; and/or
- 71.2. the Defendant would not so terminate without giving such notice as the court may hold to be reasonable (which the Claimants will contend was, on any view, never to be less than 12 months).

C. **CONTRACTUAL TERMS – OTHERS**

C.1 **Crown Office Employees**

Implied Terms

72. All Claimants who were Crown Office employees contracted directly with the Defendant, and the following were implied terms of those contracts
 - 72.1. a mutual duty of trust and confidence;
 - 72.2. a duty on the Defendant to exercise any discretion honestly and in good faith for the purpose for which it was conferred, and not arbitrarily, capriciously or unreasonably.
73. These implied contractual duties encompassed the provision of training in relation to Horizon, the provision of support in relation to Horizon, identifying and investigating alleged shortfalls, any decision to suspend, the investigation of alleged shortfalls, any decision to terminate and any decision to proceed to prosecute her (if decided upon during the employment relationship).
- 73A. The Defendant owed Crown office employees the obligations implied at paragraph 64 above.

C.2 Managers and Assistants

Rights of Third Parties

74. Claimants who were managers or assistants (in that they were employed by a Subpostmaster to work within one of the Defendant's branches) rely on s1(b) of the Contracts (Rights of Third Parties) Act 1999, in respect of the following terms in the relevant Subpostmaster Contracts (as may be applicable), purporting to confer a benefit upon them in relation to training:

- a. Subpostmaster Section 15, paragraph 7.1, as set out at paragraph 56.2.b above;
- b. NTC Part 2, paragraphs 2.3 and 2.5, as set out at paragraphs 56.4.a and 56.4.c above; and/or
- c. the implied terms (including those arising under a relational contract) pleaded herein;
- d. any further similar or other terms as may apply in their individual case.

C.3 Franchise Agreements

75. The Defendant required individuals to establish companies for the purposes of entering into Franchise Agreements, and required individuals to guarantee the obligations of those companies. Otherwise in material respects, the factual circumstances (including the financial investments made) were the same as, or similar to, those set out at paragraphs 41 to 44 above, in respect of Subpostmasters.

Express Obligations of the Defendant

76. The Franchise Agreement included express initial obligations on the Defendant, including at clause 4E: "*Consultation (including consultation with the designated officers and general management of the Franchisor) and advise with a view to enabling the Franchisee to commence the Said Business including advice and consultation with regard to ... the*

selection, training and supervision of staff, cash handling, security, accounting, book keeping, advertising and the day to day operation of the Said Business."

77. Further, at all times during the subsistence of the Agreement the Defendant was subject to express continuing obligations including:

77.1. Clause 5B: "*Provide the Franchisee with reasonable facilities for consultation with the designated officers of the Franchisor in relation to the conduct of the Said Business with a view to assisting and enabling the Franchisee to maintain the operation of the System;*"

77.2. Clause 5C: "*Provide the Franchisee with advice, know-how and guidance in such areas as management, cash handling, security, finance, promotion and methods of operation to be employed in or about the conduct of the Said Business;*"

77.3. Clause 5D: "*Provide the Franchisee with a continuing service which, subject to the provision by the Franchisee to the Franchisor of such information as the Franchisor may reasonably require, will enable the Franchisor to monitor the performance of the Said Business and to offer guidance to assist in the achievement and maintenance by the Franchisee of standards of operation, service and product;*"

Relational Contracts

78. The relationship between the Defendant and Franchisees was properly characterised as a "*relational contract*" (per Leggatt J in *Yam Seng Pte Ltd v International Trade Corp* [2013] EWHC 111), and as such, the Defendant was subject to a duty of good faith, and obligations of fair dealing, transparency, co-operation, and trust and confidence, governing the Defendant's exercise of all powers and discretions under the contract and relating to the relationship arising thereby between the parties.

Implied Terms

78A. The Defendant owed the obligations implied by statute as pleaded at paragraph 63A above.

