

Filed on behalf of the: Defendant  
Witness: Andrew Paul Parsons  
Statement No: Fourth  
Exhibits: AP 4  
Date Made: 9 October 2017

Claim No: HQ16XO1238 and HQ17X02637

THE POST OFFICE GROUP LITIGATION  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

B E T W E E N:

ALAN BATES & OTHERS

Claimants

AND

POST OFFICE LIMITED

Defendant

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FOURTH WITNESS STATEMENT OF ANDREW PAUL PARSONS

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I, ANDREW PAUL PARSONS of Bond Dickinson LLP, Oceana House, 39 - 49  
Commercial Road, Southampton SO15 1GA WILL SAY as follows:

1. I am a Partner at Bond Dickinson LLP, solicitors for the Defendant, Post Office Limited (**Post Office**). I make this statement in advance of the first Case Management Conference in this matter (**CMC**). This statement is being filed alongside the Defendant's Skeleton Argument, which was required to be lodged on 9 October 2017. It addresses factual matters that are relied on in the Skeleton Argument.
2. Facts in this statement about the operations of Post Office are taken from my own knowledge and/or from conversations and instructions from Post Office personnel. Information about Horizon has generally been provided by Fujitsu, sometimes indirectly through Post Office personnel. Other facts in this statement are within my own knowledge unless otherwise stated. This statement is accompanied by an

exhibit marked Exhibit AP 4 and, except where the context indicates otherwise, page references in this statement are to the pages of this exhibit.

3. I provided a relatively brief description of the background to this dispute and of Post Office in sections 1 and 2 of my second witness statement in this matter, which was dated 22 December 2016 (**Parsons 2**) and can be found at J,17 of the CMC bundle. The court may find it helpful to read paragraphs 18-20, 23-27 and 37-57 of Parsons 2.

### **Summary**

4. The principal purpose of this statement is to explain the issues that have arisen between the Claimants and Post Office regarding orders for early disclosure. In particular, I set out the facts that I believe are relevant to any decision to order such disclosure and I explain why the disclosure orders sought by the Claimants would require huge and disproportionate effort and cost and would also be likely to produce vast numbers of irrelevant documents.
5. Perhaps unusually for group litigation, the claims made by the Claimants in these proceedings (and, in particular, the acts and omissions by Post Office on which these claims are based) are likely to be factually very different from one another. The diverse nature of these claims and the need for a clear understanding of the facts on which they are based is explained in paragraphs 11, 99-116 and 173 of Parsons 2. Post Office agreed to a GLO in order to address common issues, principally as to the legal duties (including the construction of its contracts). It did not agree to a GLO so that individual Claimants might avoid having to provide a proper account of the claims they make (and, in particular, the breaches they allege and the losses that they claim to have suffered).
6. At the hearing before Senior Master Fontaine on 26 January 2017 (**the GLO Hearing**), Post Office was concerned that this might happen. In its view, its concerns have been borne out by events. Nine months further into these proceedings, Post Office still does not have a clear understanding of the claims that it faces. The minimal details so far provided by the Claimants (in their Generic Particulars of Claim (**GPOC**) and their Schedules of Information (**SOIs**)) omit vital information. This makes it difficult, if not impossible, for Post Office to give the vast disclosure now sought by the Claimants and makes it impossible to assess to what extent that disclosure would assist in the fair and efficient resolution of the claims actually being made in these proceedings.

7. Post Office's approach to disclosure is more targeted than the Claimants'. It proposes directions providing for early disclosure of key documents so that the important common issues can be addressed in a proportionate and timely manner.
8. Post Office does not want these proceedings hanging over its business any longer than necessary, not least because they have an obvious impact on its relationships with current postmasters. Further, although it is a large company, it has finite resources, and continues to receive government support so as to provide critical services to local communities. Unlike the Claimants, it does not have the benefit of the ample litigation funding described in paragraphs 11.7 and 128 of Parsons 2. The Claimants would no doubt disagree, but from Post Office's perspective, they have dragged out the litigation process. Post Office is concerned that their strategy is to keep this litigation alive for as long as possible without exposing the facts of their claims to scrutiny, forcing Post Office to incur very high legal costs. In this context, it is relevant to note that Post Office considers that many of the claims it faces are hopeless, for the reasons summarised in paragraphs 11.6 and 91 of Parsons 2.
9. The structure of this statement is as follows:
  - 9.1 In Section 1 (paragraphs [10-49]), I outline what I believe to be the material events that have occurred since the GLO Hearing.
  - 9.2 In Section 2 (paragraphs [50-141]), I address facts which are relevant to the Claimants' proposed directions.
  - 9.3 In Section 3 (paragraphs [142-156]), I address facts which are relevant to Post Office's proposed directions.
  - 9.4 In Section 4 (paragraphs [157-169]), I give some basic information regarding the claims advanced in these proceedings, the claims that appear to be time-barred and the claims that appear to have been settled.

#### **SECTION 1: EVENTS SINCE THE GLO HEARING**

10. Since January 2017, my firm has exchanged extensive correspondence with the Claimants' Solicitors, Freeths, on a number of matters relevant to these proceedings. I summarise the principal correspondence below.

#### **Pleadings**

11. As required by paragraph 30 of the GLO, the Claimants served their GPOC on 23 March 2017. The GPOC was very different from the draft GPOC that had been

circulated before the GLO Hearing two months earlier. Indeed, it was 33 pages longer than the original draft. Nevertheless, it did not include several of the causes of action asserted in the Claim Form, including claims for conspiracy (which the Claimants had confirmed during the GLO hearing that it was not pursuing – see page10), misfeasance in public office (which the Claimants had confirmed in correspondence it was not pursuing – see page 43 of the Claimants' Letter of Response at tab 13 of the CMC bundle), and breaches of the European Convention on Human Rights (which the Claimants had said nothing about). However, none of these causes of action has been removed from the Claim Form (or the second Claim Form subsequently issued on 24 July 2017).

12. Post Office requested Further Information in respect of the GPOC on 27 April 2017 (see tab 6 of the Case Management Bundle). This RFI was narrow in nature, being limited to 12 requests. The response provided by the Claimants was minimal and refused to address many of the requests, relying in large part on an argument that the questions related not to generic issues but to the facts of individual claims, such that the request was premature.
13. On 6 July 2017, four months after service of the GPOC, Freeths produced a proposed Amended GPOC (see tab 3 of the Case Management Bundle). Freeths explained that this '*simply plead[s] a term implied by the Supply of Goods and Services Act and make[s] clear that error and detection and repellency in the Horizon system is an issue*' (page1). The amendments changed the nature of the Claimants' case in relation to Horizon significantly. They were now alleging that Horizon was provided by Post Office as a service to postmasters, that it had to be fit for purpose from a user's perspective and that it was not so fit, including (but apparently not only) because it was not sufficiently "error repellent". None of these points were particularised.
14. The proposed Amended GPOC was served just 8 working days before Post Office's Generic Defence was due (and 15 months after the Letter of Claim). It was not explained why it had been left to the last minute. Nevertheless, Post Office was anxious that preparations for the CMC should not be adversely affected. Accordingly, it consented to the amendments on 11 July 2017 (page 10) and it served its Generic Defence as the GLO required on 18 July 2017, without seeking any extension of time.
15. Freeths requested Further Information in respect of the Generic Defence on 31 July 2017 (see tab 7 of the Case Management Bundle). In contrast to Post Office's short RFI, the Claimants' requests sought to question nearly all aspects of Post Office's case. 98 requests were made, spread over 61 topics. Post Office's

response was requested by 4 September 2017, which meant that the bulk of the work was to be done over the summer vacation.

16. My firm wrote to Freeths on 4 September 2017 to explain that Post Office's response would not be ready until the week commencing 11 September 2017 (page 18). In the event, the response was provided on 13 September 2017, 9 days after the date requested and 7 days before the Claimants' Reply was due.
17. On 13 September 2017, Freeths indicated that it would require an extension of time for the Generic Reply from 20 September 2017 to 2 October 2017 (the extension sought was subsequently shortened to 29 September 2017) (page 19). On 13 September 2017 and 18 September 2017 (pages 21-22), my firm asked Freeths to identify the reasons why an extension was required, specifically asking them to identify any part of Post Office's RFI response that was causing difficulty. Freeths did not provide this information. As explained in my firm's letters of 1 September 2017 and 20 September 2017 (pages 12 and 35), Post Office required sight of the Generic Reply before it felt able to propose its own directions, and the requested extension would only allow 6 working days in which to agree directions before skeleton arguments were due to be filed. On 18 September 2017 and 20 September 2017 (pages 22 and 35), Post Office offered to agree to an extension to 25 September 2017 to give the parties two weeks to discuss directions.
18. These offers were not acceptable to Freeths. On 20 September 2017, it applied for an extension of time, which was granted (with costs reserved to the CMC). The Generic Reply was served on 29 September 2017. This delay has affected Post Office's ability to prepare for the CMC.
19. Having reviewed the Generic Reply, Post Office still does not understand why its RFI response required the requested, or indeed any, extension. For the reasons explained in my firm's letter of 4 October 2017 (page 38), I believe the Generic Reply has been used more as a vehicle for articulating arguments, rather than as a means of addressing the factual claims made in the Generic Defence, and has not therefore helped in clarifying or narrowing the issues in dispute.
20. For completeness, I should mention that Freeths has objected to Post Office's RFI response, suggesting that Post Office should have adopted a very different (and in fact quite impossible) approach to the generic statements of case. However, on 19 September 2017, Freeths indicated that, if the Claimants sought an order for further responses, it would write to my firm identifying the relevant responses in respect of which it would seek an order (page 34). It has not done so, which makes it unnecessary for Post Office to adduce the evidence on which it would otherwise wish to rely.

### **Group Register and the new Claimants**

21. On 26 April 2017 and 25 May 2017, my firm wrote to Freeths asking them to provide an update on the new Claimants who were going to join the proceedings and an indication of who the likely new Claimants might be (pages 77 and 78). Post Office wished to begin investigating the positions of any new Claimants from its records. Freeths did not respond to this request but, in the meantime, information was shared with the media about there now being over 1,000 Claimants in these proceedings (see, for example, the Computer Weekly article of 28 March 2017 reporting that '*1,000 sub-postmasters apply to join IT-related group litigation against Post Office*' at page 80).
22. On 24 July 2017, just before the Group Register was closed to new Claimants, Freeths served a second Claim Form which included an additional 324 Claimants. This was the first indication Post Office had of who the new Claimants were.
23. There are now 510 Claimants, namely 522 Claimants who have issued Claim Forms, less 12 who have discontinued their claims.

### **Schedules of Information (SOIs)**

24. Pursuant to paragraph 26 and Schedule 3 of the GLO, the Claimants are required to serve SOIs giving basic information about their claims. Amongst other things, each Claimant is required to give brief details about any training said to have been inadequate, of any helpline advice said to have been inadequate, of any investigations of which they complain, of any pressure exerted on them to resign, and of any steps taken to impede the sale of their businesses. Each Claimant is also required to say how they treated apparent shortfalls in the accounts they submitted to Post Office (i.e. whether they falsely accounted for such shortfalls) and why, and to state the amounts or give brief details of their various heads of claim. Post Office argued for these requirements at the GLO Hearing because it believed that the parties and the Court would at least need these details before they could sensibly be expected to make important decisions about how best to manage the claims made in these proceedings and bring them to a resolution. It hoped, for example, that the details might enable the Claimants (of whom there are now 510) to be broken down into classes or groups from whom Lead Claimants could be selected whose claims were representative of the broad range of claims made.
25. Freeths served SOIs for the first 198 Claimants on 20 June 2017 (with the exception of Claimants 86 and 122, for whom extensions to 2 October 2017 were agreed). On reviewing these SOIs it became apparent that there were serious

problems with them. Post Office wrote to explain the problems and express its concerns about them on 1 September 2017 (pages 83-92). Given its importance to some of the issues to be considered at the present hearing, this letter should be read in full. Amongst other things, it pointed out that:

- 25.1 The answers given in the SOIs are often inconsistent with other answers given in the same SOI, or are inconsistent with the Amended GPOC.
- 25.2 Imprecise / evasive language is used, making it time-consuming, difficult and in some cases impossible to make sense of what is / is not being claimed.
- 25.3 In many cases, no details are given at all and, insofar as details are provided, they are provided with such brevity that they are of little or no help in understanding crucial features of the claims asserted and, in particular, the breaches alleged and the losses claimed.
- 25.4 In many cases, critical issues have been inadequately addressed or omitted altogether, such as false accounting by postmasters. This was surprising given the attention that the Amended GPOC gives to that issue.
- 25.5 It was intended that the SOIs would provide Post Office with a fair indication of the value of most of the Claimants' claims and therefore a fair idea of the total value of their claims. However, many claims have not been valued at all, some claims have been valued in ways that seem duplicative or obviously inflated and others have been valued in ways that are inconsistent with the Claimants' Amended GPOC.

26. Some examples of SOIs served by Freeths are at pages 93-132. Consistently with the Solicitor's Code of Conduct, Indicative Behaviour 11.8, Post Office and its legal team had anticipated that the SOIs, which were required to be confirmed by Statements of Truth, would be the subject of meaningful scrutiny by the solicitors on the record so as to ensure that claims were not advanced without any proper basis. However, these problems appeared to demonstrate that the SOIs had been prepared with minimal input from Freeths.
27. In its letter of 1 September 2017, my firm asked Freeths to correct the first tranche of SOIs and ensure that the next tranche of SOIs avoided these problems. We also invited Freeths to provide its proposals as to how and by when this could be done, as we were mindful that this exercise would require some time (page 91).
28. The remaining SOIs were served on 4 September 2017 (save for a handful where Post Office has agreed extensions of time). These suffer the same problems as the original tranche of SOIs (see the further examples at pages 133-152).

29. Freeths wrote to my firm on 20 September 2017 refusing to make any changes to any SOIs on the basis that it would be disproportionate to provide more complete or accurate information at this stage in the litigation process (page 153). I note Freeths did not deny that the SOIs were prepared largely without its input. This seems extraordinary to me, given that those claims that have been quantified in the SOIs, although prone to a significant margin of error and suffering from the problems discussed in paragraph 25 above, add up to around £120 million, or approximately £240,000 per Claimant.

### **Second Sight**

30. There has been discussion between the parties regarding allowing the Claimants to speak to the forensic accountants (**Second Sight**) who were involved in the inquiry and subsequent Post Office Complaint Review and Mediation Scheme described in paragraph 25 of Parsons 2 (**the Scheme**).
31. On 13 October 2016, Post Office had proposed a protocol under which the Claimants could freely speak to Second Sight, save in relation to three protected topics where there was a higher risk of privileged information being mentioned (page 158). On 24 February 2017, Freeths objected to this proposal (page 166). Rather than accepting the protocol as a temporary measure that would have allowed them immediate access, they refused to agree anything and pressed for unfettered access.
32. However, on 15 June 2017, Freeths wrote to my firm seeking to accept the protocol with a small number of very minor tweaks (page 168). I do not know why it changed its position or why it took 8 months to engage with Post Office's proposal. The protocol was signed on 1 September 2017 (page 169).

### **Known Error Log**

33. There has also been discussion between the parties regarding a Fujitsu database known as "**the Known Error Log**". As Post Office explained at paragraph 50(4) of its Generic Defence, the Known Error Log is '*used by Fujitsu [to explain] how to deal with, or work around minor issues that can sometimes arise in Horizon for which (often because of their triviality) system-wide fixes have not been developed and implemented...it is not a record of software coding errors or bugs...[and]...to the best of Post Office's knowledge and belief, there is no issue in the Known Error Log that could affect the accuracy of a branch's accounts or that secure transmission and storage of transaction data*'.
34. On 6 July 2017, whilst writing to seek Post Office's consent to the proposed Amended GPOC, Freeths requested that Post Office urgently disclose the Known

Error Log because it is '*plainly of central relevance to the case and, in particular, the issues which depend on upon the presence or absence of bugs, errors or defects in the Horizon system*' (page 1).

35. Despite Post Office explaining the irrelevance of the Known Error Log and that it was not within Post Office's control (pages 13 and 180), Freeths continued to demand disclosure of the Known Error Log (page 177).
36. On 1 September 2017, Post Office explained that, according to its information from Fujitsu, the Known Error Log is '*a proprietary database with approximately 4,000 entries [and is] a constantly rolling document, the current version in use has evolved over time and may not reflect the version in place at [a] time which is relevant to the Claimants' claims*' (page 13).
37. Due to the large amount of information involved and the fact that the Known Error Log is not in Post Office's control, Post Office stated that '*whether and, if so, how your client should have access to the Known Error Log therefore needs to be considered in the context of any wider directions that are made*' (page 135). Post Office did not refuse access to the Known Error Log (for which purpose it needed Fujitsu's consent), but it was concerned about the timing and logistics of arranging access with Fujitsu.
38. I understand from Fujitsu that the Known Error Log cannot be easily downloaded as it comprises data that is stored on a database, rather than being a document in a conventional form. Unless one has the necessary database software, reading the data in the Known Error Log is very difficult. The alternative is to manually copy or print each entry, but this would produce poorly formatted material and would take significant time and work. Fujitsu believe that the best solution is for a person with appropriate expertise to read the Known Error Log on a screen at its offices where the information can be presented in a user-friendly format.
39. To avoid incurring needless time and costs arguing about this, Post Office wrote to Freeths on 22 September 2017 offering to arrange in the first instance for an opportunity for the Claimants' IT expert to inspect the Known Error Log at Fujitsu's premises (page 180). This offer was subject to Fujitsu's requirement that the Claimants' IT expert signs a standard form Non-Disclosure Agreement in order to protect Fujitsu's commercially sensitive know-how that might be revealed in the Known Error Log.
40. However, if having seen the Known Error Log the expert believes that disclosure of some sort is needed, the inspection process offered by Post Office should enable

Freeths to indicate precisely what is needed and to explain why, as my firm proposed in its letter dated 29 September 2017 (page 181).

41. My firm has provided Freeths with the Non-Disclosure Agreement and the parties are currently arranging a mutually convenient date for Fujitsu and the Claimants' expert to meet (see page 182).

#### Directions

42. On 6 July 2017, Freeths provided a draft Directions Order for consideration: its proposed order (**the Freeths Order**) is at page 5 and its covering letter at page 1. This was sent (i) the same day as Freeths proposed the Amended GPOC; (ii) while Post Office and its legal team was hard at work on the Generic Defence; (iii) before all the SOIs had been served; and (iv) before the Group Register had closed, so at this stage Post Office was only aware that there were 198 Claimants. I thought it odd that Freeths felt able to propose directions before it had even seen Post Office's Generic Defence and did not understand how it expected Post Office to be in a position to respond. Indeed, I did not (and do not) understand how the parties could sensibly be expected to decide important matters of this kind until after the statements of case had closed. I believe that the CMC was fixed with this point in mind.
43. As I explain in paragraph 29, 32 and 33 of Parsons 2, Post Office has previously felt that it is being frogmarched into agreeing important matters before it is in a position to do so. A practice almost appears to have developed in which Freeths makes significant proposals on matters that are not yet ripe for decision and then criticises Post Office for wishing to take a considered and properly contextualised approach to such matters.
44. During July and August my firm was busy preparing Post Office's Generic Defence and response to the Claimants' RFI. We were also reviewing the first 198 SOIs and checking the details of the 324 Claimants added to the Group Register.
45. By letter dated 1 September 2017, my firm explained that Post Office would not be in a position to comprehensively deal with directions until it had seen the Claimant's Generic Reply, due on 20 September 2017 (page 12)). We did however raise a number of issues that could be dealt with without first needing sight of the Generic Reply. These included dealing with certain heads of claim that had not been pleaded in the Amended GPOC, the discontinuance of claims by a number of Claimants and the possible strike out of certain categories of Claimants whose claims appeared to be unsustainable. Some of these points are addressed in Section 3 below (starting at paragraph 142). As explained further in my firm's letter

of 20 September 2017 (page 35), the following matters could not be dealt with constructively until Post Office had sight of the Reply:

- 45.1 Preliminary issues: Regarding the contracts between Post Office and its postmasters, there are profound issues between Post Office and the Claimants. For example, the Claimants contend that most of the relevant express terms of the contracts do not reflect the "true agreement" between the parties or are unenforceable. Moreover, while Post Office alleges that two implied terms are necessary to give the contracts business efficacy, the Claimants are arguing more than 20 implied terms. The parties also take different views on the agency duties between the parties and on how the express terms should be construed. Sight of the Reply was required to understand whether and to what extent any of these matters were agreed or disputed and whether the outstanding issues could be considered as potential preliminary issues.
- 45.2 Factual disputes: The Generic Defences set out what Post Office contends to be the relevant factual background to the legal and factual relationships between the parties. I had expected the Reply to accept or dispute this on a point-by-point basis, which would reveal whether the parties would be able to reach an agreed statement of facts that, amongst other things, might form the factual basis for the determination of preliminary issues.
- 45.3 Lead cases, disclosure and expert evidence: Until the scope of potential preliminary issues and factual matrix was known, it would not be possible to make informed decisions as to the immediate case management decisions to be made (especially bearing in the mind the great difficulty in this regard that results from the inadequacy of the SOIs).
- 45.4 Limitation and concealment: These matters were not addressed in the Amended GPOC nor covered in the SOIs but they were raised in the Generic Defence. Until Post Office saw what the Claimants said about them in the Generic Reply, it could not know whether and how these matters might need to be taken into account in discussing directions.