79. Further or alternatively, in the context of the true factual matrix and the proper operation of the Franchise Agreement, the duties arising by reason of the contract being a relational contract and/or by reason of business necessity and/or obviousness, the terms set out at paragraph 0 above were implied terms of the Franchise Agreement (save to the extent such terms were already expressly provided).

D. CONCURRENT DUTY IN TORT

80. Further or alternatively, by reason of the facts and matters set out above, the Defendant assumed a responsibility towards each of the Claimants giving rise to tortious duties as follows:

80.1. **Subpostmaster Claimants:** the tortious duties owed by the Defendant to these Claimants were concurrent with its contractual duties, as particularised above at section B.

80.2. **Crown Office Employees:** the tortious duties owed by the Defendant to these Claimants were concurrent with its contractual duties, as particularised above at section C.1.

80.3. **Managers and Assistants:** despite the absence of a written contract between the Defendant and these Claimants, the Defendant in any event owed a direct duty of care to them in tort, to exercise reasonable care and skill in the provision of training and/or training materials and/or guidance in relation to the use of Horizon and/or in relation to any acts imposing or seeking to impose actual or potential liability for apparent or alleged shortfalls upon them, or exposing them to the risk of the same.

80.4. These Claimants and the Defendant were in a proximate relationship and the Defendant was aware that the failure to provide adequate training and/or training materials and/or guidance in relation to the use of Horizon was liable to expose these Claimants to the risk of suspension and/or termination and/or claims for civil recovery and/or prosecution. This category of persons was closed and identifiable and was in the Defendant's direct contemplation of

persons likely to be so closely and directly affected by the Defendant's acts and omissions that the Defendant could reasonably foresee that these Claimants were likely to be injured by the Defendant's acts or omissions. In all of the circumstances, it is fair just and reasonable that the law should impose such a duty of such scope upon the Defendant for the benefit of these Claimants.

80.5. **Directors or Guarantors of Franchise Companies:** despite the absence of a direct contractual duty between the Defendant and these Claimants, the Defendant owed a direct duty of care to them in tort, to exercise reasonable care and skill in the provision of training and/or training materials and/or guidance in relation to the use of Horizon and/or in relation to any acts imposing or seeking to impose actual or potential liability for apparent or alleged shortfalls upon them, or exposing them to the risk of the same. These Claimants and the Defendant were in a proximate relationship and the Defendant was aware that the failure to provide adequate training and/or training materials and/or guidance in relation to the use of Horizon was liable to expose these Claimants to financial liabilities for or on behalf of the Franchisee and/or other financial losses and/or claims for civil recovery and/or prosecution. This category of persons was closed and identifiable and was in the Defendant's direct contemplation of persons likely to be so closely and directly affected by the Defendant's acts and omissions that the Defendant could reasonably foresee that these Claimants were likely to be injured by the Defendant's acts or omissions. In all of the circumstances, it is fair just and reasonable that the law should impose such a duty of such scope upon the Defendant for the benefit of these Claimants.

E. **AGENCY**

81. The Defendant:

81.1. effected, recorded and managed the reconciliation of transactions effected by the Claimants;

- 81.2. possessed and/or controlled the underlying transaction data in relation to such transactions;
- 81.3. required Claimants to comply with contractual obligations in relation to the keeping and production of branch accounts;
- 81.4. had the power to seek recovery from Claimants for losses relating to branch accounts (as particularised at paragraphs 52.1 above); and/or
- 81.5. in fact sought recovery from the Claimants for apparent shortfalls.

82. Whereas the Claimants were agents of the Defendant for the purposes of dealings with third parties, such as members of the public, the Defendant was the Claimants' agent for the purpose of rendering and making available accounts and/or was under an equitable duty to render accounts.

83. Further or alternatively, for the specific purpose of effecting, reconciling and recording transactions initiated by the Claimants, the Defendant acted for itself and, simultaneously, for the Claimants, as their agent.