46. As explained above, the Generic Reply was only served on 29 September 2017. It has had a direct impact on the preliminary issues that Post Office has suggested for consideration and on the further information Post Office is seeking.
47. In the evening of 4 October 2017, my firm wrote to Freeths suggesting its own Directions Order: the suggested order (**the Bond Dickinson Order**) is at page 51 and my firm's explanatory letter is at page 38 onwards.

48. In the last few days, Freeths has accused my firm of having ambushed them with the Bond Dickinson Order, apparently with a view to prejudicing orderly preparation for the CMC. I reject these accusations absolutely and I hope they are not repeated.
49. In Section 2 below (paragraphs 50-141), I address the directions proposed in the Freeths Order, with particular reference to the proposed orders for disclosure. I discuss the directions proposed in the Bond Dickinson Order, and compare them to the directions proposed by Freeths, in section 3 (paragraphs 142).

## **SECTION 2: CLAIMANTS' PROPOSED DIRECTIONS**

### **Background**

50. In its letter of 6 July 2017 (page 1), Freeths proposed that:
  - 50.1 Lead Cases be selected, without setting out what is to be done with those Lead Cases;
  - 50.2 Post Office be required to provide a huge amount of disclosure on the basis that such disclosure is "staged" and "generic";
  - 50.3 permission is given for expert evidence in relation to Horizon without setting out what issues and questions that expert would address; and
  - 50.4 all other questions be deferred to a future CMC.
51. Freeths also tentatively suggested that the question of whether the postmaster contract is a "relational" contract be considered as a preliminary issue although this was not included in their draft Order (page 4).
52. The Claimants' directions require a great deal of work to be done by Post Office for little obvious or immediate purpose or benefit. How they might help resolve this litigation is not explained, either in the draft Order or in any related correspondence. Post Office believes that the extremely wide disclosure they seek is disproportionate, will not help progress the key points in dispute and / or is impossible to comply with. It is concerned that the Claimants are seeking to force Post Office into providing a vast number of documents and information, which may or may not be relevant, but which they can wade through in the hope that something might turn up to support their speculative claims.
53. I deal with Lead Claimants, preliminary issues and experts when discussing Post Office's proposed directions in Section 3 below (starting at paragraph 142). Post Office takes particular issue with the Claimants' orders for disclosure and I address

these immediately below. To place Post Office's objections in context, in paragraphs [54-82] below I provide a detailed explanation of how Post Office holds information and in paragraphs [83-129] I explain the difficulties that would be caused by the unilateral "generic" disclosure provided for in paragraph 3 of the Freeths Order. In paragraphs [130-134] I then explain why I believe the mutual "standard" disclosure provided for in paragraph 2b of the Freeths Order would be unworkable.

#### **Information held by Post Office**

54. Post Office is a large corporate entity. As at 1 October 2017, it had around 5,000 employees working from around 320 different offices and locations, with around 500 employees either working from home or in the field, with no fixed office base.
55. Like other large corporates, Post Office will have potentially relevant documents spread amongst a significant number of different people, teams and locations. Most of Post Office's employees will have either had contact with postmasters, and therefore hold relevant documents, or will have been involved with support and planning of operations that affect postmasters. This litigation, and the Claimants' wide disclosure requests, have the potential to touch on nearly all areas of its business.
56. It should also be borne in mind that Post Office's organisational structures and its staff have changed significantly since Horizon was fully rolled out in 2000. This includes a major restructuring in 2012, when Royal Mail was privatised and Post Office was retained by the Secretary of State for Business Innovation and Skills. Until then, Post Office had been a subsidiary of Royal Mail and the Royal Mail group had been run with a number of integrated teams and functions covering both businesses. Any disclosure order will therefore require a review of innumerable archived documents, backed-up data and legacy IT systems.

#### **Post Office's IT systems**

57. The majority of relevant documents will be held electronically. However, this does not mean that it would be easy to identify and recover them. In order to give a sense of the difficulties involved, in the following paragraphs I describe some of the principal IT systems that Post Office has in place and which might be relevant in this litigation.
58. Post Office's internal IT team estimates that it has in excess of 100 individual systems that may hold relevant documents. However, it outsources the majority of its IT systems, including IT support for those systems. Any extraction of documents from these outsourced IT systems will probably require Post Office to incur charges from these IT providers.

*Horizon*

59. Horizon is the IT system through which business is transacted in branches. In simple terms, it is provided to Post Office by Fujitsu. The key information tracked by Horizon is transaction data and event data. Transaction data is the line-by-line record of each transaction that has been input into Horizon. Event data shows other actions undertaken by a Horizon user on a terminal, such as their time of log-on and reports they have printed.
60. To retrieve all transaction and event data for all of the Claimants will be a considerable undertaking because it is a labour-intensive process. As a rough guide, Fujitsu tells me that with its current resource it would take over a year to extract one month of data for each of the Claimants' branches, in part, due to the checks that are conducted on the data's integrity when it is extracted. If Fujitsu dedicates two additional full time employees to the extraction of data (at a cost of at least £500 each per day to Post Office) in 4 months it can provide data for 1 month for all of the Claimants' branches. However, some of the Claimants have been in post for more than 17 years. Even with the additional resource, it would take decades to provide all of the transaction and event data for all Claimants.

*POL SAP and Core Finance*

61. Post Office's Finance Service Centre (**FSC**) runs Post Office's back-end accounting for its business, branches and clients. There are nearly 150 different financial functions within the FSC. Operating practices across the FSC differ widely, with some teams being primarily paper-based, some using the POL SAP and Core Finance IT systems (see paragraphs 62 to 63 below) and others principally working from emails and SharePoint (see paragraph 68 below).
62. POL SAP is currently the main software used by the FSC to record financial information across the Post Office network. There are approximately 24.2 terabytes of data in POL SAP and its archive.
63. POL SAP is a database provided under licence from SAP, a global IT company. It is not possible to simply extract all information from it for each of the Claimants as this would produce information in database format which would be meaningless without the necessary SAP licence. There are plans to move from POL SAP to a new but similar IT system called Core Finance in 2018, but a similar issue with extracting data will still exist.
64. An example of a report that can be run from POL SAP and Core Finance is the **Customer Account**. The Customer Account shows the dates of how shortfalls

accrued and any payments or deductions from remuneration that were taken to reduce the shortfall. This document is discussed further at paragraph 149.3 below.

*HR SAP*

65. HR SAP is a similar database platform to POL SAP but holds records on Post Office employees (i.e. those that work in its Crown branches). It should be noted that HR SAP does not provide a full picture of Crown employees since other records, such as on performance, will be held locally at a branch. HR SAP also holds some information on Post Office's postmasters, including their remuneration and assistants that have been registered at their branches.

*Dynamics and Remedy*

66. Dynamics and Remedy are the different call logging systems used by the National Business Support Centre (**NBSC**), which is the main helpline contacted by postmasters. Between 2000 and 2014, the NBSC used software called 'Remedy' to log calls from Agent branches. In 2014, this system was replaced by 'Dynamics'. The logs describe briefly the nature of the question asked and answer given.

*Other databases*

67. Post Office also has access to other databases from across its business that help provide information on its postmasters. For example, the Network and Strategic Analysis team have access to a Network Reinvention Database that provides dates of service of its postmasters.

*SharePoint*

68. SharePoint is a web-based Microsoft platform that allows teams across Post Office to save documents to it so that they can be shared. SharePoint is widely used across Post Office, with many teams having created several sites to hold documents. Examples of teams that use SharePoint are the Contract Adviser and Field teams.
69. The Contract Adviser team is responsible for managing contractual actions related to postmasters during the lifecycle of their contract. A Contract Adviser will be involved in recruitment of postmasters, they will manage any contractual variations such as requests to change opening hours, as well as managing processes such as suspensions or contractual terminations. Since around 2012, the Contract Adviser team has been storing electronic documents on a SharePoint site, which is divided into sub-sites. The Contract Adviser team SharePoint site is around 131

GB in size and it is estimated to contain in excess of 140,000 documents. This is just one SharePoint site. It has only been in operation for 5 years, while these proceedings span 17 years.

70. For these proceedings, Advanced Discovery, an e-disclosure specialist, has been engaged to help begin scoping the extraction of data from SharePoint and it began with the Contract Adviser site. This process was a significant project for Post Office, with input required from Computacenter (Post Office's IT supplier that manages access to SharePoint), as well as internal input from Post Office's data and information security teams, IT team and owners of the SharePoint sites. It took over 100 man hours of Post Office's time and over 25 hours of this firm's time across 4 months to find a successful way to extract data from this one SharePoint site. Once a working solution to extract the data was determined, it took over a week to simply download the data, with the extraction tools running around the clock.

*Lotus Notes*

71. Prior to the introduction of SharePoint in around 2012, many teams across Post Office used e-filing cabinets within Lotus Notes, a form of email software that is now not commonly used (**E-Filing Cabinets**).
72. The E-Filing Cabinets were on a server hosted by Royal Mail. Following Post Office's separation from Royal Mail on 1 April 2012, access to various data across Post Office was lost, including access to the E-Filing Cabinets.
73. On 28 June 2017, Royal Mail provided Post Office with a copy of the E-Filing Cabinets. However, this copy is not complete, with for example some attachments to emails and files embedded in other documents not having been transferred to Post Office. Significant work will be required by Royal Mail to complete the extraction exercise from its systems and have these made available to Post Office.

*Email*

74. Outlook is Post Office's principal email software used by all employees. Advanced Discovery advises me that in its experience, an average user can be expected to send and receive 20,000 emails a year (90 emails sent and received a day for 225 working days a year). If it is assumed that there are at least 100 key staff at Post Office whose email accounts need collecting (which may be a conservative assumption) over a 17 year period, this would mean capturing around 35,000,000 documents. A particular difficulty here and in many other contexts is that the absence of specificity in the Claimants' allegations would make it very difficult (and perhaps impossible) to devise a reliable system for narrowing down the review by

using search terms, date ranges and the other methods ordinarily used to reduce the pool of documents to those that require human review.

*Network drives*

75. Some teams, such as the Security Team (which investigates fraud and criminal misconduct) and Post Office's in-house Legal team, do not use SharePoint, but use shared drives on a Post Office IT network. As an example of the volume of data on these Network Drives, in July 2015 data was collected from the drives of the Security and Legal teams in response to mandatory statutory requests for information made by the Criminal Cases Review Commission, who are reviewing a small number of Post Office's past prosecutions. This exercise alone extracted around 200,000 documents.

*Archived and local data*

76. The systems outlined in this section represent the current and more recent IT usage. There have been other systems and databases that have been taken offline. Depending on the nature of specific allegations raised by Claimants, it may be necessary to access back-up tapes of data to reconstruct the state of databases at a certain date. Some teams also hold data on archived hard drives and memory sticks, or store data on their personal devices, such as laptop hard-drives. Post Office may need to collect all of these in and review them, depending on the scope of disclosure that is ordered.

**Hard copy documents**

77. In addition to the above IT systems, there are several teams at Post Office that are still paper-based, or regularly use paper records. I describe some of the principal teams below.

*Former Agent Debt Team*

78. The Former Agent Debt team manages shortfalls that have accrued in postmasters' accounts who no longer have a relationship with Post Office or have been suspended. The team's records are primarily paper based and many of them have been archived. Retrieving these files, and then scanning them into a data room so that they can be disclosed, will be a significant exercise, taking many months.

*Contract Adviser Team*

79. The Contract Adviser team maintains hard copy files. The hard copy files are not duplicates of the electronic files discussed above. Current postmaster files are kept at Post Office's Chesterfield office and former postmaster files are archived. The files are organised by branch so that each file will contain information relevant to all those postmasters and temporary postmasters who have operated a branch. They will need a manual review to extract information that pertains to the Claimants.

*Branch records*

80. Postmasters are required as part of branch process to run certain reports every month and retain a paper copy. Once a postmaster's contract terminates, the paperwork is typically sorted into archive storage boxes and stored with Box-It, Post Office's off-site storage provider. Generally, there can be up to 5 boxes of paperwork removed from each branch. Taking into consideration that there are currently 11,500 branches in the Post Office network and that in recent years through both Network Transformation and general turnover there has been significant change in the branches across the network, there is likely to be thousands of boxes stored with Box-It.
81. The paper reports are not printed on A4 sheets but on till rolls. These rolls will each be several feet long. To catalogue and disclose all of these till rolls will be a large task for Post Office, even bearing in mind the logistical difficulties of trying to scan or copy sections of numerous long till rolls.
82. It should be noted that those Claimants who are still operating as postmasters will hold this information in their branches and that Post Office's ability to retain the paperwork is limited by the postmaster having printed and stored it in the first place and then allowing Post Office access to remove it.

**The Claimants' orders for "generic" disclosure**

83. In the light of the information set out above, I now discuss the 7 categories of disclosure that the Claimants seek in paragraph 3 of the Freeths Order. In my respectful view, the Claimants' requests are a fishing expedition. Complying with them would be vastly expensive and would take many months.

**Horizon system architecture**

84. In paragraph 3a of the Freeths Order, the Claimants are seeking documents about "the Horizon system architecture".

85. The Horizon system has undergone many changes since it was fully rolled out in 2000, with Horizon Online introduced in 2010. In the original Horizon system, changes were released in batches for different parts of the system. There were dozens of major releases on the main system, with many more minor releases. Since the introduction of Horizon Online, there have been 15 major releases, each with up to 10 sub-releases. Any of these could contain a number of changes in functionality driven by code changes.
86. There is also a programme of patching and updating of operating systems and associated code changes, where required, to maintain the relationship between Horizon and other systems that communicate with it.
87. Fujitsu keeps a library of the key technical documentation regarding Horizon and Horizon Online in a content management system called Dimensions. Dimensions holds 4,165 live technical documents for the current Horizon system. There are also 22,025 technical documents for historical versions of Horizon.
88. Whilst the documents do show the date they were updated and signed off, for an expert to read into the system would be an extremely time-consuming task. In order for that expert to understand what the system looked like on a particular date, they would need to digest all of these documents, check for the version of the documentation that was in force on the date in question and link each relevant document together to recreate a picture of the system on that date. Fujitsu doubt that this would create a perfect picture of all aspects of a historic version of Horizon, but believe it would allow an expert to understand the high-level system architecture on a given date.
89. On average, around 250 to 350 people at Fujitsu work on the Post Office account at one time, although this number varies depending if specific project work is being undertaken. Over the 17 years since the system was rolled out, there have been thousands of people at Fujitsu who have worked on Horizon and it is not now possible to trace who worked on the system at what time. All of these people will have created emails, documents and draft documents, in addition to the technical documents described above.
90. Consequently, whilst the Horizon technical documentation can, with Fujitsu's consent, be located and extracted relatively easily, to capture all documents regarding the Horizon system architecture would require an enormous search. In my respectful view this is a disproportionate exercise at this stage in the litigation, especially where the problems in Horizon about which the Claimants purport to complain have not been identified, making it impossible to narrow down the exercise to targeted areas.

91. It should also be noted that many of these documents are not under Post Office's control. Fujitsu maintains some documents for Post Office to which Post Office has a right of access, but there are many other documents that are Fujitsu's internal documents, many of which are commercially sensitive know-how which belong to and are confidential to Fujitsu. Post Office is reliant on Fujitsu's cooperation in gaining access to these documents.
92. Moreover, I understand that these documents may contain highly sensitive information about the security controls in Horizon. Public release of this information could undermine the security of the system. This is a particular concern in this litigation, where a number of the Claimants have convictions for offences of dishonesty.
93. These concerns apply to the technical documents library. However, Fujitsu is at present willing to allow access to those documents on a voluntary basis, subject to certain safeguards. Those safeguards are that (i) the Claimants' expert initially views the technical documents at Fujitsu's office in Bracknell and (ii) the IT expert signs a Non-Disclosure Agreement. If copies of technical documents need to be provided, this can be considered once those documents have been identified and their content and sensitivity are understood by both sides to the litigation.
94. In the meantime, Fujitsu has identified what it believes to be the 4 best documents describing Horizon. These are listed in Schedule 1 of the Bond Dickinson Order. Provided a suitable Non-Disclosure Agreement is signed, Fujitsu is prepared to release these directly to the Claimants' IT expert. Fujitsu has also offered to allow him to inspect the 4,165 documents described in paragraph 87 above, so that he can form a view as to what further documents he needs and why.
95. I believe that this approach to disclosure will give the Claimants access to the information they need without the disproportionate disclosure exercise that they are proposing.

#### **Bugs, errors or defects in the system**

96. In paragraph 3b of the Freeths Order, the Claimants are seeking disclosure of "bugs, errors or defects in the Horizon system which were, or may have been, the cause of discrepancies or alleged shortfalls" attributed to the Claimants. This request is extremely broad, being based on the very vague allegations in the Amended GPOC (see paragraphs 22 to 24 of Amended GPOC), which provides the only basis on which Post Office could presently guess as to whether or not any bug or defect "may" have been the cause of a discrepancy or shortfall. Moreover, bugs are not given unique designations and there are no convenient

keywords that could be searched within the millions of documents held by Fujitsu in order to locate documents relating to them. The order sought by Freeths would be extremely difficult and costly to comply with, and would be likely to produce considerable irrelevant material.

#### **Operation of the helpline**

97. In paragraph 3c of the Freeths Order, the Claimants are seeking documents in relation to "the operation of the helpline". As I have already sought to explain, the Amended GPOC and SOIs are vague, and give little indication as to the particular things the helpline is alleged to have said to particular Claimants in particular contexts at particular times.
98. There is more than one "helpline" available to postmasters and the different helplines have different documents and store them in different ways.

#### *NBSC Helpline*

99. The NBSC helpline is usually the first contact point for queries from branches for operational support. On average over the last 17 years, between 50 and 70 members of staff have worked at the NBSC at any particular point in time. NBSC receives on average 35,700 calls per month (based on data obtained for 2016/17). I note that the Amended GPOC tends to make allegations about how Post Office generally instructed staff to do or say things or how the helpline is generally run, rather than identifying specific advice given by the helpline to specific Claimants in specific contexts or at specific times. Post Office may need to trawl through millions of calls and gather documents from hundreds of staff in order to give disclosure relevant to these allegations.
100. NBSC advisers all have access to a tool called Knowledge Base which is used to answer questions. Dynamics will direct the adviser to an article depending on the points raised by the caller. There are currently around 5,000 different articles within Knowledge Base, which is hosted on a SharePoint site. Given the lack of particulars from the Claimants it is therefore not possible at this stage to identify which parts of the Knowledge Base may be relevant to the Claimants' claims. This only leaves the option of disclosing the whole Knowledge Base of around 5,000 articles. This would be a difficult thing to do, because unless all of the articles are printed manually, scoping would need to be carried out to identify how, and where the articles are stored in SharePoint. I explain at paragraph 70 above the difficulties with extracting data from the Contract Adviser SharePoint site.

101. As described at paragraph 66 above, logs of calls to the NBSC are entered into Remedy or Dynamics. It should be possible to give disclosure of logs of particular calls that were made between particular Claimants' branches and NBSC.
102. Other documents generated on the operation of NBSC include training materials. New NBSC staff receive training and ongoing training is provided to NBSC staff on new products and services as they are introduced. There will also be other planning documents on the operation of the NBSC. These will generally be stored in emails and potentially on SharePoint. Accessing these materials would require the capture and review of potentially dozens of email accounts and laptops. Information on staffing planning is contained within a system called Verint. The Amended GPOC does not say enough to make it clear whether these materials will be relevant.

*Horizon support*

103. Post Office and its postmasters have access to a help desk called Horizon Service Desk (**HSD**) to manage technical issues with Horizon. The HSD is currently provided by an external IT provider, ATOS. It was provided by Fujitsu prior to June 2014.
104. Both Fujitsu and ATOS retain logs of calls from their tenure running the HSD. However, it will be technically very difficult to access logs from during Fujitsu's tenure between 2001 and September 2009. This is because the call logging system Fujitsu used for this period (Powerhelp) was taken offline due to it being run on redundant software. Fujitsu estimate that the cost of attempting to access the Powerhelp data could be up to £50,000, with no guarantee of success. There would also be a cost for maintaining access to the data if the restoration was successful, but Fujitsu is unable to provide a quotation for this until a solution has been devised.
105. ATOS estimates that to retrieve its call logs for around 50 branches over a 4 month period would take 10 working days and cost up to £5,000. If one assumes that this litigation may require the retrieval of logs for 100 branches over a 3 year period (noting that ATOS took over the HSD in 2014), this could cost over £500,000.
106. Post Office's on-site IT engineers are provided by Computacenter. If the HSD is unable to resolve an issue over the telephone, then support from Computacenter and Fujitsu may be needed. Both suppliers hold relevant records of this support. As with the Horizon documentation discussed in paragraphs 87 to 92 above, it is likely that some of this material is not within Post Office's control and substantial cooperation from Computacenter and Fujitsu will be needed.

107. In light of the above, an unfocused disclosure of documents relating to helplines would be a very difficult and expensive exercise and be liable to either miss relevant documents or disclose irrelevant documents. The key material will be the logs of calls made by Claimants to the NBSC helpline and Post Office can provide disclosure of these in a proportionate manner if limited to a reasonable number of Claimants who have recently been postmasters.

#### **Conduct of investigations**

108. In paragraph 3d of the Freeths Order, the Claimants are seeking documents on the "conduct of investigations". However, I understand that the term "investigation" could include the activities of a wide variety of teams at Post Office including the FSC, Field Support, Fraud Analysis, Cash Management, Security and Contract Adviser teams.
109. Documents for all of these teams will be held in different places across the business. The Contracts and Policy Development Team develops policies for the business in conjunction with individual teams. Whilst the Policy team drafts the policy, guidance on interpretation is held within individual teams, for example the Contract Adviser Team may also issue informal guidance and updates by email or memo to its members. Locating a policy on "investigations" and related guidance would therefore require a search of email inboxes, laptop hard drives, SharePoint sites and network drives for many staff within each team. To put this in context, the Contract Adviser team has had around 40 employees since 2000 and this is just one of the teams that would need searching and probably manually reviewing.
110. The Policy team has since around 2013 used a SharePoint site for documents but prior to this some documents were kept in paper form. To locate old records of policies would require Post Office looking back through the records of former members of the Policy team for outdated documents no longer in use. This may involve pulling archives of hardcopy documents.
111. One important "investigation" document is an audit report, which details the findings of a Post Office audit of a branch. The audit reports may be in the form of an email or a spreadsheet but are clearly identifiable as a report prepared following a branch audit, typically with a summary table showing any shortfalls that were found and in respect of which of Post Office's assets. Although audit reports can be saved in many different locations they are commonly used documents that Post Office can usually locate.
112. In light of the above, Post Office considers that to give disclosure in relation to "investigations" would be a huge exercise, requiring it to review years of emails and

documents and then largely guess at what might or might not be relevant in light of the vaguely pleaded issues in the Amended GPOC.

113. Moreover, several of the Claimants have been convicted of criminal offences and there are questions over the honesty of other Claimants. The Fraud Analysis, Cash Management and Security Teams are concerned that, unless protective measures are put in place, disclosing their process and policy documents, especially to current postmasters, would put Post Office's cash at risk because it would reveal what indicia are relied upon to trigger an investigation. Without revealing the precise nature of the controls that are in place, I can only say that Post Office considers that a postmaster aware of the precise controls and triggers would be far better able to remove Post Office cash or stock without this being apparent to Post Office. It may well be that disclosure of these policy documents, if / when needed, will have to be made subject to special confidentiality terms or other protections.

#### **Training policies and practices**

114. In paragraph 3e of the Freeths Order, the Claimants are seeking documents on training policies and practices, particularly where Post Office imposed new practices or systems or required new services.

115. Post Office provides a combination of classroom and on-site training for new postmasters depending on the postmaster's previous experience (some may already have been or be operating other branches). The materials for these courses have changed over time depending on the products offered by Post Office and its policies.

116. Whilst training is given when an agent first joins the Post Office network or when their branch undergoes a change of model, training is also given at various other points in time. For example, when auditors visit a branch and see that processes are not being followed, they may give on the spot training. Training given may be recorded in the branch file or in an audit report. Training can also be given for more specific purposes, such as for the introduction of Horizon Online, or by external companies, such as the Bank of Ireland on how to use ATMs.

117. Retention of training materials for the initial training courses depends on the staff responsible for developing the materials having kept them. Some training materials have been uploaded to SharePoint, some are kept on network drives and some have been kept on laptop hard drives. To attempt to locate all of the training materials, Post Office would need also to contact all trainers since 2000 to understand what materials were produced and where they were kept. To put this

in context, Post Office estimates that at any one time around 100 - 200 staff may be involved in giving training.

118. Again, the allegations in the Amended GPOC are very imprecise. They do not identify particular types of training, but call into question training of all types given by Post Office over 17 years. As things stand, the Claimants' request for disclosure would require Post Office to search for and review hundreds of thousands of documents and then guess at what might be relevant. I anticipate that this would lead to the disclosure of at least tens of thousands of irrelevant documents. The better way to proceed would be for each Claimant to identify the aspects of their training that they believe were deficient and then Post Office can provide further disclosure on these issues in a more targeted manner.

#### **Post Office suspense accounts**

119. In paragraph 3f of the Freeths Order, the Claimants are seeking documents relating to Post Office's suspense accounts, with no clear explanation as to what they mean by this phrase.

120. The Letter of Claim of 28 April 2016 did not make any allegation in relation to suspense accounts. It was not until the Claimant's 62-page letter of 27 October 2016 that the issue was raised, at paragraph 23 which referred to '*circumstances where Post Office holds surpluses in suspense accounts, which after 3 years are credited to its profits*' and alleged that Post Office benefits from errors wrongly attributed to postmasters (see also paragraph 72).

121. The Amended GPOC repeated this issue, in that it refers at paragraphs 38 and 39 to suspense accounts in which Post Office is alleged to have '*held unattributed surpluses*' and that after '*3 years, such unattributed surpluses were credited to the Defendant's profits*'.

122. From discussions with Post Office's finance team, I understand that the term "suspense account" does not have a fixed meaning in accounting jargon; it is a generic accounting term. This broad topic was briefly discussed during the Scheme with Second Sight, but it is not clear whether the Claimants' case is based on and/or goes beyond the points raised by Second Sight. It is therefore unclear as to what the Claimants mean when they refer to a suspense account or unattributed surpluses. I note that the Claimants say in their Generic Reply that Post Office must know what is meant, which I believe is regrettable given that Post Office's Generic Defence is clear on this point and is confirmed by a Statement of Truth. In any event, I will explain why the Claimants' allegations are not as clear as they think.

123. The Claimants appear to allege that there are specific suspense accounts where monies are held that have not been resolved, with Post Office then benefiting from those discrepancies because they are ultimately released to profit. Almost any account operated by Post Office could in theory hold unattributed sums, and identifying accounts that may, at one time or another, be considered to have operated in part in this way is difficult.
124. Within Post Office's finance system, POL SAP, and its archive there is approximately 24.2 terabytes of data. Post Office's finance teams have been asked to identify which of these might be classed as suspense accounts. They estimate that there are 119 ledgers that might fall into this bracket, however this exercise was subject to numerous assumptions as to precisely how to classify an account's functions. It is important to understand that these accounts were not just or even mainly used for "suspense account" type movements but other purposes as well, such as moving items between back office accounts and profit and loss in the usual course of business.
125. As matters stand, the Claimants' current request for disclosure would require a disclosure of all accounting information in at least these 119 accounts, much of which would be irrelevant. Provision of this vast amount of information in a usable format would not be straightforward as it would be coming in a database format that is not readily accessible without certain software. Moreover, unless the Claimants intend to undertake a forensic accounting exercise on this data, Post Office cannot see what utility this information would be to the Claimants at this stage of the proceedings. As far as I am aware the Claimants have not yet engaged a forensic accounting expert, and there has been no request for an order permitting expert evidence of this kind.

#### **Documents delivered up by Second Sight**

126. At paragraph 3g of the Freeths Order, the Claimants are seeking disclosure of 35,000 documents delivered up by Second Sight following termination of its contract for services to Post Office arising out of the Post Office Complaints Review and Mediation Scheme described at paragraphs 24-25 of Parsons 2.
127. These documents contain a significant amount of privileged material that would need to be removed. It will also contain irrelevant material relating to people who are not Claimants and relating to the operation of the Scheme.
128. A significant part of the documents consists of large numbers of emails with drafts of reports and internal Second Sight discussions on particular cases before finalising its reports. In my view, the most important documents would plainly be

the reports actually produced by Second Sight (rather than documents showing only what Second Sight might have considered saying but did not say). The Claimants already have these. The Claimants also have direct access to Second Sight. From my own experience of the Scheme, I do not think it likely that much could be extracted from these documents that would be of any significant use to the Claimants. I estimate that to review all the documents returned by Second Sight will cost around £75,000.

129. Nevertheless, Post Office is prepared to disclose these documents on the basis set out in the Bond Dickinson Order.

#### **Standard disclosure in Lead Cases**

130. For the reasons stated above, giving so-called generic disclosure of the type sought by the Claimants from Post Office would be extremely difficult, time consuming and expensive, not least because of the lack of specificity in the claims, the wide date range of the Claimants' claims, the many different locations in which documents are held and the many different teams that will hold them. The difficulty is compounded by the lack of clarity in the SOIs, the Amended GPOC and the Generic Reply.
131. Turning to the Claimants' proposal for standard disclosure on Lead Cases sought in paragraph 2b of the Freeths Order, I believe that such an order will neither be possible nor proportionate.
132. It is important to understand that the Claimants are not providing for the Lead Cases to be pleaded out before disclosure is given. Post Office will not therefore know what specific issues each Lead Case is raising. In this situation, it does not make sense to talk about "standard disclosure": in the absence of pleadings, there would be no fact-specific allegations and issues on the Lead Claims that would enable the CPR test to be applied in any meaningful way. For example, one would not know what Post Office is alleged to have said or done to a particular Lead Claimant or when it is alleged to have been said or done, and one would not know how or when that postmaster is alleged to have suffered the loss and other injuries he claims.
133. Without pleadings setting out the parties' respective cases with the requisite degree of particularity, I do not understand how standard disclosure would be possible. It may be that the Claimants are expecting Post Office to give disclosure of all dealings and other interactions between Post Office and the Lead Claimants. However, a full disclosure process of that sort would plainly be disproportionate. In

any event, even if standard disclosure could sensibly be given, it would still give rise to all the problems outlined above in relation to "generic" disclosure.

134. At this stage, I would estimate that the cost to Post Office of Freeths' disclosure orders (including both generic and standard disclosure) would likely be between £2 million and £6 million, and that it would take at least 9 months, and possibly as much as 15 months, to complete the exercise.

#### **Disclosure already given by Post Office**

135. The Claimants' proposals for disclosure should also be assessed in the context of the amount of disclosure that Post Office has already given voluntarily, and what the Claimants appear to have done (or not done) with this disclosure.

136. By their Letter of Claim of 28 April 2016, the Claimants made 32 wide-ranging requests for disclosure, many of which did not seem relevant, reasonable or proportionate, particularly where grounds for the disclosure had not been particularised, and some of the requested disclosure was privileged. By its Letter of Response of 28 July 2016, Post Office agreed to provide disclosure in respect of 8 of those requests (as far as it was reasonably able), it requested clarification in respect of 4 requests and it referred Freeths to its clients in respect of a further 4 requests, since many of the relevant documents would have been provided as part of the Scheme (hundreds of pages of documents were shared with most of the participating postmasters).

137. On 31 August 2016, Post Office gave disclosure of the following items:

137.1 Copies of the contractual documents and variations between Post Office and its postmasters. These included:

- (a) 1994 Subpostmaster contract (consolidated version)
- (b) Acknowledgement of appointment of postmaster
- (c) Branch standards booklet
- (d) Branch standards contract variation
- (e) Conformance booklet
- (f) Subpostmaster Paystation terms and conditions

137.2 Fujitsu contract

137.3 Course materials for Horizon training

- 137.4 Audit guidelines
- 137.5 Documents surrounding the termination of the Scheme
- 137.6 Draft witness statement of Martin Rolfe (regarding an allegation of "remote access" to Horizon)
- 137.7 Internal email correspondence between Alan Lusher and Andrew Winn of Post Office regarding branch accounts
- 137.8 Post Office documents on certain Horizon issues previously discussed with Second Sight
- 137.9 Second Sight's terms of engagement
- 137.10 Post Office notes on retract fraud on ATMS and audit trails on Girobank deposits
- 137.11 A report by Graham Brander of Post Office on the investigation into the branch run by Josephine Hamilton (Claimant 69)
- 137.12 The Scheme rules
- 137.13 The Scheme Working Group's terms of reference
- 137.14 Minutes of the Scheme Working Group's meeting of 17 October 2014
- 137.15 Post Office notes on suspense accounts
- 137.16 A sample branch trading statement
138. As noted in paragraph 136 above, Post Office had referred Freeths to its clients for several of these documents (of the 198 Claimants named on the first claim form, 88 participated in the Scheme). Although Freeths confirmed on 29 March 2017 that it had '*advised all of our clients in respect of their obligations to preserve all disclosable documents*', no indication of what documents the Claimants hold that would assist them or narrow their disclosure requests has been given. Freeths has recently provided a disclosure report which contains practically no information about the documents held by its clients. This seems consistent with little or no work having been done to obtain the many significant documents many of them will have. The Claimants have declined to give Post Office any disclosure of their own.
139. The disclosure given by Post Office also does not appear to have been properly considered by the Claimants. On 10 April 2017, Post Office gave disclosure of 140 contractual documents relating to the Claimants. This took at least 100 man hours

of Post Office's time as well as the costs of my firm in assisting in the collation and review of the contracts.

140. Having undertaken this large and costly exercise, in its letter of 10 April 2017 (page 184) my firm asked the Claimants to '*undertake a similar exercise in locating the contractual documents held by each Claimant*' to ensure the parties held matching documentation and to help fill the gaps for contracts Post Office had been unable to find (in part due to the time since some of the contracts were terminated). No such contracts have been provided by the Claimants
141. On reviewing the SOIs, it was clear that the disclosed documents had not been taken into account. Examples of this are set out in paragraph 3 of my firm's letter of 1 September 2017 (page 85).

### **SECTION 3: POST OFFICE'S PROPOSED DIRECTIONS**

142. The Bond Dickinson Order is at page 51. Its main provisions are explained in my firm's covering letter at page 38. In summary:

- 142.1 Paragraph 1 of the Bond Dickinson Order provides for a process by which 40 Potential Lead Claimants are selected by the parties.
- 142.2 Paragraph 2 provides for Post Office (i) to make certain Horizon documents available for inspection by the Claimants' IT expert and for Post Office to disclose three categories of documents to the Claimants, namely (ii) a full set of Post Office's standard postmaster contracts (although most of these have already been provided), (iii) relevant and non-privileged copies of the documents delivered up by Second Sight at the end of the Scheme (see paragraphs [126-129] above) and (iv) copies of the settlement agreements entered into between Post Office and many Claimants (see paragraph [147] below).
- 142.3 Paragraph 3 provides for those Claimants who have claims for personal injuries to disclose their medical records to Post Office.
- 142.4 Paragraphs 4 to 7 provide for Post Office and the Lead Claimants to give early disclosure of certain specified categories of documents.
- 142.5 Paragraph 9 leaves a gap for what Post Office hopes will be an agreed questionnaire process by which sufficient details of the individual claims made by the Claimants are provided to enable a proper assessment to be made of the range of claims which Post Office faces and of how that

range of claims can be broken down into categories and managed accordingly.

142.6 Paragraphs 10 to 14 provides for the court to consider directing a trial of certain contractual questions as preliminary issues, for which purpose Lead Claimants are to be selected and their claims pleaded out.

142.7 Paragraphs 15 to 18 provide for the striking out of certain claims, unless certain steps are taken by the Claimants.

142.8 Paragraphs 19 to 23 provide for the Claimants to give information as to (i) the factual bases on which Claimants whose claims are more than 6 years old contend that their claims are not time-barred, (ii) the factual bases on which Claimants who have settled their claims against Post Office contend that their claims are not barred by their settlement agreements, (iii) the Claimants who submitted false accounts to Post Office and why they say they did so, and (iv) the amounts of the Claimants' various heads of claim.

142.9 Paragraphs 24 to 32 address various other matters, including costs.

143. I do not propose in this statement to recite the arguments in favour of these directions, but there are some factual points which I believe it would be helpful for me to address.

### **Early Disclosure**

144. To address the problems with the disclosure sought in the Freeths Order, Post Office proposes a targeted approach which should not impose undue difficulty or expense on any of the parties. The categories of Post Office disclosure provided for in paragraph 2 and the categories of mutual disclosure provided for in paragraphs 4 to 7 should be clear in the light of the matters discussed in Sections 1 and 2 above.

145. This disclosure is designed to provide (i) documents that will assist the parties in pleading as to the Lead Claims; (ii) documents that will help the Claimants better understand Horizon's operations and help the parties to discuss case management in this regard, including as to any orders for expert evidence and disclosure in relation to Horizon that may be appropriate; and (iii) documents connected with the further information being sought by Post Office. It is a form of staged disclosure and it is not intended to be a substitute for standard disclosure.

*Horizon documents*

146. Post Office hopes that providing the Claimant's expert with access to documents in relation to Horizon will ultimately allow them to take a more realistic view of the merits of their vague allegations about Horizon. Post Office does not accept that any proper or viable claim has been formulated or pleaded in this regard, and it proposes to give disclosure to break the current impasse in which the Claimants insist that they do not know enough to enable them to plead a properly particularised claim. Post Office proposes to facilitate access for the Claimants' IT expert to the 26,000 technical documents described at paragraph [87] above. This is in addition to access to the Known Error Log and Second Sight, which have been offered in correspondence.

*Settlement Agreements*

147. As I explain in paragraphs [166] to 169 below, Post Office contends that at least 114 Claimants have entered into settlement agreements by which they have settled the claims they are seeking to make in these proceedings. It is proposing an order that it disclose the relevant settlement agreements to the Claimants and, as I explain in paragraph [155] below, it is also proposing an order that the relevant Claimants set out the essential facts they rely on in order to avoid those settlement agreements.