84. The Defendant was thereby required:

- 84.1. properly and accurately to effect, execute, record, and/or maintain and keep records of all transactions which the Claimants initiated using Horizon or for which the Claimants were potentially responsible;
- 84.2. to render and make available to the Claimant accounts (in accordance with paragraph 84.1);
- 84.3. further or alternatively, where the Defendant alleged shortfalls to be attributed to the Claimants, to comply with the duties averred at paragraphs 64.3 to 64.11 above.

F. FIDUCIARY DUTIES

85. The Defendant undertook to provide and manage the accounting system on behalf of Claimants, in circumstances giving rise to a relationship of trust and confidence.
86. Further or alternatively, the Defendant undertook to provide information in respect of transactions initiated by the Claimants to the Claimants:
 - 86.1. upon which the Claimants relied or would foreseeably rely;
 - 86.2. in which the Claimants, in all the circumstances, reposed confidence or had no choice but to repose confidence.
87. Further or alternatively, the Defendant was the Claimants' agent for the specific purposes set out in Section E above.
88. Further or alternatively, the relationship between the Claimants and the Defendant was one in which the Defendant had discretion and/or power; the Defendant was able unilaterally to exercise that discretion and/or power to affect the Claimants' legal or practical interests; and the Claimants were vulnerable to the Defendant's exercise of the same. The Claimants identify as particular examples of such discretion and/or power the written terms set out at paragraph 51, 52, 54 and 62 above.
89. In all the circumstances, the Defendant owed the Claimants fiduciary duties as set out in paragraph 84, in good faith and candour.

G. GENERIC BREACHES OF CONTRACT / TORT / FIDUCIARY DUTY

90. The Defendant breached its contractual and/or tortious and/or fiduciary duties to the Claimants.
91. The breaches of duty particularised below are indicative breaches which are common to all or some of the Claimants.
92. The Defendant failed to provide adequate **training** to Claimants in that it:

- 92.1. failed to provide adequate training when Horizon was introduced;
- 92.2. failed to provide adequate training when new or different services were introduced;
- 92.3. provided training which was primarily sales focused, and failed to provide adequate training specific to:
 - a. balancing accounts using Horizon;
 - b. resolving apparent shortfalls;
 - c. identifying the root causes of recurring problems; and/or
 - d. transaction corrections;
- 92.4. failed to provide adequate training in relation to the detailed content of Operating Manuals (and/or updates to the same) issued by the Defendant; and/or
- 92.5. failed to provide adequate training materials and resources for Claimants to provide adequate training to staff employed or engaged by them.

93. The Defendant failed to provide adequate **support** to Claimants for the reasons set out at paragraph 30 above.
94. The Defendant failed to make available **transactional information** via Horizon or otherwise for a period and/or in a format which enabled Claimants to detect and resolve errors, including understanding and challenging transaction corrections issued by the Defendant in that:
 - 94.1. individual transaction data was not available to the Claimants for some transaction types at any time (including on the day of the transaction);
 - 94.2. transaction data which was available to the Claimants was only available in branch for a period of 42 days (60 days after the introduction of Horizon Online);

- 94.3. transaction data outside the 42 (or 60) day period was not routinely provided, even when requested or required in order to respond to a transaction correction;
- 94.4. the Defendant failed promptly to make transactional records available to Claimants where a discrepancy or apparent shortfall was identified; and/or
- 94.5. Claimants who were suspended were not able to access Horizon or any of the electronic transaction data and/or were denied access to personal records held at their branch.

94A. The Defendant failed to provide a system which was reasonably fit for purpose, including any or adequate error repellency (as at paragraph 24.1 above).