*Medical reports*

148. More than 65% of the Claimants have asserted a claim for personal injury in their SOIs, which Post Office assumes means psychiatric injury. However, in the light of the questions it has raised about the preparation of the SOIs as discussed in paragraph [25] above, Post Office is gravely concerned that many Claimants have asserted a personal injury claim when no recognisable psychiatric injury has in fact been suffered, thereby artificially increasing the true scope of the claims. Post Office is therefore seeking disclosure of the Claimants' medical records in accordance with what I understand to be common practice in personal injury cases.

*Disclosure between Post Office and Lead Claimants*

149. Paragraphs 4-7 of the Bond Dickinson Order requires disclosure of certain defined documents for every Potential Lead Claimant. These categories vary slightly between postmasters and assistants and also vary depending on whether the disclosure is to be given by Post Office or Claimant. Some of the categories are self-explanatory and some have been explained above. As to the others:

- 149.1 The signed Confirmations of Appointment and signed Prefaces are the contractual documents signifying that the postmaster accepts Post Office's terms.
- 149.2 Transaction and Event data recorded on Horizon for the Potential Lead Claimant's Branch(es) as described in paragraph 59 above. It will show details of transactions undertaken in the Branch(es), as well as actions undertaken by the Horizon user, which can assist in understanding how any issues arose. As set out at paragraph 60 above, the extraction of transaction and event data is a time consuming process. It should be possible to devise a method for extracting the necessary data by the deadline set out in the Bond Dickinson Order but this could only be confirmed once the parties have chosen Potential Lead Claimants and Post Office knows the amount of data involved.
- 149.3 The Customer Account from POL SAP or Core Finance (as applicable) is a report produced from POL SAP or Core Finance that shows shortfalls in a postmaster's account at FSC. It shows how that shortfall has accrued, for example at audit or if the debt has been settled centrally, and the payments or deductions that have been made in respect of the shortfall.
150. The disclosure documents proposed by Post Office could be said to cover the life-cycle of a typical postmaster from appointment, operation of their branch, termination and then any post-termination actions. As a solicitor at Bond Dickinson, I have been working for Post Office for nearly ten years and in my experience the documents Post Office proposes to disclose are those most commonly referred to in any dispute between a postmaster and Post Office.
151. In relation to the disclosure which Post Office proposes for the Potential Lead Claimants, an additional category sought from lead Claimants is documents relating to the losses they claim to have suffered (as only the Claimants will hold these).

#### **Preliminary issues**

152. As indicated in my firm's letter of 4 October 2017, Post Office's proposal regarding the trial of preliminary issues is a tentative one. It is conscious that there are risks and disadvantages associated with seeking to determine this relationship separately from other issues that are in dispute.

**Strike Out**

153. Regarding the Claimants' claims for conspiracy, misfeasance in public office and for breach of the ECHR, none of which are pleaded in the Amended GPOC, the following points should be noted:

153.1 Conspiracy: By its letter of 11 July 2017, my firm objected to the continued inclusion of this claim in the claim forms (page 13). Freeths responded on 19 September 2017, stating that the Claimants would agree to amend the claim forms to withdraw the conspiracy claims if Post Office was minded to apply to strike the claims out (page 26). Post Office is so minded. It is strongly of the view that the claim should never have been made in the first place.

153.2 Misfeasance: Freeths' Letter of Claim dated 28 April 2016 asserted a claim for misfeasance in public office, and in its Letter of Response of 28 July 2016, my firm explained by reference to the authorities why Post Office could not be treated as a public authority for the purposes of the tort. In its Letter of Reply dated 27 October 2016 Freeths stated that it had considered the objections my firm raised and decided not to pursue the point. Consistently with this, no claim for misfeasance was asserted in the Amended GPOC. However, the claim remains in the original claim form, and it was subsequently repeated in the second claim form.

153.3 By its letter of 1 September 2017, my firm objected to the continued inclusion of this claim in the claim forms (page 13). In its response of 19 September 2017, Freeths claimed for the first time that misfeasance in public office related to the malicious prosecution claims and that any particularisation would depend on the outcome of the Criminal Cases Review Commission's review into the Claimants' prosecutions (page 27). This contention is not consistent with the Claimants' previous correspondence and I believe that it is obviously untenable. I further believe that the Claimants have no real prospect of succeeding on any claim for misfeasance in public office and that it would be in accordance with the overriding objective for the claim to be struck out.

153.4 ECHR: At no point in the Letter of Claim, in any subsequent correspondence or in the Amended GPOC did the Claimants articulate a claim under the ECHR. In response to my firm's objection to the claim in its letter of 1 September 2017 (page 13), Freeths also claimed that the ECHR claims related to the malicious prosecution claims (page 27).

153.5 I believe that these Claimants have no real prospect of succeeding on any claim under the ECHR and that it would be in accordance with the overriding objective for the claim to be struck out.

154. In the correspondence at pages 14 and 47, my firm has asked various questions about whether various Claimants who have been made bankrupt or who have died have standing to bring their claims. In the light of that correspondence, the orders suggested by the Claimants require no further explanation.

#### **Further information**

155. The orders sought for details of the Claimants' cases on limitation, settlement, false accounting and quantum are matters for submission. However, in paragraphs 162-169 below, I explain why Post Office believes that the claims of a considerable number of claimants are either time-barred or have been settled. In their Generic Reply, the Claimants dispute this with little more than bare denials. It appears that the relevant Claimants do not wish to reveal the particular facts they rely in support of their denials. In Post Office's view, all or most of these Claimants have no proper evidential basis for denying these things, and it is in the overriding interest for them to be required to reveal their hand. It is in no-one's interest to allow their claims to escape scrutiny indefinitely.

#### **Other orders**

156. I hope that the parties will be in agreement in relation to ADR and costs. I should make it clear note that security for costs remains a live issue. Discussions with Freeths are continuing on the question of whether and if so how security should be given and Post Office reserves its right to make a security application in the future.

#### **SECTION 4: THE CATEGORIES OF CLAIMANTS**

157. By the Bond Dickinson Order, Post Office is proposing:

157.1 that specific provisions be made for Claimants who are bringing claims as postmasters or assistants;

157.2 that information be provided regarding potentially time-barred claims; and

157.3 that further information be provided regarding potentially settled claims.

158. This section contains an analysis of the Claimants falling in these categories, so as to show the number of Claimants who are likely to be affected.

### **Categories of Claimants**

159. In paragraphs 69 to 86 of Parsons 2 I explained the different types of Claimants. From a review of the SOIs provided by the Claimants, I understand that the Claimants fall into the following groups:

159.1 453 of the Claimants are / were postmasters.

159.2 25 of the Claimants are / were assistants.

159.3 4 of the Claimants are / were crown employees.

159.4 11 of the Claimants are / were companies.

159.5 3 of the Claimants have entered into guarantee agreements with Post Office in respect of a company which has contracted with Post Office.

159.6 6 of the Claimants are / were directors of their respective companies which have contracted with Post Office.

160. These numbers are not precise because the information in the SOIs is unclear (sometimes to the extent that Post Office has not been able to categories some Claimants at all) and some Claimants have had multiple roles e.g. they were an assistant who became a postmaster. I believe however the above figures broadly reflects the split of different types of Claimants in these proceedings.

161. At paragraph 1 of the Bond Dickinson Order, it has been proposed that the selection of Lead Claimants is limited to Claimants who are asserting claims as a Subpostmaster or an assistant. Bond Dickinson's Order seeks to exclude Crown employees, companies' guarantors and directors from being selected as Potential Lead Claimants since they are not representative of the Claimants as a group.

### **Time-barred Cases**

162. The Bond Dickinson Order requires certain Claimants to give details of the facts on which they rely in order to avoid limitation.

163. Post Office is not yet in a position to positively assert a limitation date for each of the Claimants, because the Claimants have not particularised their claims to an extent which would enable Post Office to carry out the analysis needed to advance a comprehensive case on limitation. However, each of the Claimants has provided Post Office with a SOI which includes their termination date. This provides a rough indication as to the likelihood of a limitation defence to be available

164. It should be noted that not all the Claimants have the same *prima facie* limitation date. Ignoring the claims made for personal injury (for which the limitation period is 3 years), those Claimants named in the original Claim Form have a limitation date of 11 April 2010, those Claimants whose names were added to the amended Claim Form have a limitation date of 3 August 2010 and those Claimants named in the Second Claim Form have a limitation date of 24 July 2011.
165. From a review of the SOIs, I am aware that:
  - 165.1 192 Claimants (38% of the total number of Claimants) have termination dates prior to their respective limitation dates indicated above. These Claimants are highly likely to be time-barred. They are the Claimants identified in Schedule 5 to the Bond Dickinson Order.
  - 165.2 A number of Claimants are bringing claims in relation to their tenures at multiple branches and, of these, 23 (4.5%) are advancing a claim in respect of a branch where their termination date is prior to their respective limitation date.
  - 165.3 About 90 (18%) of the remaining Claimants' appointments were mainly prior to their respective limitation date. In the event that losses have been sought for these periods, the losses claimed by these Claimants may be exaggerated.
  - 165.4 Only 100 Claimants (19%) have been appointed within the last 6 years. These are the only Claimants for whom it can be said with certainty that they will not be subject to a limitation defence.

#### **Settled Cases**

166. The Bond Dickinson Order requires certain other Claimants who have previously entered into settlement agreements with Post Office to specify the facts on which they rely to avoid these settlements. These Claimants can be split into two categories:
  - 166.1 Claimants who were part of the Scheme; and
  - 166.2 Claimants who were part of the Network Transformation programme.
167. The Scheme handled complaints raised by postmasters and where mediation was successful, formal settlement agreements were entered into. 12 of the Claimants are party to such settlement agreements with Post Office, which provided that they were in full and final settlement, to release any and all claims, whether or not

Claim No: HQ16XO1238 and HQ17X02637

presently known to the parties that they ever had against Post Office and/or any of its related parties in relation to their respective complaints.

168. As part of Post Office's Network Transformation programme, certain postmasters were provided with two options, as follows:

168.1 To convert their branch into a NTC Main or Local branch. If a postmaster chose this option, then their existing contract with Post Office would be terminated. In addition to funding equipment and works to update the postmaster's branch, Post Office made a payment to the postmaster to support their transition to a Network Transformation Contract, on certain conditions. These included a condition that the payment was made in full and final settlement of any and all claims that the postmaster had or may have against Post Office howsoever arising and whether arising out of the termination of the existing contract and whether under common law, contract, statute or otherwise. The level of payments differed depending on the type of model the postmaster was converting to, but for Local branches the payments made were up to £60,000. Post Office believes there are 60 Claimants who fall within this category.

168.2 To leave the Post Office network. If a postmaster chose this option, he or she was invited to submit their resignation from their contract with Post Office. If the postmaster's contract was terminated, Post Office would make a "Leaver's Payment" to the postmaster, on certain conditions, including a full and final settlement condition as set out above. The Leaver's Payment was typically in the region of £100,000 but could be up to £200,000. Post Office believes there are 42 Claimants who fall within this category.

169. Thus, there are 114 Claimants (22% of the total number of Claimants) who have already entered into settlement agreements with Post Office.

#### STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed:   
GRO  
Date: 9 October 2017

# FREETHS

Bond Dickinson LLP  
DX 38517  
Southampton3

**GRO**  
Switchboard: **GRO**  
Email: **james.hartley** **GRO**

By email: andrew.parsons **GRO**

6 July 2017

Our Ref: JXH/1684/2113618/1  
Your Ref: AP6/364065.1369

Dear Sirs,

**BATES & OTHERS -V- POST OFFICE LTD**  
**Claim No: HQ16X01238**  
**DRAFT ORDER FOR CMC**

In advance of the CMC listed for 19 October 2017, we write enclosing proposed directions (see draft Order attached) as to which we seek your agreement and co-operation.

We also enclose proposed Amended Particulars of Claim, which we invite you to agree, so that the brief additions to the Particulars of Claim can be pleaded to in your Defence. The Amended Particulars of Claim simply plead a term implied by the Supply of Goods and Services Act and make clear that error detection and repellency in the Horizon system is in issue.

There is also the urgent matter of disclosure of the Known Error Log(s), which we address immediately below.

### **Known Error Logs**

We need the Known Error Logs (and/or similar logs or audit records of bugs, errors or defects). These are plainly of central relevance to the case and, in particular, the issues which depend on upon the presence or absence of bugs, errors or defects in the Horizon system. We have been asking for these documents (and others) since the Letter of Claim dated 28 April 2016. We also note that extracts from these Logs were referred to during the trial of Seema Misra.

This case obviously involves whether there were such errors, as well as what Post Office knew of them. There is no basis for not disclosing these documents and, as you are well aware, your refusal to provide them to date has prevented us from providing any detailed particulars of bugs, errors or defects in the Particulars of Claim.

6 July 2017  
Page 2

Please confirm by return that you will now provide these documents. An obviously convenient time to provide the Known Error Logs (and/or similar) would be with your client's Defence on 18 July 2017. We need to be in a position to give these issues careful consideration well in advance of the first CMC, and in any event when considering our clients' Reply.

**Draft Order**

TRIAL OF PRELIMINARY ISSUE

1. At the CMC the court will consider whether or not to order the trial of any preliminary issue(s). We have previously suggested to you the resolution of whether the contractual relationship between the parties amounts to a relational contract may be identified as a preliminary issue.
2. We consider that whether or not there should be a trial of this or any other preliminary issue would best be considered after service of your Defence, at which point the parties will be able see how the issues between them have crystallised, and we will be better placed to consider the matter and to give some consideration to possible agreed facts.
3. However, if at this stage you have any proposals in relation to trial of any preliminary issue please let us know.

DISCLOSURE

4. To date there has been considerable correspondence between us regarding disclosure of documents by Post Office, and we have made repeated requests to which your client has not acceded. You are well aware of the documents which will be in issue in this case (in addition to the Known Error Logs above), and the obligations which your client has in relation to disclosure.
5. You have resisted many of our disclosure requests to date on the basis that "*a full disclosure exercise would be required*" to locate relevant documents, but at the CMC after close of pleadings there can be no doubt that orders for disclosure will be made.
6. Rather than seek standard disclosure of all documents, you will see from the draft Order that we have proposed disclosure in stages, initially limited to documents relating to the following matters, which are essential to our understanding of the key generic issues in the case:
  - a. the Horizon system architecture (documents which evidence the overarching systems architecture are obviously essential for our expert to understand the operation of the Horizon system);
  - b. bugs, errors or defects in the system which were or may have been the cause of discrepancies or alleged shortfalls attributed by the Defendant to any of the Claimants [GPOC §22]
  - c. the operation of the helpline [§29-30];

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- d. the conduct of investigations [§31];
- e. Post Office suspense account(s) [§38-39].

7. We suggest disclosure of these generic documents at the first stage as an appropriate and proportionate way to proceed.

8. If you disagree with our proposal for staged disclosure, please explain why. If you would prefer to provide standard disclosure, we are prepared to consider with you how that might best be achieved.

9. We will need to have discussions with you in relation to e-disclosure, which we think would most naturally follow your response to our proposal above, but if you do wish to set out your proposals (or initial proposals) in relation to e-disclosure now, then please do so.

10. Proposals for disclosure solely relating to individual Claimants are made below, under Lead Cases.

#### LEAD CASES

11. We are intending to issue a further Claim Form later this month, and at that stage we anticipate there will be a total of around 400 - 500 Claimants. Management of the Group will obviously require selection of Lead Cases. The approach to this process which we suggest is that the parties initially identify a pool of Claimants in respect of which each party gives disclosure, from which Lead Claimants may then be selected and managed by the Court.

12. As you will see from the draft Order, we suggest the initial pool be comprised of 20 Claimants identified as potential Lead Cases by each party, giving a pool of 40 Claimants, which should be more than sufficient to cover the GLO issues. The parties then give standard disclosure for those cases in the pool.

13. After disclosure, the parties should then co-operate to seek to agree 16 cases from that pool to be Lead Cases. The court would then be in a position to manage further progress of the Lead Cases at the next CMC.

14. We invite your agreement to this approach, or any other constructive proposals you may have.

#### EXPERT EVIDENCE

15. Expert IT evidence in respect of the operation and accuracy of the Horizon system is plainly required, and we propose that each party be given permission to adduce expert evidence in the field of IT accordingly.

16. We think further consideration is necessary as to whether any additional expert evidence is necessary and if so, in what discipline, however if you have specific proposals in relation to this issue please let us know.

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Page 4

17. It is important that our IT expert is able to carry out inspection and testing, and we are presently in discussions with our expert as to what initial access is required for our expert to begin work. We will write to you further in due course about this issue. Inevitably our expert's views will be informed by disclosure of the generic documents relating to the system architecture, bugs and errors etc, therefore these discussions will need to be ongoing.
18. The draft Order accordingly proposes that prior to the next CMC, the parties should co-operate and seek to agree further directions in relation to these expert issues.

#### ALTERNATIVE DISPUTE RESOLUTION

19. We repeat our preparedness to seek to resolve or at least narrow the issues by any means of Alternative Dispute Resolution (including Mediation). We invite your agreement to the standard direction that we have included in the Draft Order.

#### CUT OFF DATE

20. We are monitoring the rate of new prospective claimants, and whether any extension to the cut-off date for claims to be entitled to be entered onto the Group Register may be required (particularly in circumstances where we were not able to advertise the GLO in the form approved by the Court prior to it actually being made). For the avoidance of any doubt, the potential need to extend the cut-off date was expressly envisaged by paragraph 37 of the GLO therefore we do not consider any separate application in relation to extension of the cut-off date is necessary.

#### COSTS MANAGEMENT

21. We remind you of the obligation at paragraph 35 of the GLO that 14 days before the CMC the parties shall serve and file a statement which sets out the costs incurred to date and the projected estimate of costs to the conclusion of the CMC.
22. As to further costs management, we are giving continued consideration to this issue, but as you will see from the draft Order, our current proposal is that the parties regularly report their costs, as they pass particular milestones of £500,000, £750,000, £1 million and any increment of £250,000 thereafter.

We look forward to hearing from you.

Yours faithfully



Freeths LLP

THE POST OFFICE GROUP LITIGATION

Claim No. HQ16XO1238

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

BEFORE Mr Justice Fraser

19 October 2017

BETWEEN:

ALAN BATES & OTHERS

Claimants

- and -

POST OFFICE LIMITED

Defendant

---

Claimants' draft ORDER

---

UPON HEARING Leading Counsel for the Claimants and Leading Counsel for the Defendant

IT IS ORDERED THAT:-

**TRIAL OF PRELIMINARY ISSUE**

1. *[For the parties and the court to consider in the light of the Generic Defence]*

**LEAD CASES**

2. In respect of the selection of Lead Cases: -

- a. By [date], the Claimants' solicitors and the Defendants solicitors' shall each select [20] individual claims which will together form the pool of [40] Claimants from which Lead Cases will be selected.
- b. By [date], the parties do provide standard disclosure of documents relating to the pool of Claimants identified above.

- c. By [date], the parties do seek to agree [16] Lead Cases from the pool of Claimants aforesaid. Any disagreement on any question of lead case selection shall be determined at the next CMC.
- d. Further directions in relation to Lead Cases to be given at the next CMC.

#### DISCLOSURE

3. The Defendant do provide standard disclosure in stages, initially limited to documents relating to the following matters:

- a. the Horizon system architecture (documents which evidence the overarching systems architecture are obviously essential for our expert to understand the operation of the Horizon system);
- b. bugs, errors or defects in the system which were or may have been the cause of discrepancies or alleged shortfalls attributed by the Defendant to any of the Claimants [GPOC §22]
- c. the operation of the helpline [§29-30];
- d. the conduct of investigations [§31];
- e. training policies and practices [§64.1, 65];
- f. Post Office suspense account(s) [§38-39].
- g. documents delivered up by Second Sight following termination by the Defendant of Second Sight's contract for services.

4. In respect of the above documents: -

- a. The Defendant do provide disclosure thereof by 4pm on [date].
- b. By 4pm on [date], the Claimants must make any request to inspect the original of, or to provide a copy of, any such document.
- c. Any such request, unless objected to in writing, must be complied with within 14 days of the request.
- d. Disclosure of electronic documents shall be in accordance with the protocols to be agreed between the parties.