95. By reason of bugs and/or errors or otherwise, the Defendant failed properly to **execute and reconcile all transactions** which the Claimants initiated or effected and/or to **record and maintain accurate transactional records** in relation to such transactions.
96. Further in relation to the **attribution of apparent or alleged shortfalls**, the Defendant:
 - 96.1. failed properly to account for, record and explain all transactions and any alleged shortfalls which were attributed to the Claimants;
 - 96.2. failed to co-operate with Claimants in seeking to identify the possible or likely causes of any such shortfalls and/or whether or not there was any shortfall at all;
 - 96.3. failed to disclose possible causes of the appearance of alleged shortfalls (and the cause thereof) to the Claimants candidly, fully and frankly; and/or
 - 96.4. failed to make reasonable investigation and fair consideration to whether the apparent shortfalls represented real loss to the Defendant, and if so the cause and/or reason such loss had arisen.

97. The Defendant further **demanded payment** in relation to such apparent or alleged shortfalls before the Defendant had complied with the duties above.
98. The Defendant failed properly and fairly to **investigate** alleged shortfalls before attributing them to the Claimants and/or seeking recovery from the Claimants and/or suspending or terminating the Claimants' engagement for a reason relating to alleged shortfalls (including signed branch trading statements).
99. The Defendant **suspended and/or terminated and/or subjected** the Claimants to **pressure to resign** in circumstances where:
 - 99.1. the Defendant was itself in material breach of duty for one or more of the reasons set out above;
 - 99.2. before the existence of a real loss to the Defendant, and if so the cause and reason for such loss, had been established after reasonable enquiry and analysis or at all;
 - 99.3. without investigating and/or giving reasonable consideration to the circumstances giving rise to the same;
 - 99.4. the Defendant's approach (wrongly) put the burden of proof upon the Subpostmasters – a burden which they were frequently unable to discharge in all the circumstances;
 - 99.5. without establishing causative fault by the Subpostmaster concerned and/or the Defendant's contractual entitlement to recover alleged shortfalls; and/or
 - 99.6. on the flawed and unreasonable basis that Claimants would only submit false accounts to cover up their own theft (paragraph A.7 above) and/or without taking into account the matters set out in section H below, practical pressures and difficulties generated by the Defendant's own systems and requirements and/or the practical realities faced by individual Claimants (paragraph 35.2 above).

100. The Defendant pursued **civil and/or criminal proceedings** in relation to alleged shortfalls in circumstances as set out at paragraph 99 above.
101. The Defendant impeded and/or unreasonably refused to consent to the **subsequent appointment** of a new Subpostmasters or potential purchaser of branch premises.
102. The Defendant **concealed** from the Claimants the matters at paragraphs 23 to 25 above.
103. The Defendant (by its Helpline operators or otherwise) told or led individual Claimants to believe that they were the only ones experiencing difficulties with Horizon and/or discrepancies or apparent shortfalls and/or otherwise concealed the extent to which others were in fact experiencing such difficulties.
104. By reason of matters aforesaid and/or otherwise by its acts or omissions the Defendant:
 - 104.1. acted in breach of the implied duty of good faith;
 - 104.2. exercised powers and/or discretion affecting the Claimants arbitrarily, capriciously or unreasonably;
 - 104.3. acted in breach of the implied duty of trust and confidence;
 - 104.4. failed to take reasonable care and skill; and/or
 - 104.5. otherwise breached one or more of its specific duties in contract, tort and/or equitable or fiduciary duties as particularised above.
105. Further or alternatively, the misstatements and/or misrepresentations (particularised in Section H, below) are relied upon free-standing breaches of the *Yam Seng* duties set out above, the duty of co-operation and/or the duty of trust and confidence (as the context may admit).

H. ACTIONABLE MISREPRESENTATION & DECEIT

106. Some or all of the Claimants pursue claims against the Defendant for deceit negligent misstatement, misrepresentation under section 2 of the Misrepresentation Act 1967 and/or deceit.
107. The representations, falsity and reliance pleaded below are indicative of the representations and reliance which are common to all or some of the Claimants pursuing such claims.

H.1 Representations

108. The Defendant, by its officers, Helpline operators, other employees, servants or agents, expressly or impliedly, by words and/or conduct, made representations:
 - 108.1. that there were, in fact, shortfalls in the branch accounts and/or that they represented real losses to the Defendant (when there were not any such shortfalls or any shortfall that did exist was materially overstated);
 - 108.2. that, in respect of those alleged shortfalls, the Defendant had investigated, analysed and/or properly satisfied itself, alternatively had reliably established:
 - a. that there were in fact such shortfalls; and
 - b. that they represented real losses to the Defendant;
 - c. that they were attributable to the branch in question (when the Defendant had not so investigated, analysed, established and/or properly satisfied itself of the same);
 - 108.3. that, pursuant to the contractual provisions between the parties, it was for Claimants to disprove that any alleged shortfall was due to their own negligence, carelessness or error, or that of their assistants (when the contractual burden of proof in fact lay on the Defendant);

- 108.4. that individual Claimants were, in each case, the only ones experiencing difficulties with Horizon and/or discrepancies or apparent shortfalls (when this was untrue, as aforesaid, and large numbers of people contacted or were trying to contact the Helpline);
- 108.5. that defects, bugs or errors in Horizon were not a possible cause of apparent shortfalls (when in fact they were, as now admitted by the Defendant);
- 108.6. that investigations which were carried out by or on behalf of the Defendant were carried out fairly and properly, and/or had not excluded defects, bugs or errors in Horizon as a possible cause of apparent shortfalls (when they were not so carried out and had excluded the said problems with Horizon); and/or
- 108.7. that there was no ability remotely to alter transactions in branch accounts (which the Defendant now accepts to have been untrue).

109. The Claimants relied on those representations, as set out hereafter, as the Defendant knew or ought to have known they would.

H.2 Falsity

110. For the reasons set out above in parentheses and, further, above at paragraphs 23 to 27, 31 and/or 55 to above, the representations were false.

H.3 Lack of due care

111. The Defendant failed to take due care, or any or sufficient care, in making the said representations. In particular, the Defendant:

- 111.1. failed to take any or any proper account of the volume of calls being made to its Helpline by Subpostmasters in relation to issues with Horizon and the appearance of unexplained shortfalls;
- 111.2. failed to take any or any proper account of the possibility of Horizon causing errors (that the Defendant now admits);

- 111.3. failed to take any or any proper account of problems and/or defects and/or bugs previously detected within Horizon which had caused the erroneous appearance of shortfalls in Post Office branches;
- 111.4. failed to instruct its Security Team investigators to have regard to possibilities of bugs and/or problems with the Horizon system as being a potential cause of otherwise unexplained shortfalls;
- 111.5. failed to instruct its auditors and/or contracts managers (or others) carrying out investigations to have regard to possibilities of bugs and/or problems with the Horizon system (including training deficiencies and hardware errors or flaws) as being a potential cause of unexplained shortfalls;
- 111.6. approached and/or instructed its officers, investigators, servants or agents to approach unexplained shortfalls on the basis that the Claimants had caused them and/or were responsible for them, unless the Claimants could prove otherwise; and/or
- 111.7. failed to exercise sufficient care and/or the necessary standard of care, in all the circumstances, in particular: the relationship between the parties, their proximity, the advantages of the Defendant in resources and access to information, the dependence of the Claimants upon the discretionary exercise of contractual power by the Defendant (subject to the matters pleaded above) and the implications and potential seriousness of a finding of an alleged shortfall for the Subpostmaster concerned.

H.4 Negligent misstatement

112. For the purpose of the claims for negligent misstatement, by reason of the nature and proximity of the special relationship between the Defendant and the respective Claimants, the Defendant owed the Claimants a duty of care, in making the representations at Section H.1, yet made them carelessly and in breach of that duty, owed by the Defendant to the Claimants to take reasonable care that the representations were accurate and/or true.