## EXPERT EVIDENCE

5. Each party has permission to adduce expert evidence of an IT expert in relation to the operation and accuracy of the Horizon system ("IT expert evidence").
6. *[Agreement for initial inspection and testing by IT Expert]*
7. Prior to the next CMC, the parties shall co-operate and seek to agree further Directions in relation to expert evidence (including the number and disciplines thereof, issues which they will address, and any appropriate or necessary tests, inspections, sampling or investigations).

## NEXT CMC

8. There be a further CMC on [date] 2018.

## ALTERNATIVE DISPUTE RESOLUTION

9. At all stages the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging in any such means proposed by another must serve a witness statement giving reasons within 21 days of that proposal; such witness statement must not be shown to the trial judge until questions of costs arise.

## CUT OFF DATE

10. *[To discuss whether the cut-off date for claims to be entitled to be entered onto the Group Register be should be extended.]*

## COSTS MANAGEMENT

11. The parties regularly report their costs to each other and to the Court, as they pass the following milestones: £500,000, £750,000, £1 million and any increment of £250,000 thereafter.

## COSTS

12. Costs of this CMC be [costs in the case].
13. Costs of the Defendant's Application dated 26 July 2016, reserved by the Consent Order dated [8 February 2017], be [costs in the case].

Dated this \_\_\_\_\_ day of October 2017

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE POST OFFICE GROUP LITIGATION  
BEFORE Mr Justice Fraser  
BETWEEN:

Claim No. HQ16XO1238

ALAN BATES & OTHERS

Claimants

– and –

POST OFFICE LIMITED

Defendant

---

Claimants' draft ORDER

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Ref: JLH/2113618/1



[www.bonddickinson.com](http://www.bonddickinson.com)

11 July 2017

For the Attention of Mr J Hartley  
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By email only

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Dear Sirs

**Bates & Others -v- Post Office Limited**  
Claim Number: HQ16X01238  
Claim Form and GPOC amendment

We write further to your letter of 6 July 2017.

As you will appreciate we are currently focused on finalising our client's Defence which is due on 18 July. We address below the request you have made to amend the Generic Particulars of Claim (GPOC) and will respond to the other matters in your letter by the end of July.

It is disappointing that you have waited until 12 days before our client's Defence is due to raise amendments to the GPOC. You have had months to raise these points. These late changes have prejudiced the preparation of our client's Defence as we are now having to deal with new factual and legal issues in an extremely short timeframe.

Notwithstanding this prejudicial timing, our client is keen to ensure that Court timetable and the CMC listed for October are not delayed. It therefore agrees to the amendments to the GPOC and will endeavour to file its Generic Defence by the current deadline of 18 July.

We note that there are also a number of other outstanding points which may require amendments to your clients' Statements of Case. These are set out below. We do not believe that any of these points are controversial and so it would be beneficial to make all these amendments at the same time so to avoid the need for multiple rounds of amendments to the Claim Form and / or GPOC and to avoid the costs of making these amendments separately in the future.

#### Conspiracy Claim

We refer to the transcript of the GLO Hearing on 26 January 2017.

At paragraph 813 your Counsel confirmed that "*what we propose to do is to take conspiracy out of the GLO issues and we, at the moment, unless we are able to get more information before the date for serving the finalised generic particulars of claim, ... we intend to remove the conspiracy claim, but on the express basis that we will be revisiting it in the light of disclosure*".

We note that the conspiracy claim is not pleaded in the GPOC. Please now amend the Claim Form so that this claim is removed. We also trust that the claim for conspiracy will not be repeated in any future Claim Forms which are issued.

Bond Dickinson LLP is a limited liability partnership registered in England and Wales under number OC317661. VAT registration number is GB123393627. Registered office: 4 More London Riverside, London, SE1 2AU, where a list of members' names is open to inspection. We use the term partner to refer to a member of the LLP, or an employee or consultant who is of equivalent standing. Bond Dickinson LLP is authorised and regulated by the Solicitors Regulation Authority.

### **Company Claimants**

We refer to your letter of 28 February 2017, in which you note there are two individual Claimants (Saifudin Kutianawala and Vijay Parekh) who operated their branch using a company which contracted with Post Office under a Franchise Agreement. In that letter you state "*their respective companies will be added as Claimants in due course*". We also note from the Schedules of Information that Nahman Nisar was the director of Deckham Deli Ltd and his company contracted with Post Office.

Having reviewed the Schedules of Information for Mr Kutianawala and Mr Parekh, we note that their respective companies, FSK Enterprises Ltd and Sons and Daughters Ltd, have both been dissolved and struck off the register.

To date, these company Claimants have not issued a claim against Post Office. Please confirm whether you will be adding these companies to the existing Claim Form and removing Mr Kutianawala, Mr Parekh and Mr Nisar or whether you intend to amend the Claim Form to remove references to company Claimants.

Please also confirm that in respect of any additional company Claimants that their claims will be brought in the name of the company.

### **Deceased Claimants**

We refer to your letters of 24 May 2017 and 12 June 2017. In these letters you confirm that you will be applying to the Court to amend the Claim Form in relation to Ms Enid Mummery and Mr Julian Wilson who have passed away since the Claim Form was served on 11 April 2016.

Please could you confirm when you expect to be in a position to provide us with the probate documentation so as Post Office can consider this amendment to the Claim Form.

### **Discontinued claims**

You have previously indicated that four Claimants wish to discontinue their claims and accordingly these Claimants have not provided Schedules of Information. Please confirm how you intend to do this, as this may require some form of amendment to the Claim Form.

Please can you provide a draft Consent Order addressing the above matters as appropriate.

Yours faithfully



Bond Dickinson LLP



www.bonddickinson.com

1 September 2017

**Second Letter**

For the Attention of Mr J Hartley  
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**By email only**

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

Dear Sirs

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

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

**1. General Directions**

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

Bond Dickinson LLP is a limited liability partnership registered in England and Wales under number OC317661. VAT registration number is GB123393627. Registered office: 4 More London Riverside, London, SE1 2AU, where a list of members' names is open to inspection. We use the term partner to refer to a member of the LLP, or an employee or consultant who is of equivalent standing. Bond Dickinson LLP is authorised and regulated by the Solicitors Regulation Authority.

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

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

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

## **3. Discontinued claims**

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

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

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

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

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

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

**5. Untenable claims on their specific facts**

5.1 From our review of the SOIs so far provided, it appears that there may be cases that, on any view, are unsustainable. It is in the interests of all parties that unmeritorious cases are removed from the Group at an early stage so to avoid wasting costs on unnecessary case management, disclosure and evidence.

5.2 We set out below some examples of such cases. We are highlighting cases of this sort in the hope that you will either discontinue these claims or explain why you say they are tenable. If you do not do so, our client will consider whether to make an application to strike them out. We should be grateful for your prompt engagement on these matters and for a full reply by 15 September 2017 so that these matters may be considered at the CMC as appropriate.

Kamran Ashraf (10) and Siema Kamran (93)

5.3 Your clients Kamran Ashraf and Siema Kamran operated the Hampstead Heath branch between 2001 and 2003. Siema Kamran was the subpostmaster. According to their SOIs, she was largely absent from the branch and **GRO** Kamran Ashraf, was her assistant and operated the branch on her behalf.

5.4

**GRO**

5.5

**GRO**

1.5

12.3

**GRO**

12.2

15.2

5.6 As we understand from the SOIs that your client has provided:

5.6.1

**GRO**

5.6.2

No complaint can be made against Horizon or Post Office's training or support in

**GRO**

5.6.3 Post Office's decision to terminate Mrs Kamran's engagement as subpostmaster was justified **GRO**

5.6.4 **GRO**

5.7 In the circumstances, we are aware of no grounds on which a claim by these Claimants can be sustained against our client. We believe that their claims are an abuse of process, not least because **GRO** and that they have no real prospect of success.

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

Wendy Cousins (47)

5.9 **GRO**

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

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

Lee Castleton (240)

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

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

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

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

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

Margaret Bateman (18) and Michael Rudkin (156)

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

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

Ralph Oliver (126)

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

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

Yours faithfully

A handwritten signature in black ink that reads "Bond Dickinson LLP". The "B" and "D" are capitalized and have decorative loops. "Bond" is on the first line, "Dickinson" is on the second line, and "LLP" is on the third line.

**Bond Dickinson LLP**



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4 September 2017

For the Attention of Mr J Hartley  
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By email only

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andrew.parsons **GRO**  
**GRO**

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

Dear Sirs

**The Post Office Group Litigation  
Response to Request for Further Information**

We refer to your Request for Further Information (RFI) dated 31 July 2017, which sought a response by today.

A draft response to the RFI is currently with our client for approval however, due to the General Counsel of Post Office being on leave until the end of this week, we shall not be in a position to provide Post Office's response by your deadline.

We envisage being in a position to provide the response during the course of next week.

Yours faithfully

*Bond Dickinson LLP*

**Bond Dickinson LLP**

# FREETHS

Andrew Parsons  
Bond Dickinson LLP  
DX38517 Southampton 3

Direct dial:  GRO  
Direct fax:   
Switchboard: **GRO**  
Email: james.hartley  GRO

13 September 2017

Our Ref: JXH/1684/IT106/2/KL

**By email only**

Dear Sirs

**BATES & OTHERS v POST OFFICE LIMITED – GROUP ACTION**  
**CLAIM NO: HQ16X01238**

**RFI**

We write regarding our RFI sent to you on 28 July 2017, which requested a response by 4 September 2017.

You did not provide your response by that date. Instead, at 6.15pm on that day, we received your letter, stating that:

*“A draft response to the RFI is currently with our client for approval however, due to the General Counsel of Post Office being on leave until the end of this week, we shall not be in a position to provide Post Office’s response by your deadline.*

*We envisage being in a position to provide the response during the course of next week.”*

At no time prior to 4 September 2017 did you warn us that there would be any difficulty in meeting that date. More than a week has now passed and we have not received the Response or any further communication from you as to when we will receive it.

The date of 4 September 2017 would have afforded us just over two weeks in which to consider your responses and take them into account in drafting the Reply and Defence to Counterclaim, which paragraph 32 of the GLO requires to be served on 20 September 2017, one week from today.

# FREETHS

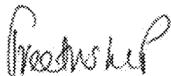
13 September 2017  
Page 2

As you know, there are significant requests within our RFI, including clarifying central points in the case, for example, as regards overarching issue as to the variation in practice, procedure and operation of Horizon over time and Post Office's case on key contractual terms.

Please confirm that Post Office will indeed provide its response by 4pm on Friday, 15 September 2017 and agree that the date for service of the Reply to the Defence and Counterclaim be varied to 2 October 2017, in accordance with paragraph 38 of the GLO.

We look forward to hearing from you by return.

Yours faithfully



Freeths LLP  
Please respond by e-mail where possible



[www.bonddickinson.com](http://www.bonddickinson.com)

13 September 2017

For the Attention of Mr J Hartley  
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Our ref:  
AP6/AP6/364065.1369  
Your ref:

Dear Sirs

**The Post Office Group Litigation  
Response to the Claimants' Request for Further Information**

We refer to your first letter today.

Please find enclosed Post Office's response to the Claimant's Request for Further Information (RFI) dated 28 July 2017.

As explained in our letter of 1 September 2017, we will not be in a position to discuss and agree directions until we have reviewed the Reply. These directions are due to be lodged with the Court on 9 October 2017. Your proposed extension of time for the Reply to 2 October 2017 would only allow the parties a week in which to discuss and then draw up directions. It is important therefore to keep to the Court ordered timetable. An extension to the Reply deadline should only be considered in exceptional circumstances given the need to allow time for the parties to discuss case management issues.

You will see in the RFI response that in many places we do not believe that further information was required and / or that a proper and / or proportionate request for information was made. We therefore consider that it should be possible to review the RFI responses and still provide your clients' Reply by the Court deadline of 20 September 2017. If there are any particular responses that make this not possible, please let us know and provide specific details of why you cannot provide the Reply on time and why that would justify delaying preparations for the CMC.

We note that our client has previously had to work within tight deadlines which have been caused by the Claimants, for instance the Amended Generic Particulars of Claim were provided, without prior warning, on 6 July 2017 with Post Office's Generic Defence being due 8 working days later. Nevertheless, our client re-drafted and served its Defence on time. We have made efforts previously to keep to Court deadlines and would welcome your support in achieving the same now.

Yours faithfully

*Bond Dickinson LLP*

**Bond Dickinson LLP**



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18 September 2017

For the Attention of Mr J Hartley  
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By email only

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**GRO**

Our ref:  
AP6/AP6/364065.1369  
Your ref:

Dear Sirs

**The Post Office Group Litigation  
Claimants' Reply and Request for Further Information**

We refer to your first letter of 15 September 2017.

**Proposed extension for the Claimants' Reply**

In our letter of 13 September 2017, we asked that, if you still considered that an extension to the Reply deadline was required, you identify the RFI responses which created the need for an extension. In particular, we asked for specific details of why you could not provide the Reply on time and why that would justify delaying preparations for the CMC. These points have not been addressed. Nor have you confirmed whether your clients' contention is that the Reply will be late solely due to the RFI responses or also because of other reasons (no such reasons having been identified).

The timing of Post Office's response to the Claimants' proposed directions was brought to your attention on 1 September 2017. No objection has been raised on this timing until now.

Post Office requires sight of the Claimants' Reply before it can respond substantively to the Claimants' proposed directions because (1) a number of the matters in the Amended Generic Particulars of Claim were reserved for pleading in the Reply (see, e.g., paragraphs 66 and 68); and (2) Post Office is not in a position to make case management decisions when it does not have full sight of the case being brought against it. We have made the point in correspondence, in the Defence and in our client's RFI that the Claimants' generic case remains vague and unparticularised.

We are also awaiting a response to our letter of 1 September 2017 in relation to the directions which, depending on the content of your response, may inform a number of matters to be addressed in the directions.

Despite the above and merely to avoid the wasted time and costs of an application, Post Office is willing to agree to an extension for the Claimants' Reply until 12pm on 25 September 2017. This date gives your clients more time to finalise the Reply but also leaves sufficient time for CMC preparations to be completed. We believe that this is the latest viable date for the Reply without it causing problems:

- \* If the Reply is provided by 12pm on 25 September 2017 we will endeavour to write to you by 5pm on 27 September 2017 with Post Office's response to the Claimants' proposed directions.
- \* We propose that your response to these comments is provided by 2 October 2017.



- This would allow the parties a week in which to discuss the proposed directions prior to the filing of these with the Court on 9 October 2017.

#### **Response to the Claimants' Request for Further Information**

We note that you are considering applying to the Court under CPR 18. At present, we do not understand your clients' position, bearing in mind the following:

- Your clients' requests were manifestly excessive and not necessary or proportionate, extending to 61 questions. There is an obvious contrast with our client's focussed requests for further information, to which barely any constructive responses were provided.
- You have not addressed the approach taken by Post Office, explained why you disagree with Post Office's approach or sought to bring a more proportionate set of requests.
- You have not even identified which of Post Office's responses fail, in your clients' view, to provide information that is necessary and proportionate to your clients' understanding of Post Office's generic case and/or the preparation of their own generic case.

Before making any application to the Court under CPR 18.1, please identify:

1. which responses which you consider to be inadequate and why; and
2. why the additional information being sought is reasonably proportionate and necessary to enable the Claimants to understand Post Office's generic case and/or prepare their own generic case.

We remind you of the Claimants' duty of cooperation in this regard.

We note that such explanations were not originally provided alongside the RFI and it is incumbent on your clients to cooperate in seeking to resolve or at least narrow any disagreement as to the necessity and proportionality of providing (yet) further information. If you apply to the Court without having cooperated in this regard, Post Office will respectfully invite the Court to dismiss the Claimants' application summarily and to award Post Office its costs.

Yours faithfully

*Bond Dickinson LLP*

**Bond Dickinson LLP**

# FREETHS

Andrew Parsons  
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DX38517 Southampton 3

**GRO**  
Switchboard:   
Email: james.hartley

19 September 2017  
Second Letter

Our Ref: JXH/1684/IT106/2/KL

By email only: Andrew.Parsons

Dear Sirs

**BATES & OTHERS v POST OFFICE LIMITED – GROUP ACTION**  
**CLAIM NO: HQ16X01238**  
**DIRECTIONS**

We write in response to your second letter dated 1 September 2017. A number of matters have now already been addressed by us in other correspondence, as we refer to below.

We adopt the headings in your letter, for ease of reference.

**A. General Directions**

Overview

We proposed directions to you on 6 July 2017. Your response stating that you “*will not be in a position to discuss and agree detailed directions*” until you “*have sight of all of the Schedules of Information*”, “*have reviewed [our] Generic Reply*”, and you “*understand [our] position on the matters set out in [your second and third letter of 1 September 2017]*” is unreasonable. Our letter dated 15 September 2017 addresses this point in relation to the Reply and the same position is true of the other matters you have identified.

The parties have a duty to co-operate, to help the court to further the overriding objective. We should seek to agree directions to the extent we are able to do so in good time before the CMC. There are other documents which need to be prepared and agreed before the CMC, and it will aid the process of identifying the issues which require resolution at the CMC if we agree directions to the extent possible at an early stage.

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Second Letter  
Page 2

Extent of Existing Agreement

Your letter states "*Elements of your proposed directions appear reasonable*", but does not identify any paragraphs or sections of the draft Order as in fact agreed.

Please let us know which paragraphs of the draft Order we sent to you on 6 July 2017 can be agreed.

Preliminary Issues

In our 6 July 2017 letter we suggested that whether the contractual relationship between the parties amounts to a relational contract might be a suitable preliminary issue, but that we would review this issue on receipt of your Defence. (The possibility of this as a preliminary issue was first mentioned in our Letter of Claim dated 28 April 2016).

We see from paragraphs 103 of your Defence that you deny that the relationship between Subpostmasters and Post Office is properly characterised as a relational contract, and indeed deny that if it were to be, that it would affect the construction or effect of the terms of the Subpostmaster Contract.

As this is an overarching question of law between the parties, which affects all of the Subpostmaster Claimants, we think it likely that early resolution of this issue would be particularly valuable. We are open to discussion with you as to whether Franchisees should also be included in the scope of this issue (noting your position is likewise in relation to those Claimants – paragraph 119, although this is a much smaller group).

In your 1 September 2017 letter, you did not respond to our proposal to identify this issue as a preliminary issue. Please now let us know your position regarding a preliminary issue trial on the question of whether the relationship between Subpostmasters (and, potentially also Franchisees) and Post Office is as a matter of law a relational contract.

Your letter said that you "*are working on a possible list of preliminary issues with a view to being able to circulate this as soon as possible after we received your Generic Reply*". If you have additional potential preliminary issues in mind please provide them to us now. You do not need to wait for our Generic Reply to do this.

Lead Claimants

Your response on this issue in your 1 September 2017 letter seems to confuse the possibility of a preliminary issue trial, with the proposals we made in relation to lead cases generally. If there is a trial of one or more discrete preliminary issues (for example the relational contract point, above), then of course we don't propose the comprehensive process of lead case selection currently

19 September 2017  
Second Letter  
Page 3

provided for in our draft order (initial identification of 40 cases, disclosure in each of those cases, then selection of 16 lead cases to proceed). This would not be proportionate. If there is to be a trial of preliminary issues, then we should ideally seek to do this by reference to agreed facts, but at most we would expect there to be evidence heard from a small number of claimants (not 16).

Please can you make clear, if there is not a preliminary issue trial, whether you agree the proposals we have made for lead case selection. It is not helpful to say that "*there may be some attractions in our methodology*" without identifying what is agreed, not agreed, or what counterproposals you may have.

#### Disclosure

We have made sensible proposals for disclosure of documents relating to the key generic issues. It obviously makes sense for generic documents to be disclosed first, and these are held by your client. Disclosure by individual claimants will only be required if those claimants are selected as lead cases.