113. In all the circumstances, it was reasonable for the Defendant to have appreciated that the Claimants would rely:

113.1. upon the Defendant's ability to make careful inquiry or upon its particular knowledge of the matters as to which the said representations were made; and

113.2. upon the said representations for the purposes of (i) agreeing to accept the existence of (alleged) shortfalls or responsibility for their having arisen, (ii) agreeing to pay or otherwise satisfy the Defendant's demands in respect of the same, (iii) recording the state of account of the branch and/or stating the same to the Defendant, and/or agreeing the same; or (iv) entering into compromise/settlement agreements with the Defendant

H.5 Misrepresentation Act 1967

114. For the purpose of the claims under section 2 of the Misrepresentation Act 1967, Claimants entered into contracts constituted by (i) to (iv) in paragraph 113.2 above, after the said misrepresentations had been made by the Defendant and in reliance upon and induced by the same. Accordingly, the Defendant is liable to the Claimants for losses suffered as a result thereof, as if the Defendant had made the said misrepresentations fraudulently, unless the Defendant proves that it had reasonable grounds to believe and did believe up to the time the contract was made the facts represented were true, as to which the Claimants put the Defendant to strict proof. The Claimants are entitled to and claim rescission and/or damages pursuant to section 2 of the Misrepresentation Act 1967 and claim the same.

H.6 Deceit

115. The Defendant made the said representations: (i) recklessly as to their truth or falsity, (ii) having turned a blind eye to whether they were true or false and/or (iii) without an honest belief in their truth; alternatively, the Defendant made the said representations knowing that they were false.

PARTICULARS OF KNOWLEDGE

- 115.1. By reason of the Defendant's knowledge of the flaws in the Horizon system particularised herein and the ability remotely to alter transactions (and/or related underlying data), the Defendant knew or was reckless as to whether apparent shortfalls were (i) not shortfalls, (ii) not necessarily shortfalls, (iii) were not accurately or reliably recorded in their amount, (iv) were not properly, alternatively reliably, attributable to the branch accounts and/or (v) were not truly the responsibility of the Claimants;
- 115.2. The Defendant knew or was reckless as to whether the extent to which it had (or had not) investigated, analysed and/or properly satisfied itself that there were indeed such shortfalls and whether these represented real losses to the Defendant attributable to the branch in question and (where such the representations made as to this were false, as aforesaid) the Defendant was thereby reckless as to, or aware of, the same;
- 115.3. The Defendant knew of (or was reckless as to) the terms and effect of the contracts which it had imposed upon the Claimants, in standard terms (which the Claimants had no opportunity to negotiate), which the Claimants will invite the court to infer the Defendant carefully considered, and the Defendant knew or should have known that the contractual burden was upon the Defendant;
- 115.4. The Defendant knew or was reckless as to whether individual Claimants were, in truth, the only ones experiencing difficulties with Horizon (of the category or specific type being encountered by those individual Claimants) and/or discrepancies or apparent shortfalls (when this was untrue, as aforesaid);
- 115.5. The Defendant knew that, or was reckless as to whether, defects, bugs or errors in Horizon were a possible cause of apparent shortfalls (as now admitted by the Defendant);

- 115.6. The Defendant knew that the said investigations were not carried out even-handedly, fairly and/or properly, and/or the Defendant was reckless as to the same;
- 115.7. The Defendant knew that the Defendant and its investigators had effectively excluded defects, bugs or errors in Horizon as a possible cause of apparent shortfalls and/or the Defendant was reckless as to the same; and/or
- 115.8. The Defendant knew that there was an ability remotely to alter transactions in branch accounts (including the underlying data) and/or the Defendant was reckless as to the same.

H.7 Reliance

116. The Claimants relied on the aforesaid misrepresentations and/or misstatements (and were induced thereby) in: (i) accepting transaction corrections; (ii) paying, or agreeing to pay, alleged shortfalls in circumstances; (iii) entering into compromise/settlements with the Defendant and/or (iv) otherwise taking action or agreeing to take action to their detriment in respect of their engagement with the Defendant and/or in the course of defending civil or criminal proceedings.

I. HARRASSMENT

117. Some or all of the Claimants further or alternatively pursue claims under section 3 of the Protection from Harassment Act 1997, on the grounds that the Defendant pursued a course of conduct, on more than one occasion, which amounted to harassment and which it knew or ought to have known amounted to harassment.
118. The matters particularised below as constituting the course of conduct relied upon are indicative acts which are common to all or some of the Claimants pursuing a claim for harassment.
119. The Defendant's course of conduct consisted of:
 - 119.1. demands for payment in relation to alleged shortfalls;

- 119.2. pressure to accept transaction corrections and/or to accept responsibility for alleged shortfalls and/or to repay the same;
- 119.3. threatened or actual civil and/or criminal proceedings in relation to such alleged shortfalls; and/or
- 119.4. steps taken in the course of such civil and/or criminal proceedings in relation to the same.

J. DURESS & UNCONSCIONABLE DEALING

120. Some or all of the Claimants will (in the circumstances set out in Section A.7 above) contend that they acted under economic duress and/or the Defendant dealt with them unconscionably.
121. For the avoidance of doubt, the Claimants will contend that:
 - 121.1. there was an acute imbalance in the relationship between the Claimants and the Defendant;
 - 121.2. the Defendant could *prima facie* rely and did so, rely, upon its standard express terms of its contractual agreements which were replete with provisions conferring power and discretion upon the Defendant and were so operated by the Defendant;
 - 121.3. further, the Defendant's practice was to construe the contracts such that the burden of proof was on the Claimants, as aforesaid;
 - 121.4. the foregoing put the Claimants at a serious or special situational disadvantage and some of those who became increasingly desperate were also under a constitutional serious or special disadvantage;
 - 121.5. at all material times, the Claimants were in ignorance of the errors and bugs in the Horizon system, as well as of the information (or some of it) from which the underlying causes of alleged shortfalls could be identified;

- 121.6. in reality, they were pressured to accept and pay to the Defendant sums alleged to be shortfalls and to accept responsibility for the same;
- 121.7. in the premises, the Defendant acted unconscionably in taking advantage of the situation as aforesaid;
- 121.8. further or alternatively, the Claimants found themselves in a position of serious need or distress, in which the Defendant took advantage of the weakness of their position;
- 121.9. in the premises, the Claimants acted under economic duress and/or the Defendant dealt with them unconscionably.

122. The Claimants are entitled to and claim rescission of the above transactions and/or damages and/or restitution.

K. MALICIOUS PROSECUTION

123. Some or all of the Claimants against whom the Defendant brought civil and/or criminal proceedings further or alternatively pursue claims against the Defendant in malicious prosecution.
124. The Claimants do not plead particulars of these claims pending the outcome of the Criminal Case Review Commission review which is currently ongoing in relation to the convictions of (currently) over 30 of the Claimants. The result thereof will inform the pleading of claims on behalf of those Claimants, as well as others in a materially similar position.

L. UNJUST ENRICHMENT

125. Some or all of the Claimants who made payments to the Defendant of alleged shortfalls further or alternatively pursue a claim for unjust enrichment against the Defendant.
126. As to these Claimants:

- 126.1. they mistakenly believed they had an obligation to repay the alleged shortfalls under the terms of their contracts with the Defendant;
- 126.2. the Defendant made misrepresentations to the Claimants as to their contractual obligation to repay and/or one or more of the representations particularised above;
- 126.3. the Defendant had not established their obligation to repay as required by the contract;
- 126.4. the Claimants acted under economic duress; and/or
- 126.5. the Defendant dealt with the Claimants unconscionably as aforesaid.