If you do not agree with our proposals for disclosure, please let us know your counterproposals. You do not need our Reply or any other information from us in order to do this.

For the avoidance of any doubt, in the same way as lead cases above, our proposals in relation to disclosure are not intended to be prior to a preliminary issues trial. If there is a preliminary issues trial, the parties will need to consider appropriate disclosure for that focused purpose to take place first.

#### **Un-pleaded Generic Claims**

##### Conspiracy

The reference to the GLO Hearing transcript in your 11 July 2017 letter shows that you are well aware that our counsel was seeking to address your client's professed concerns in relation to conspiracy as one of the GLO Issues, by removing the reference to it, at that stage. This was plainly in the wider context that the GLO Issues would later be revisited, as reflected in both common practice and the GLO itself.

Furthermore, as the passage you quoted in our 11 July 2017 letter makes clear, he also stated that unless the Claimants were able to obtain more information before the date for serving the finalised generic particulars of claim, the conspiracy claim, which was in the draft Particulars of Claim, would be removed. As you are aware, no further information was forthcoming from you in relation to this issue prior to the date for serving the generic particulars of claim and, therefore, as indicated to the court, it was removed (and consequently, where was therefore no need to plead to the issue of conspiracy in your Defence.)

19 September 2017  
Second Letter  
Page 4

As for your request for us to remove reference to conspiracy from the present Claim Forms (or discontinue those claims), it was not our intention to do so prior to disclosure and we had thought that this was clear from what our counsel said at the hearing.

If your client is minded to apply to strike out the reference to conspiracy in the Claim Form, our clients would be prepared to agree to amend the Claim Forms as requested in your 11 July 2017 letter. Such agreement would again be on the same express basis as stated at the hearing and recited above, namely that our clients will revisit that issue following disclosure. For the avoidance of doubt, the Claimants will rely upon s.32 of the Limitation Act in the event that conspiracy is thereafter alleged.

#### Other Claims

Misfeasance in public office and the ECHR claims are both related to the malicious prosecution claims which it has been agreed should be stayed pending the outcome of the current review by the Criminal Cases Review Commission ("CCRC"). The same rationale for not pleading these claims applies as to malicious prosecution, namely that any particularisation in Generic Particulars of Claim will materially depend on the outcome of the CCRC review and findings on that review will be likely to inform the pleading in respect of all such cases (see more fully, paragraph 72 of Mr Harley's second witness statement). We therefore do not agree to discontinue these claims.

#### **B. Discontinued Claims**

We have previously informed you of our intention to discontinue 8 claims (see our letters of 20 June and 4 September 2017):

1. Conrad Chau (41)
2. Usman Kiyani (101)
3. Mario Lummi (109)
4. Dermot Lynch (110)
5. HUMS Group Ltd (325)
6. Ling Ma (368)
7. Nalin Patel (418)
8. Potential Estates Limited (429)

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We also confirm we intend to discontinue:

9. Mr Vijay Parkeh (132)
10. Sarah Javed (98)
11. Chelsea News Limited (244)
12. Ravinder Kaur (350)
13. Anil Kumar (358)

We are currently reviewing the position in relation to B Joshi Limited (224). Our intention, as set out in our letter of 20 June 2017, is to serve these and any further Notices of Discontinuance in relation to the existing Claimants at the same time. The relevant Notices will be filed well in advance of the upcoming CMC – there is no reason for you to require these by 15 September 2017. The total number of claims to be discontinued will be small, relative to the size of the overall group, and we have made our intentions clear on this issue.

### **C. Standing to bring claims**

#### Dissolved Companies

We have already informed you, in our letter of 20 June 2017, that the claim of HUMS Group Ltd (325) will be discontinued.

#### Companies without claims

As stated above, we are considering the position in relation to B Joshi Limited (224). Save in that case, we do not agree that these companies do not have claims. These companies contracted with Post Office and/or Post Office assumed a duty of care to them, in each case giving rise to claims for loss, for the goodwill of the business or otherwise. It is disproportionate to further engage in correspondence about these companies which represent a very small subset of the Claimant cohort.

#### Bankrupt Claimants

Please see Schedule 1 to this letter in respect of the Claimants you identify in this category. Your letter is mistaken in assuming all of these claimants have been made bankrupt – as shown in Schedule 1, in fact many of the bankruptcy-related costs are due to the Claimants entering into IVAs.

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Of the Claimants who were made bankrupt, as the schedule shows, these claims have all now been assigned, save in two cases (Ennosel Savio and Keith Jones) where the bankruptcy orders have been annulled (in relation to Keith Jones, we informed you of this in correspondence on 24 March 2017 and 18 April 2017), and one case where the bankruptcy has just been made and the process of obtaining an assignment is in hand.

We will write to you under separate cover to provide copies of these assignments.

#### Deceased Claimants

In two cases, we are making short further enquiries. We will write to you separately to provide evidence of the standing of each of the personal representatives to bring the claims you have identified.

#### ***D. “Untenable claims on their specific facts”***

As it has been necessary to reiterate on multiple occasions, this is a Group Action, the purpose of which is to: (i) provide access to justice where large numbers of people have been affected by another's conduct, but individual loss is so small that it makes an individual action economically unviable; (ii) provide expeditious, effective and proportionate methods of resolving cases, where individual damages are large enough to justify individual action but where the number of claimants and the nature of the issues involved mean that the cases cannot be managed satisfactorily in accordance with normal procedure; and (iii) achieve a balance between the normal rights of claimants and defendants, to pursue and defend cases individually, and the interests of a group of parties to litigate the action as a whole in an effective manner.

We make clear that we do not accept your factual analysis of the individual claims, and it is immediately obvious that your analysis is flawed in key respects (although we will revisit the specific case of Mr Oliver's Schedule which may be an error). However, we do not intend to respond point by point to particular issues about individual claims. The purpose of a Group Litigation Order is to manage a large number claims efficiently, and the process you invite us to engage in is entirely contrary to that. For us to respond to claims you identify (notably, “examples” and “*not an exhaustive list*”) would be entirely contrary to the intended operation of Part 19.

#### **Conclusion**

We look forward to hearing from you constructively in relation to our proposed directions sent on 6 July 2017, as further addressed above.

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Second Letter  
Page 7

Yours faithfully



Freeths LLP  
Please respond by e-mail where possible

# FREETHS

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19 September 2017  
Fourth Letter

Our Ref: JXH/1684/2113618/1/LB  
Your Ref AP6/364065.1369

By Email andrew.parsons **GRO**

Dear Sirs

**BATES & OTHERS v POST OFFICE LIMITED – GROUP ACTION**  
**CLAIM NO: HQ16X01238 and HQ17XO12637**  
**REPLY & RESPONSES TO CLAIMANTS' RFI**

We write in response to your letter of 18 September 2017.

*Proposed Extension for the Claimant's Reply*

We informed you that, given the delay with your RFI Responses (by 10 days) we would need a further 9 days to serve the Reply, namely by 4pm on 29 September 2017. Your agreement to an extension to 12pm on 25 September 2017 is not sufficient. We will be serving the Reply by 4pm on 29 September 2017 and, if you do not agree, we will issue an application to extend time accordingly.

As to your rationale for not agreeing 29 September 2017, it is entirely premised upon your professed need to have the Reply before you can discuss directions. As we have already explained, in our letter of 15 September 2017 and our Second Letter of today, there has never been any justification for your failure to respond substantively to the proposed directions which we sent you on 6 July 2017. Your position is wholly without merit.

In our Second Letter today, we wrote inviting a response regarding directions, and look forward to receiving it shortly, so that areas of agreement can be identified and the parties can focus on seeking to agree other matters, so that the court can at least start from uncontentious proposals wherever possible. Even if the court ultimately gives directions which differ from those agreed by the parties, it is obvious that adopting the normal and sensible approach which we suggest is

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# FREETHS

helpful to the court and discharges the parties' duties of co-operation in seeking to achieve the overriding objective. Please now respond.

#### *Response to the Claimants' Request for Further Information*

There are many respects in which the Response to the RFI is unsatisfactory – including in relation to material variations in practices over time (addressed below) and refusal to provide obviously relevant information, including as to the “*wide range of reports*” (Request 9); the Known Error Logs (Requests 26 to 29, as to which we also await your response on disclosure); and bugs and errors resulting in shortfalls (Requests 34 to 36). We will write further regarding these after we have served the Claimants' Reply. However, our present focus must be on the Reply. In the meanwhile, we would invite you to reconsider your responses to the matters which we have initially highlighted in this letter, pursuant to the duty of co-operation to which you have referred in your letter. We will of course not make any application without first specifying to you the Requests in respect of which we would seek an order from the Court.

As to the material variations referred to above, paragraph 4 of the Generic Defence is such that, at the most basic level, the Claimants have no idea whether the practices, procedures and operation of Horizon, pleaded in the Generic Defence, have any relevance to most of the Claimants' cases and, if they do, in respect of what time period. Many of the Requests in our RFI were directed to obtaining the necessary information. Our letter enclosing our RFI, dated 31 July 2017, specifically highlighted this aspect of the RFI and explained why it was important. Your Response to our RFI of 31 July 2017, provided on 13 September 2017, failed to provide the information.

Our overarching Request was, if Post Office's practices, procedures and operations had materially changed over time, to identify those changes in responding to our Request. Post Office refused to do so on the basis that “*It is not for Post Office to speculate as to what changes in its practices and procedures over time might be considered material to one or more Claimants' (unparticularised) allegations of inadequacy*” and “*... it would be disproportionate and inappropriate for Post Office to have to plead the detail of all conceivably relevant practices and procedures and changes over a period of 18 years.*”

As you are well aware, our Request was limited to material changes and was asked in the context of a generic pleading in a Group Action – all in circumstances in which Post Office has pleaded only to its current practice plus a few selective responses. Your averment that it would be disproportionate to plead to all changes highlights the potential irrelevance of a pleading which only addresses current practice and procedures.

The unreasonableness of Post Office's approach is shown in sharp relief, for example, by the Responses to Requests 23 and 24, on the central issue as to the operation of Horizon, as follows:-

#### Paragraph 50(2)

Of: “Horizon has robust controls making it extremely unlikely that transaction data input in a branch would be corrupted when being transferred to, and stored in, Post Office's data centre in a manner that would not be detected and remedied”

**23.** Is this sub-paragraph pleaded to reflect “the current practices, procedures and operations” (as suggested by paragraph 4 of the Defence)?

Defendant's Response 23

23: Yes.

**24.** Please identify the relevant “robust controls” and explain how they operate (identifying any material changes over time).

Defendant's Response 24

24: Post Office's generic case is sufficiently pleaded at paragraphs 50(2) and 53 of the Generic Defence. The Claimants do not require the information sought in order to understand Post Office's generic case or to plead a Generic Reply. Post Office repeats the General Response. As to the request to identify all “material changes”, Post Office repeats the Response on Practices and Procedures.

The pleaded practices, procedures and operation of Horizon are likely to have changed materially over time. It obviously matters how they have changed.

Although only illustrative, figures provided by Post Office on 26 September 2016, in a response to an FOI Request, clearly show a changing picture in relation to both net suspensions of Subpostmasters and prosecutions. The figures appear to show that material changes seem very likely to have taken place in Post Office's practices, procedures and the operation of Horizon. Between 2009/10 and 2012/13, net suspensions ranged between 166 and 131; between 2013/14 and 2015/16, they ranged between 65 and 52. The figures for prosecutions are starker. Between 2010/2011 and 2012/13, they ranged from 31 to 42; between 2013/14 and 2016/17, they ranged from 2 to 0.

Post Office has made a deliberate choice not to set out, even in outline, how the relevant pleaded practices, procedures and operation of Horizon have changed over time. So it may be, for all the Claimants know, that the Reply will be pleading to aspects of practices, procedures and the operation of Horizon which are not relevant to the issues encountered by the vast majority of Claimants and the claims which they bring as a result. This is plainly unsatisfactory and appears evasive.

You clearly appreciate the significance of variations in the factual matrix of particular claims, which will plainly include the practices, procedures and operation of Horizon, at the relevant time. For example, in your second letter of 1 September 2017, you accepted that our proposed methodology for selecting lead claims has “*some attractions*” and cited the difficulty presented by “*major factual differences between the various claims brought*”.

Identifying whether or not the pleaded practices, procedures and operation of Horizon bear any relationship to most of the claims is obviously relevant, if not fundamental, to the pleading of Post Office's case and any Reply. But it is also relevant to the grouping and management of the Claimant cohort.

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**FREETHS**

Conclusion

Please now confirm your agreement to service of the Reply by 4pm on 29 September 2017. We will not be able to meet your earlier date and therefore refusal will make an application necessary.

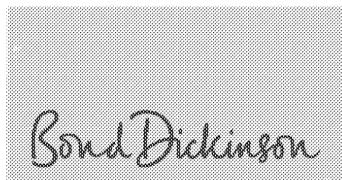
Please also now confirm that you will now reconsider your Response to the RFI, as we have invited you to above. It presently appears that an application for an order under CPR 18.1 will be necessary and we will write to you further, identifying all responses in respect of which an order will be sought, following service of the Reply.

Yours faithfully



Freeths LLP

Please respond by e-mail where possible



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20 September 2017

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Dear Sirs

**The Post Office Group Litigation  
Claimants' Reply and Request for Further Information**

We refer to your first and fourth letters of 19 September 2017 regarding the timing of your clients' Generic Reply ("Reply"). In particular, we respond to your request to move the deadline from Wednesday 20 September to Friday 29 September.

Although this extension might in other contexts appear modest, we remain concerned that it will hinder the parties' preparations for the CMC, as it would allow only 6 working days after the Reply is served for the parties to discuss and seek to agree directions before Monday 9 October, the date by which the Court has ordered the parties to file draft directions Orders and Skeleton Arguments.

While we intend to make as much progress as we can prior to the receipt of the Reply, there are a number of matters within the Claimants' proposed directions that cannot be subject of any detailed consideration before our client has had an opportunity to take into account the content of the Reply:

1. **Preliminary issues.** Whether a topic may be suitable as a preliminary issue will depend on the pleadings. You recognised this in your letter where you say:

*"In our 6 July 2017 letter we suggested that whether the contractual relationship between the parties amounts to a relational contract might be a suitable preliminary issue, but that we would review this issue on receipt of your Defence"* (emphasis added)

Your proposal is to address the "relational contract" question as a preliminary issue because, you say, this will have an effect on the construction of all Post Office's contracts. It is clear therefore that this question is entwined with each parties' position on implied terms and construction. Post Office has pleaded two implied terms and in its Defence responded to the Claimants' 20 implied terms as well as a number of related points on the construction of express terms. We envisage that the Reply will inform Post Office of the Claimants' position in respect of these terms. Until Post Office has sight of the Reply, it does not know which of these terms are agreed, disputed or no longer sought to be implied, and therefore Post Office cannot know what issues of construction may sensibly be considered as preliminary issues.

2. **Factual disputes.** In its Defence, Post Office set out the factual background to the legal relationship between the parties. Until we see the Reply, we will not know the extent to which the Claimants agree or dispute this. We cannot therefore make an informed choice on whether an agreed statement of facts (as you propose) is a viable basis on which to address preliminary issues or whether and to what extent factual evidence may be needed.

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3. **Lead cases, disclosure and expert evidence.** Until the scope and utility of preliminary issues is known, and the extent of any related factual dispute is understood, it is not possible to make a decision on whether Lead Cases are an appropriate way to proceed. Indeed you acknowledge this point in your letter:

*"If there is a trial of one or more discrete preliminary issues (for example the relational contract point, above), then of course we don't propose the comprehensive process of lead case selection currently provided for in our draft order (initial identification of 40 cases, disclosure in each of those cases, then selection of 16 lead cases to proceed). This would not be proportionate. If there is to be a trial of preliminary issues, then we should ideally seek to do this by reference to agreed facts, but at most we would expect there to be evidence heard from a small number of claimants (not 16)." (emphasis added)*

Consequently, we also cannot at this stage provide constructive comment on the need or proportionality of orders for disclosure or expert evidence.

4. **Limitation.** Post Office is unable to ascertain whether matters such as limitation and concealment need to be included within the directions Order until the Claimants position on this has been pleaded. These matters were not pleaded in the Amended Generic Particulars of Claim, as your clients' position on these points was reserved to the Reply.

Despite your assertion that Post Office has taken no steps to progress the directions, our letter of 1 September 2017 addressed a number of matters that could be discussed at the CMC but which did not require prior sight of the Reply. We have received your response to these matters yesterday (4 days late) and will be considering them shortly.

For the above reasons, it is not possible to have a constructive dialogue on many issues regarding future case management (other than those we have raised previously) until the Reply is served. We will of course make such progress as we can in discussing potential directions before receipt of the Reply, although we anticipate that the most productive discussions will follow the close of pleadings.

In this context, we remain of the view that no extension of time to serve the Reply is necessary or appropriate. We note that no specific reasons are given by you as to the need for an extension and, in particular, the Claimants have not identified why the service of the Response to RFI on 13 September 2017 has caused any unavoidable delay in this regard. Indeed, you have not explained why you need until 29 September, and not some earlier date, to finalise the Reply.

We do not wish, however, to put any of the parties to the expense of a contested application and have therefore considered how the disruption caused by the late service of the Reply could be minimised. We have in mind, in particular, compliance with Directions Order No.1 and effective preparations for the CMC on Thursday 19 October.

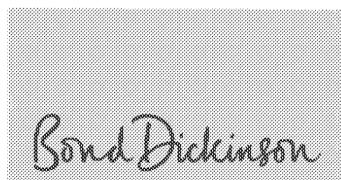
With this in mind, we would ask that you reconsider our previous proposal to extend the Reply deadline to Monday 25 September, thus allowing the parties two weeks to discuss directions before Skeleton Arguments and draft Orders are to be lodged on Monday 9 October.

Failing this, if there is to be an extension of time for the service of the Reply to Friday 29 September (as you are seeking), our view is that this would leave too little time for the parties to seek to reach agreement on directions. Our client's position is therefore that it will consent to your clients' application for an extension of time to Friday 29 September on the condition that you write to the Managing Judge enclosing this letter and inviting the Court to consent to an agreed variation of paragraph 4 of Directions Order No.1 extending the time for Skeleton Arguments and draft orders be lodged to Friday 13 October 2017. If the Court approves this, the parties will then have two weeks to discuss directions before filing documents with the Court.

Yours faithfully

A handwritten signature in black ink that reads "Bond Dickinson LLP". The signature is fluid and cursive, with "Bond Dickinson" on the top line and "LLP" on the bottom line.

Bond Dickinson LLP



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4 October 2017

For the Attention of Mr J Hartley  
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Dear Sirs

**The Post Office Group Litigation  
Directions**

- 1.1 As promised in our Second Letter of 1 September 2017, we write to provide our comments on Directions following receipt of your Generic Reply on 29 September 2017 (last Friday).
- 1.2 As a starting point, we note that this litigation covers an extremely broad range of legal and factual issues that could be tackled in a number of different ways. In this context, we consider that cooperation between our firms is likely to be more productive than adopting an oppositional approach. We would value your comments on the proposals below and would be happy to meet with you to discuss a suitable way forward.

**2. Generic Reply**

- 2.1 The Generic Reply has not provided as much assistance in narrowing or clarifying the issues in dispute as we had hoped. For example:
  - 2.1.1 The approach taken in the Generic Reply of responding "thematically" to the Generic Defence makes it difficult to see what your client's case is on many paragraphs of the Generic Defence. However, we note that a large number of those paragraphs have not been addressed at all, except by the general denial at paragraph 92.
  - 2.1.2 In our view, the Generic Reply does not provide a substantive response to large parts of Post Office's factual case that either cannot sensibly be in dispute or, if they are in dispute, it is important to know in what respect they are disputed. For example, Post Office provided at paragraphs 33 to 46 of the Generic Defence a detailed summary of Horizon and its basic operation. These paragraphs are responded to only selectively in the Reply, and not under the same heading or in any clear order. As a result, Post Office cannot tell which parts of its case in this regard are genuinely in dispute.
  - 2.1.3 The Generic Reply appears to be designed more as a vehicle for argument than as a means of clarifying and either narrowing or providing more detail as to the issues in dispute. The Claimants have, for example, chosen to plead that Post Office has made various admissions that it has in fact not made. For example, paragraph 58.5 of the Generic Reply alleges that Post Office has made an admission that it has already (by way of a Response to a Request for Further Information) stated that it does not make.