127. In the premises, it is unjust and/or unconscionable for the Defendant retain sums which it has obtained from the Claimants in these circumstances and, in any event, that is so where the Defendant cannot establish that the alleged shortfall amounted to a real loss to it.

M. LOSS AND DAMAGE

128. By reason of the matters aforesaid the Claimants have suffered loss and damage.
129. The following are indicative of the types of loss and damage claimed. Further details in each individual case will be set out Schedules of Information.

M.1 Financial losses

130. The Claimants have typically sustained financial losses arising from payment to the Defendant of alleged shortfalls from their own resources and losses consequential thereon.
131. Claimants whose appointments were terminated have suffered loss of their business investments and consequential losses including reduced profit to linked retail premises.

132. Claimants who were suspended or were terminated without notice have lost the income they would have received during the suspension or notice period.
133. Claimants who lived in residential premises which were linked to their branch suffered further losses consequent on termination of their engagements.

M.2 Stigma and/or reputational damage

134. Claimants who have been accused of dishonesty and/or excluded from their branch or subject to similar treatment by the Defendant have suffered stigma and/or reputational damage.
135. The Defendant's conduct in characterising the Claimants as dishonest or suspending them or excluding them from the branch so as to create an impression of such dishonesty, caused stigma and foreseeable financial loss in the form of loss of trade, including to related retail premises, and/or caused prejudice to future employment or business prospects.

M.3 Distress and related ill-health

136. Many Claimants suffered distress and some of them ill-health as a result of the conduct of the Defendant, with some attempting to commit suicide.

M.4 Bankruptcy

137. Claimants who were made bankrupt or entered into IVAs on the basis of or as a result of alleged shortfalls, were caused particular financial loss such as disadvantageous assets, trustee's costs, distress and reputational damage.

M.5 Prosecutions

138. Claimants who were prosecuted suffered particular losses, including withdrawal of credit, legal costs and loss of employment and earning capacity.
139. Some also suffered community or custodial sentences, many of which are now subject to the review by the CCRC as aforesaid.

M.6 Exemplary Damages

140. Further and/or alternatively the Defendant has acted in deliberate and cynical disregard of the Claimants' rights and the Claimants seek exemplary damages.

M.7 Interest

141. The Claimants claim interest in accordance with s.35A of the Senior Courts Act 1981 on such sum in damages as the Court shall award at such rate and for such period as it shall see fit to award. The Claimants claim compound interest in respect of their claim for unjust enrichment.

AND THE CLAIMANTS CLAIM:

- (1) Declaratory relief as to the terms and/or nature of the legal relationship between the Claimants and the Defendant.
- (2) Damages, including aggravated or exemplary damages.
- (3) Restitution and/or payment of money had and received.
- (4) Orders for the taking of accounts and payment of sums found due on the taking of such accounts.
- (5) Rescission and/or damages and/or declaratory relief in relation to any agreements to repay or other agreements relating to shortfalls which any of the Claimants entered into.
- (6) Further or other relief as the Court may think fit.
- (7) Interest.
- (8) Costs.

PATRICK GREEN QC

KATHLEEN DONNELLY

OGNJEN MILETIC

The Claimants believe that the facts stated in these Generic Particulars of Claim are true.

Signed.....

James Hartley, Freeths LLP

Dated: 6 July 2017

WBON0001175
WBON0001175

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Claim No. HQ16XO1238

B E T W E E N:

ALAN BATES & OTHERS

Claimants

- and -

POST OFFICE LIMITED

Defendants

GENERIC PARTICULARS OF CLAIM

Henderson Chambers
2 Harcourt Buildings, Temple, London EC4Y 9DB
DX 1039 CHANCERY LANE
Tel: **GRO**

Freeths LLP,
1 Vine Street, Mayfair, London W1J 0AH
DX 37209 Piccadilly
Tel: **GRO**