2.1.4 In several instances, the Generic Reply fails to provide any substantive response to Post Office's case on matters that were addressed in detail in the Generic Defence. For example, paragraph 49 of the Generic Reply asserts, without any particularity, that the "*terms relied upon by the Defendant*" (without distinction) may not be relied upon as a result of the Unfair Contract Terms Act 1977 (**UCTA**). The total lack of particulars is particularly regrettable in circumstances where the Generic Particulars of Claim (**GPoC**) indicated that particulars of the Claimants' case on UCTA would be provided in the Reply (see paragraph 68 of the GPoC). We find it particularly difficult to see how the Claimants could seriously contend that all of the express terms on which Post Office relies are covered by and fail to pass the reasonableness test in UCTA, but even if this is their contention, they need to set out the grounds on which they make this contention for each relevant term.

2.1.5 The Generic Reply gives no proper indication of the Claimants' generic case on the defences asserted by Post Office in the GPoC, in particular on limitation and the effect of the settlement agreements they have entered into, being matters which could not be addressed in the GPoC.

2.2 We provide the above by way of example only. We regret to say that, in our view, the Generic Reply has done little to narrow or clarify the issues in dispute and that this has reduced the utility of the generic pleadings in furthering the fair and efficient resolution of these proceedings.

2.3 This compounds the problems caused by the Schedules of Information (**SOIs**) we have received, as discussed in our letter dated 1 September 2017. In the circumstances, it is difficult to exaggerate the difficulties to which the parties will be put in seeking to break the mass of Claimants down into classes of Claimant whose claims are sufficiently similar to allow Lead Claimants to be chosen with any confidence. We address this aspect further in paragraphs 4.1, 4.2, 7.1 and 7.2**Error! Reference source not found.** below.

3. **Summary of Post Office's proposed Directions**

3.1 Please find enclosed our client's proposed Directions Order, which we summarise below and address in greater detail at sections 4 to 14 of this letter.

**Preliminary Issues, Factual Matrix, Lead Claimants and Disclosure**

3.2 In the circumstances in which the parties find themselves, Post Office's view is that addressing the contractual rights and duties between the parties may be an appropriate way to obtain Court decisions that will assist with the resolution of the majority of cases and create a foundation on which more informed decisions on future case management can be made. Subject to your views and those of the Managing Judge, we cautiously suggest the preliminary issues identified in the draft Directions Order.

3.3 Post Office agrees with your proposal to use Lead Claimants and will provide a substantial amount of early disclosure on these cases in order to speed up progress towards resolving the factual issues (although, as stated above, the nature and scope of the factual dispute remains unclear). Post Office does not, however, agree to give disclosure sought in your draft Directions. Your clients have sought one-sided, overly broad and manifestly disproportionate disclosure on issues that are not yet the subject of any properly particularised pleading, such that giving disclosure would be not only vastly expensive but impracticable (because there would be no properly articulated case against which to apply the test for standard disclosure) and which would have the effect of dealing the progress of the litigation. As explained below, we have proposed that more limited categories of disclosure are provided by the Claimants and Post Office.

3.4 Post Office is willing to explore using an agreed statement of facts at a preliminary issues trial. It will be difficult to formulate such an agreed statement, not least because of the absence of any detailed response to Post Office's factual case in the Generic Reply. From our experience with the pleadings we anticipate that there are likely to be substantial disputes around the factual matrix against which the parties entered into contracts. We therefore propose that a group of

Lead Claimants is selected and that the Claims of those Lead Claimants are individually pleaded and used to decide contested points of fact at a preliminary issues trial.

#### **Horizon disclosure**

3.5 We recognise that in parallel with any preliminary issues you wish to make progress on the issues relating to Horizon. Our client's proposed Directions stop short of giving permission for expert evidence because it is not possible at this stage to formulate proper questions to put to an expert (not least because the Claimants' case in this regard remains general and speculative: see, for example, paragraphs 36 to 37 of the Generic Reply). We propose providing your IT expert with access at Fujitsu's premises in Bracknell to around 4,000 technical documents that describe the Horizon IT architecture. This is in addition to access to the Known Error Log and Second Sight, both of which have already been offered / agreed in correspondence. With the benefit of this information and decisions on preliminary issues, we are hopeful that more informed decisions can be made about the expert evidence that may be needed in the future.

#### **Further information**

3.6 Around 60% of the Claimants are *prima facie* time-barred and/or have settled their claims. It is therefore important to address these issues at an early stage as it may significantly change the dynamic of this Group Litigation if a large number of claims are not able to proceed. Having reviewed the Reply, we note that this issue may turn on the circumstances of each case. We therefore propose Directions that further information be given on the positions of those Claimants affected by these issues.

3.7 It is clear from the generic pleadings that a key issue in this litigation will be how your clients have accounted for shortfalls in their branches. This point was discussed at the GLO hearing and a question on it was inserted in the Schedules of Information (**SOIs**). As we have explained in other correspondence, the SOIs do not answer this question adequately or at all. Our Directions therefore call for more information on this point from all Claimants.

3.8 We have also included orders to require the Claimants to provide more detailed valuations of their Claims. Post Office's view is that there are points of principle on quantum that could usefully be addressed at a preliminary issues trial. This information will assist the Court in making proportionate case management decisions. It is also necessary for ADR to have any chance of success, not least because Post Office has no real insight into how the various heads of claim asserted by the Claimants have been valued but suspects that these have been vastly over-valued.

3.9 The net result of the above should (i) give the parties clarity on the legal duties between them, (ii) provide a greater understanding of the technical questions that need to be asked of experts about Horizon and (iii) allow the proportionality of future case management to be assessed. We believe this will reduce the costs of disclosure and expert evidence going forward and make it more likely that this matter can be resolved without the need for a full trial of each Claimant's claim.

3.10 We set out below more detailed commentary on both your and our client's draft Directions.

#### **4. Potential Lead Claimants (para 1 of our client's proposed Directions Order)**

4.1 We agree with your suggested mechanism for selecting Lead Claimants. However, as already noted, we are not able to group the Claimants into classes of claims which are sufficiently similar to each other to enable Lead Claimants to be chosen with any confidence. In these circumstances, we believe that the Claimants we choose at this point in time can be Potential Lead Claimants only. We have proposed 40 Potential Lead Claimants but are open to your thoughts on whether the number should be different. Given that our client does not have a clear understanding of the ranges of claims that it faces, given the heterogeneity of the Claims and the large time period encompassed by the GLO, Post Office can see the benefit of having a relatively large pool of Potential Lead Claimants, at least at this stage.

4.2 We do however reserve the right to call for more or different Lead Claimants in the future. We have explained in detail in our previous correspondence and our witness evidence for the GLO that the cases in this litigation are diverse with few common issues. The very poor quality of the SOIs has made the diversity problem worse. The absence of any real clarity and coherence in the SOIs has created a situation in which Post Office still does not know what specific factual allegations are being advanced by which Claimants and is therefore working in the dark when it comes to selecting Lead Claimants who could be expected to cover the broad range of claims made in this case. Without more information about the range of claims there is a serious risk of selecting Lead Claimants that are not representative of all or even many Claimants. It may well be that further Lead Claimants will be required in the future depending on the course of this litigation. We would welcome your comments on this point specifically, as it would be very regrettable if, after the trial of Lead Claims, it is discovered that the pool of Lead Claimants fails properly to capture the breadth of the claims our client is in fact facing.

5. **Early Disclosure (paras 2 to 8)**

5.1 Throughout this litigation, you have made a repeated complaint that your clients are unable to proceed without further disclosure from our client. We have previously set out the reasons why we disagree with this, in particular that your clients have day-to-day knowledge of the events which occurred within their branches and have within their own knowledge the necessary information to plead their claims.

5.2 Our client has also already disclosed numerous documents to you during the course of this litigation in response to specific requests. It has also disclosed 140 contractual documents. We pause to note that by contrast, your clients have not disclosed a single document to our client. The costs to Post Office of providing voluntary disclosure have already been very substantial. We have indicated previously our client's concern that your firm is using requests for information and disclosure in preference to obtaining instructions from its clients.

5.3 Furthermore, many of your clients have the benefit of disclosure given through the Mediation Scheme that runs to hundreds if not thousands of documents and the reports prepared by Second Sight and Post Office into specific cases. You also now have access to Second Sight.

5.4 Nevertheless, our client is prepared to provide more early disclosure to assist with the selection and pleading of Lead Claimants (including for the preliminary issues discussed below). This is not intended to be a substitute for standard disclosure. Our Directions Order provides for both parties to search for and disclose certain key categories of documents. We believe that this will return the greatest number of relevant documents for a proportionate amount of time and cost and will leave your clients in a good position to plead the cases of selected Lead Claimants. We should make clear that even this reduced disclosure has substantial cost implications for Post Office.

5.5 To be clear, this is not the standard disclosure on Lead Claimants that you have proposed. Standard disclosure cannot be given until those cases are pleaded, as otherwise our client will not know what documents are material to the issues in a particular case and therefore need to be disclosed. We also note that any order for standard disclosure (even once a case is pleaded) risks pulling in an extremely wide range of documents. For example, if a Lead Claimant was to allege inadequate training, this could require a vast amount of disclosure. We describe below the problems with giving this disclosure.

5.6 By contrast with our approach, the disclosure requests in your draft Order are extremely broad, would likely lead to significant satellite disputes, would be very costly to comply with and take substantial time to conclude.

5.7 Although you label the Order at paragraph 3 of your draft Directions as a form of staged disclosure, it covers nearly all the material factual issues in this case and relates to nearly all the points made in section A to the GPOC which sets out the factual background to the claims. This is not staged disclosure but is tantamount to standard disclosure in terms of the scale and cost of the task that it foresees. This cannot sensibly be carried out without the benefit of individual pleadings or even factual pleas at a generic level.

5.8 Neither your draft Order nor any of your related correspondence makes clear why you have tried to select certain categories of documents over other categories, or why these categories might assist with the resolution of cases, or why all the documents you seek would even be relevant to the claims your clients have brought.

5.9 Determining the scope of the disclosure you are seeking will also be very difficult based on the GPoC alone, given the very generalised nature of the allegations in the GPoC. The SOIs do not assist in the narrowing the scope of disclosure. We repeat here our client's grave concerns about the quality of those documents as raised in our Third Letter of 1 September 2017.

5.10 In light of the above, there is a high risk that our client would need to give disclosure of all of its documents on a given subject in order to comply with the very broad and generic disclosure orders which you propose. This would come at an extremely high cost, take an inordinate amount of time and come with no assurance that the disclosed documents would actually be relevant to the cases of any particular Claimant and contribute in any way to the fair and efficient resolution of these proceedings.

5.11 Your request for disclosure of "*training policies and practices*" is a good example of the problem. The GPoC says the following about training:

5.11.1 At 64.1 there is an implied term that Post Office was to "*provide adequate training and support (particularly if and when the Defendant imposed new working practices or systems or require the provision of new services)*".

5.11.2 At 92.1 there is an allegation of breach that Post Office failed to provide training in relation to:

- (a) Horizon;
- (b) new services;
- (c) balancing accounts;
- (d) resolving shortfalls;
- (e) identifying root causes of losses;
- (f) transaction corrections;
- (g) Operating Manuals (which we note cover all Post Office operations); and
- (h) how postmasters should train their assistants.

5.11.3 We note that paragraph 92.1 is caveated by paragraph 91 as only being "*indicative breaches*", so the above list is not exhaustive.

5.12 The general and non-exhaustive nature of the GPoC leaves wide open the question of what may need to be disclosed. The Claimants have not positively asserted which products and transactions they allege Post Office failed to provide training in respect of. At present, our client would have no safe basis on which to reach a view because, since specific transaction and products are not mentioned in the GPoC and no individual case has been pleaded in this regard, the vague and general allegations in the GPoC would seem to encompass training in relation to any and all types of transaction (even those that, it seems to us, are unlikely to be the subject of any allegations by specific Claimants). This may lead to either potentially important disclosure being missed and the exercise having to be repeated or Post Office spending hundreds of thousands or even millions of pounds reviewing and disclosing documents that, in the event, contribute nothing to the resolution of these proceedings.

5.13 If Post Office adopted a very broad approach to ensure that all conceivably responsive documents are covered by its searches, the combination of the GPoC and the order at paragraph 3e of your Directions could require disclosure of all documents regarding:

- 5.13.1 all changes to practices, systems, services and products at Post Office that could give rise to a need to further training over a 17 year period;
- 5.13.2 all internal decisions made by Post Office on whether or not to provide or update training in light of the above over a 17 year period;
- 5.13.3 all training policies, training materials and handouts given to postmasters over a 17 year period;
- 5.13.4 all guidance for all trainers, the training and qualifications of trainers, internal emails between trainers and their line management over a 17 year period; and
- 5.13.5 all practices used by Post Office to roll out training, managing the delivery of training, and gather feedback on training over a 17 year period.

5.14 We remind you in this regard of the huge scale of Post Office's operations. These documents are not stored in one location and would require searches of multiple servers and hardcopy locations. We would also need to review the emails of dozens, if not hundreds, of people who have been involved in training over the last 17 years which may mean retrieving archived records. We will (if needed) prepare evidence setting out the enormous scale of the task faced by our client if it were asked to give the disclosure you are seeking.

5.15 The above issues with the breadth and imprecision of the disclosure you are seeking apply equally to paragraphs 3c to 3f in your Order.

5.16 In short, we believe that to provide the disclosure required in paragraph 3 of your draft Directions would cost over £1m and take a minimum of 9 months, and more likely 12 months, to complete. This is not an effective or proportionate way to proceed. By contrast, we contend that our proposed approach to disclosure would be a proportionate and appropriate way to move this litigation forward.

5.17 In relation to paragraphs 4(d) and 6(b) of our client's proposed Directions, we are currently discussing with Fujitsu the best method by which to extract this data from Horizon. Retrieving this data is a considerable task because it is a labour-intensive process. As a rough guide, Fujitsu have informed us that it takes a day to retrieve 1 week of data for a branch due, in part, to the checks that are conducted on the data integrity controls. Side-stepping these controls could invalidate them with the possibility of creating a situation in which Post Office could no longer have confidence in the integrity of the data. We expect to be in a position to confirm the timings for extracting this data by the CMC.

5.18 Disclosure by the Claimants is dealt with at paragraphs 5 and 7 of the proposed Directions. We have sought to limit these categories of documents to disclosure which would be proportionate and appropriate for the Claimants to provide. However, we do not know how your clients store their documents and we recognise that a number of these requests are currently drafted in a broader fashion than those which we have drafted for Post Office (for example, requests 5(d) and 5(g)). We would welcome your proposals on narrowing these categories of documents, taking into account your knowledge (and the Claimants' knowledge) as to what documents would in practice be covered by the categories, where they are likely to be located, etc.

## **6. Experts and Horizon (paras 2a and 2b)**

6.1 As to expert evidence, we believe that it is premature for the Court to give permission for expert evidence without a clear understanding of the issues to be addressed and / or without being able to formulate questions to be addressed by experts.

6.2 This difficulty is principally caused by the fact that, putting it in neutral terms, the allegations regarding Horizon are very general, vague, unclear and (we would say) speculative.

6.2.1 Paragraph 94A of the GPoC is a good example of the problem. The Claimants broadly assert that Horizon is not fit for purpose, which is stated to include (presumably non-exhaustively) "error repellency". No particulars are given of the types of errors the Claimants have in mind or how Horizon should have better "repelled" them. Based on these very vague pleadings, the Claimants are now calling for significant disclosure (see paragraphs 3a and 3b of your proposed Directions Order) and expert evidence.

6.2.2 Similarly, paragraphs 36, 37 and 40 of the Generic Reply set out extremely general allegations in relation to Horizon (and, we would contend, at least in part, appear to proceed on the assumption that the Claimants are not responsible for the shortfalls, thereby assuming as established what must be proven).

6.2.3 As Claimants, it is for your clients to assert positive and specific claims that Horizon is defective, not fit for purpose, etc. They should plead and particularise the circumstances where they have experienced alleged problems with Horizon. For example, if they wish to allege that Horizon provided insufficient information to postmasters (para 94 GPoC), is not sufficiently "error-repellent" (para 94A GPoC) or did not accurate record transactions (para 95 GPoC), then each Claimant could indicate what the relevant errors were, how and when they were made and how they should have been "repelled". No guidance on any of these questions is given, either the GPoC or the SOIs. It is actively unhelpful to simply assert that Horizon failed properly to effect or record transactions (paragraph 40 of the Generic Reply). There is no solid foundation on which to identify focused expert issues and evidence.

6.3 A further problem with your proposal is that it takes no account of the fact that the parties have very different positions on the legal duties of Post Office and the Claimants and the relevance of these duties to the operation of Horizon. The precise formulation of these duties will change quite considerably the nature of the expert evidence needed. Taking the above example again, if the Court decides that there is no duty on Post Office to ensure that Horizon is free from defects, then expert enquiries into "error repellency" may not be needed.

6.4 So we can formulate appropriate orders for disclosure and expert evidence around Horizon, we first need better pleadings on this topic and some preliminary decisions on the legal duties in relation to it (which are addressed in our list of proposed preliminary issues).

6.5 It may be that your clients' real intention is not to seek permission for expert evidence at this stage but rather to obtain an order that presses the parties to start the process of gathering information on Horizon in order to get experts up to speed. If that is the case, our client can see the sense of this and is willing to cooperate, but we would suggest approaching the matter slightly differently, as follows:

6.5.1 Our client can provide some early disclosure about Horizon, even in the absence of any proper pleading in this respect. We would accept that the most sensible first step is for our client to provide reasonable and proportionate access to basic information about Horizon. We therefore enclose with the proposed Directions a list of 4 documents that are held by Fujitsu and that, we are informed, Fujitsu believes best describe the Horizon IT architecture at a high-level. Fujitsu has agreed to provide copies of these documents.

6.5.2 Our proposed Directions also provide for access by your IT expert to around 4,000 technical documents about Horizon also held by Fujitsu. These technical documents are held in a content management system and are the current version of each of the live technical documents for Horizon Online. These documents range from high level designs to detailed designs of the system and its code, along with documents that describe hardware that is used in the system.

6.5.3 These documents are security sensitive and are also the internal know-how of Fujitsu, which is highly commercially sensitive. Fujitsu has indicated that it will consent to your expert inspecting these documents at its premises in Bracknell, but it has not agreed to provide copies, at least at this stage.

6.5.4 In addition to these 4,000 documents, there are approximately 20,000 further documents held by Fujitsu regarding Horizon in its content management system. These may be old documents that are no longer used or previous versions of existing documents, with the version number now up to 36 on some documents. Fujitsu has suggested that the (approximately) 4,000 documents being offered for inspection are the best place to start for the experts to understand the Horizon system, since they describe the system as it stands now. Fujitsu has indicated that it could be willing in the future to allow your expert to inspect the further documents at its premises in Bracknell, if a need for to inspect them is explained. This has not been included within the proposed Directions Order at this stage as the review of the disclosed and inspected documents will hopefully guide which (if any) of these further documents your expert will feel that it is necessary to inspect and in relation to which Fujitsu will be asked to allow access (taking into account its concerns as to confidentiality).

6.6 This approach is provided for in paragraphs 2(a) and (b) of our client's proposed Directions Order. The proposed Order also includes additional protections around the inspection and use of Fujitsu's confidential and sensitive information. The non-disclosure agreement it refers to will be (or will be based on) Fujitsu's standard non-disclosure agreement and we will provide a copy in due course.

6.7 We should make it clear that our client is making this proposal in spite of its belief that the Claimants' allegations regarding Horizon are speculative. For the avoidance of any doubt, it fully reserves its right at any time to assert that these allegations have no proper evidential basis, are not sustainable and do not justify a fishing expedition in the hope that something might turn up. As a side point, we note that expert evidence may be needed on other issues as well as Horizon, such as forensic accounting expertise on certain cases. We cannot comment further at this stage however, given the absence of detailed particulars as to quantum, and our client's position on the full scope of expert evidence is fully reserved.

**7. Claim Questionnaires (para 9)**

7.1 To assist with (i) picking Lead Claimants and (ii) those Lead Claimants pleading their cases, our client is prepared to offer further disclosure, as explained above. As explained in our Second Letter of 1 September 2017, due to the poor quality of the SOIs it will be difficult for our client to select Preliminary Issue Lead Claimants which are representative of the claims brought by the group and the preliminary issues proposed below, and impossible to pick any other Lead Claimants. You have previously refused to rectify the SOIs to address our client's concerns. We would now urge you to make a sensible proposal on what additional information should be provided by the Claimants to remedy the deficiencies in our client's understanding of the ranges of claims our clients face and to make it possible to ensure that the Lead Claimants can safely be said to cover those ranges of claims.

7.2 Subject to any proposals you may make, it appears to us that it may be appropriate to adopt a procedure under which (1) Post Office has liberty to serve a questionnaire on the Claimants, (2) the Claimants have liberty to apply to raise objections, and (3) failing any application in relation to any questions, the Claimants will be required to give proper answers to those questions within a specified period.

7.3 We look forward to hearing from you on these points.

**8. Preliminary Issues and Second CMC (paras 10 to 14)**

8.1 In your Second Letter of 19 September 2017, you proposed that there be a preliminary issue on whether the contractual relationship between the parties amounts to a "relational contract". You

make this proposal because, you say, this will have an effect on the construction of all Post Office's contracts.

- 8.2 As we have said previously, the dispute as to whether or not the contracts can properly be characterised as "relational" and what, if any, implications this has for the construction of those contracts is one small part of the dispute as to implied terms and construction. It is an interwoven part of a much larger dispute. Post Office has pleaded 2 implied terms and in its Defence responded to the Claimants' (now more than 20) pleaded implied terms as well as a number of related points on the construction of express terms. From the Generic Reply, we now know that the Claimants deny Post Office's implied terms and its construction of (seemingly all) of the key express terms. Post Office does not agree that it would be useful to select one sub-issue going to the implication of one of the many terms alleged (an implied term requiring good faith, transparency, etc.) and determine it in isolation, especially where Post Office has pleaded that whether or not the contracts are characterised as "relational" will not have any (or any substantial) effect on the contract and/or the application of the contractual terms to the facts of the Claims: see paragraph 85 of the Generic Defence.
- 8.3 Given the above, Post Office's position is that, if there is to be the trial of any preliminary issues regarding the construction and implication of terms, those issues (including any argument you might wish to advance regarding a "relational contract") should all be dealt with together. Although we are conscious that this would not be a straightforward process and would have some disadvantages, we tentatively propose for consideration whether these issues should be tried as preliminary issues for all the major versions of the contract used for subpostmasters. This exercise should not however extend to franchisees, directors, guarantors or employees who are in markedly different positions, both in relation to the terms of their contracts and legal duties and the factual matrix against which their legal positions will be judged.
- 8.4 Moreover, from our review of the SOIs, we believe that there are around:
  - 8.4.1 4 Claimants who were crown employees.
  - 8.4.2 14 Claimants who were franchisees or guarantors of franchisees.
  - 8.4.3 6 Claimants who were directors of companies who were postmasters or franchisees.
- 8.5 These figures are not precise because (i) some of the SOIs are unclear on even this basic detail and (ii) some Claimants had multiple roles (e.g. he or she was an employee who later became a subpostmaster). In any event, the numbers of these types of Claimants is relatively small, and we believe it disproportionate to include these Claimants within the preliminary issues.
- 8.6 We set out in Schedule 3 to our draft Directions a list of possible preliminary issues for your consideration, subject of course to the Managing Judge's views. We invite your comments.
- 8.7 As noted above, we are happy to explore your idea of an agreed Statement of Facts for this purpose. However, we anticipate that this would be a slow and difficult process and would leave many issues outstanding and refer to comments above in paragraph 3.4 on this matter.
- 8.8 You propose to deal with these points of dispute through evidence from a small number of Claimants. We can see some merit in this proposal. However, any evidence will need to be preceded by the pleading out of individual cases so as to identify (and, hopefully, narrow) the factual issues in dispute; in the absence of such pleadings, Post Office will not know on what factual points evidence is required or even what time periods it should address in its evidence. We repeat the points made in our previous correspondence and above about the inadequacy of the GPoC, the Reply and (in particular) the SOIs, the result of which inadequacy is that there is as yet no clear framework on which witness evidence could be built.
- 8.9 We therefore propose that 20 Preliminary Issue Lead Claimants are selected from the 40 Potential Lead Claimants, their claims are pleaded out and then the CMC is restored to allow the Managing Judge to review the position in the light of the pleadings, to make a final decision as

whether to proceed with the preliminary issues suggested and, if he sees fit to do so, to give further directions on evidence.

8.10 We believe that having this number of claims pleaded will greatly assist to understand both the context and practical consequence of any preliminary issues for particular Claims and, more generally, the application of the outcome of the legal issues to the type of factual allegations that are advanced. In this regard, the claims of subpostmasters and assistants who have been convicted may be included in the pool of Lead Claimants for preliminary issues. On the Claimants' case, these Claimants will be affected by the determination of the preliminary issues (or some of them).

**9. Strike out (paras 15 to 18)**

9.1 As referred to in our letter of 1 September 2017 and your letter of 19 September 2017, there are a number of other issues that also need addressing at the CMC. We have made provision for these in our draft Directions Order and describe them briefly below:

9.1.1 Conspiracy claim. Our client requires the abandoned conspiracy claim to be withdrawn by way of amendment to the Claim Forms. We note your position on s.32 Limitation Act.

9.1.2 Misfeasance in public office. In your letter of 27 October 2016, you agreed to discontinue the misfeasance in public office claim having considered the arguments in our Letter of Response. Those arguments were that Post Office, as a private company, was not a public office holder. It is irrelevant if this claim is connected to the malicious prosecutions claims or not; it is bound to fail anyway. Please confirm that this claim will be withdrawn.

9.1.3 ECHR. Your letter of 19 September 2017 is the first time you have ever said anything about the nature of the human rights claims. These claims were not discussed at all in the Letter of Claim or your long substantive letter of 27 October 2016 or pleaded. Please properly explain the nature of this claim, as at present we have no information about how this claim is being formulated or why Post Office, as a private company, could be subject to such a claim. Failing an adequate explanation, we will contend that this claim should be withdrawn or struck out.

9.1.4 Bankrupt claims. Please confirm that you are not aware of any other Claimants having been made bankrupt as we requested in our Second Letter of 1 September 2017.

Please also provide evidence of the claim assignment or annulments referred to in the schedule to your letter of 19 September 2017 by noon on 6 October 2017.

Assuming that there are no other bankrupt claims and the above evidence is provided, no orders about will be required in the Directions Order.

9.1.5 Deceased Claimants. Please respond substantively on this issue by noon on 6 October 2017.

9.2 In relation to your second letter of 20 September 2017, your refusal to engage on specific cases is counter-productive. It may generate the impression that your clients are trying to hide particularly weak claims in amongst the group and so swell its ranks. This is wasting costs on both sides. We also do not agree with your characterisation of the Group Litigation process.

9.3 According to the SOIs, the values of the manifestly hopeless claims identified in our Second Letter of 1 September are, except for one claim, all in excess of £100,000. Had these claims been brought individually, we contend that they would have been the subject of reverse summary judgment or struck out.

9.4 Further, the Group Litigation process does not eliminate the need for your clients ultimately to prove the merits of each individual case. Although there may be some issues that can be dealt

with collectively, there are many more that will ultimately turn on the circumstances of individual cases – as we have been saying since the outset of this matter. It therefore will result in no saving of costs to indefinitely put off addressing the point that certain of the Claims obviously have no real prospect of success

9.5 We note your point about our firm only providing *examples* of manifestly hopeless claims. We therefore propose not addressing this point at this first CMC, but will return to it at the second CMC described in paragraph 13 below once we have had more time to review all of the SOIs and the further information discussed below and to identify a more comprehensive list of claims that our client contends should not proceed any further.

**10. Further Information on time-barred claims and settled claims (paras 19 and 20)**

10.1 Your clients' Generic Reply fails to address the important issues regarding Claimants who are potentially time-barred and / or have signed settlement agreements with our client.

10.2 Paragraph 69 of the Generic Reply simply denies that the settlement agreements provide our client with any defence yet does not provide any specific grounds for this. Paragraph 71 does little more than state the sections of the Limitation Act 1980 on which the Claimants rely. We note that neither of these matters were addressed directly or in detail in the GPoC, and the Claimants' reliance upon s32(1)(c) of the Limitation Act 1980 was not brought to our client's attention in the Claimants' pre-action correspondence.

10.3 We believe that there are:

10.3.1 At least 192 Claimants whose claims may be time-barred. The standard limitation period for most of your clients' claims is no more than 6 years. This would include all the claims for breach of contract, fiduciary or agency duty and in tort. The limitation date for these claims is therefore either 11 April 2010, 26 July 2010 or 24 July 2011 depending on which Claim Form a Claimant is named. If one assumes that the last material action of our client is the termination of a Claimant's contract then this termination date is likely to be the key date for limitation purposes. Using the termination dates stated in the Schedules of Information and on the Group Register, we believe that 192 Claimants were terminated before their respective limitation date, meaning that their claims may be wholly time-barred.

10.3.2 114 Claimants have entered into settlement agreements with Post Office. These settlement agreements contain wide releases of claims against Post Office. They occur in generally two situations:

- (a) 12 Claimants settled with Post Office as part of the Mediation Scheme.
- (b) From its internal records, Post Office currently believes that 102 Claimants settled with Post Office as part of either its Network Change or Network Transformation programmes. In consideration for a payment to leave the Post Office network or convert their existing branch to a main or local branch, these Claimants waived all claims against Post Office. Our client is currently in the process of locating the relevant settlement agreements.

10.4 Details of time-barred Claimants can be found at Schedule 6 to the proposed Directions and details of those who entered into settlement agreements can be found in the enclosed spreadsheet. Please note that these lists of Claimants are not exhaustive and further information may come to light in due course that identifies further Claimants as falling into the above categories.

10.5 It is not clear from the Generic Reply whether all Claimants are asserting that they relied on the same fraudulent representations or concealed fact or mistake that Post Office is said to have made to or concealed from all postmasters in general, or whether each of them intends to assert that there were fraudulent representations made to or facts concealed from individual Claimants.

Our client is therefore left in a position that it does not know the case which is being brought against it. We would be grateful if you would clarify this point.

10.6 If the latter, then our client needs to understand the fraudulent representation or concealed fact(s) or mistake alleged by each Claimant that are relied on to extend the standard limitation periods and/or avoid a settlement agreement. Paragraphs 19 to 20 of our proposed Directions provide orders for your clients to provide further information on this point.

**11. Further Information on Accounting to Post Office (para 21)**

11.1 As we raised in our Third Letter of 1 September 2017, question 3.2(d) in the SOIs was included by the Master to draw out how your clients have dealt with shortfalls. This is a key issue in this litigation. The response in your Second Letter of 20 September 2017 is evasive and does not address the failure to answer this question in the SOIs in the majority of cases.

11.2 Our proposed Directions therefore call for more information from each Claimant on how they have accounted for shortfalls. The wording of this request for information mirrors the wording in the GPoC. In essence, we are calling for each Claimant to clarify which aspects of the generic claim they are relying on.

11.3 Please take this letter and our proposed Order as a request that you provide this information voluntarily in accordance with Practice Direction 18.

**12. Further Information on Quantum (paras 22 and 23)**

12.1 In our Third Letter of 1 September 2017, we explained how the SOIs failed adequately to value the claims in breach of the GLO. This means that it is difficult to judge whether directions are proportionate and will be an impediment to any ADR process.

12.2 Our proposed Directions therefore include orders for your client to submit proper claim valuations. These orders go further than the GLO, in that they call for your clients to provide more detail as to the value of their personal injury claims and their stigma / reputation loss claims. We see no reason why your clients should not provide this information. It will assist the parties because:

12.2.1 Our client's case is that stigma / reputation losses are not recoverable in connection with many of your heads of claim. This could be a useful question to address as a preliminary issue. However, to decide whether it worth investing time on this point we first need to understand how much is being claimed for stigma / reputation loss. We have not included this issue in the list of preliminary issues at the moment, pending further quantum information.

12.2.2 Post Office presently considers it implausible that, as the SOIs indicate, 67% of the Claimants can have suffered personal injuries in respect of which compensation could be recovered. Properly valuing these claims will flush out those Claimants who did and did not truly suffer a personal injury and so provide a more stable footing on which to form a realistic estimate of the values of the Claims. We have therefore called for the personal injury claims to be valued in accordance the Judicial College Guidelines, and have only required your client to indicate into which bracket a claim falls. You will note that in the disclosure section of our draft Order we have also sought disclosure of medical records for each Claimant who is claiming personal injury for a similar reason.

12.3 Please take this letter and our proposed order as a request that you provide this information voluntarily in accordance with Practice Direction 18.

**13. Further CMC (paras 13 and 14)**

13.1 As you will see in our draft direction, the various strands above can be pulled together at a further CMC to take place in on the first available date after 3 October 2018. At this second CMC, we envisage the Court making decisions on:

- 13.1.1 the list of preliminary issues (if not agreed or ordered at the first CMC);
- 13.1.2 directions to a preliminary issues trial; and
- 13.1.3 possible directions for handling any summary judgment / strike out applications made by our client.

**14. Costs**

- 14.1 For the sake of avoiding argument at the CMC, our client is prepared to agree to costs in the case in respect of our client's application in relation to out of time amendments, if your clients will agree to costs in the case in relation to its recent application for an extension of time for the Generic Reply. If this point is not agreed, our client intends to seek its costs on its application and will contend that your client should bear the costs of its application for an extension of time.
- 14.2 We have also included the standard provisions that those Claimants who have served Notices of Discontinuance shall pay to the Defendant their respective individual costs and an equal proportion of the common costs up until the date on which their Notice of Discontinuance was served on the Defendant.

**15. Disclosure Report**

- 15.1 We are in receipt of your clients' Disclosure Report served on us today. On the basis that the Claim Forms include claims for personal injuries, pursuant to CPR 31.5(2) we do not believe that CPR 31.5(3) applies and there is therefore no need for the parties to file and serve a Disclosure Report.
- 15.2 Further, in a case of this kind, we do not believe that a Disclosure Report would be of any practical utility, as your clients' own disclosure report demonstrates.
- 15.3 This letter proposes that the parties give a substantial amount of early disclosure to assist with the selection and pleading of Lead Claimants but not for the parties to give standard disclosure. Further, we propose to set out substantial detail as to disclosure, including the sources of potentially relevant documents, in our evidence for the CMC. We therefore do not consider that, if required, to file and serve a Disclosure Report serves a useful purpose at this time and we have not prepared one. However, we consider that the spirit of CPR 31.5 is to encourage dialogue on disclosure and hope that this letter will be a useful step in such a process.

**16. Next steps**

- 16.1 We welcome your comments on our proposed Directions Order by noon on 6 October 2017. We appreciate that this is asking for a quick response, but the parties only have limited time to discuss these matters before the Court deadline of 9 October 2017 for filing draft Directions due to the later provision of the Generic Reply.
- 16.2 If you are really unable to provide a full response by this time, we would ask you to respond to the specific requests for response in paragraphs 9.1.2 to 9.1.5 above by noon on 6 October 2017 and invite you to respond to the remaining points as soon as possible thereafter.
- 16.3 We do however believe that much time might be saved if the parties were to meet to discuss these matters rather than exchange correspondence. If you would prefer to meet, please provide your dates of availability.

Yours faithfully

*Bond Dickinson LLP*

**Bond Dickinson LLP**

**POST OFFICE GROUP LITIGATION  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION**

**Before the Honourable Mr. Justice Fraser**

**Thursday, 19 October 2017**

**BETWEEN:**

**ALAN BATES & OTHERS**

**Claimants**

**- and -**

**POST OFFICE LIMITED**

**Defendant**

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**DEFENDANT'S DRAFT ORDER**

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UPON the Court holding a Case Management Conference;

AND UPON HEARING Leading Counsel for the Claimants and Leading Counsel for the Defendant

**IT IS ORDERED THAT:**

**DEFINITIONS**

- I. Unless otherwise indicated below, this Order uses the same defined terms as are used in the Group Litigation Order dated 22 March 2017 ("GLO").
- II. "Claim Forms" means the claim forms with claim numbers HQ16X01238 and HQ17X02637.
- III. Where "brief details" of any acts or omissions are required to be given, the required details are (i) the nature of the act or omission; (ii) when it was done or omitted to be done; (iii) who did it or omitted to do it; and (iv) where the relevant act is a statement or representation, misrepresentation, or fraudulent misrepresentation, the further details

specified in paragraphs IV and (where applicable) V below.

- IV. Where "brief details" of any statement or representation (including any advice, encouragement or pressure) are required to be given, the required details are (i) when, by whom and to whom it was made; (ii) how it was made (orally, in writing or by conduct); (iii) where it was made orally, the gist of the words used and the individuals by whom and to whom they were uttered; where it was made in writing, the nature and the date(s) of and parties to document(s) concerned; where it was made by conduct, details of the acts or omissions constituting the conduct concerned; and (iv) where it was a false or misleading statement or misrepresentation, the further details specified in paragraph V below.
- V. Where "brief details" of any false or misleading statement or misrepresentation are to be given, the required details are (i) an indication of the respect(s) in which it is alleged to be false; and (ii) where it was a fraudulent misrepresentation, an indication of the grounds on which it is alleged that the representor knew that it was false.
- VI. "Relevant Branch" means, in respect of each Claimant, the Post Office branch(es) named in his Schedule of Information during the period such Schedule of Information indicates he was a Subpostmaster, franchisee, director or guarantor of a Subpostmaster or franchisee, assistant or Crown employee (as the case may be).
- VII. "He" and "his" shall mean "he"/ "she"/ "it" and "his" / "her" / "its" as may be appropriate to the Claimant in question.

## **POTENTIAL LEAD CLAIMANTS**

1. By 16 November 2017 [1 month after CMC], the Claimants' solicitors and the Defendant's solicitors shall each select 20 Claimants, which will together form a pool of up to 40 lead claimants from whose claims Lead Cases may be selected (**the Potential Lead Claimants**). The Potential Lead Claimants shall only include Claimants who are asserting claims as a Subpostmaster or an assistant (and not Claimants who are asserting claims as a franchisee, guarantor, director or Crown employee).

## **EARLY DISCLOSURE**

2. By 14 December 2017 [2 months after CMC], the Defendant shall:
  - a) Disclose and make available for inspection the documents regarding the Horizon system architecture listed in Schedule 1 hereto.

- b) Use reasonable endeavours to arrange for the Claimants' IT expert, Jason Coyne, to be given access to inspect at the office of Fujitsu in Bracknell any of the documents listed in Schedule 2 hereto.
- c) Disclose and make available for inspection the following Post Office terms and conditions:
  - i. Subpostmaster Contract 1994 issue
  - ii. Modified Subpostmaster Contract
  - iii. Community Subpostmaster Contract
  - iv. Temporary Subpostmaster
  - v. Local On-site (latest version)
  - vi. Local Off-site (latest version)
  - vii. Main On-site (latest version)
  - viii. Main Off-site (latest version)
  - ix. Temporary Local Contract (latest version)
  - x. Temporary Main Contract (latest version)
- d) Disclose and make available for inspection the documents delivered up to the Defendant by Second Sight Support Services Ltd (**Second Sight**) following the end of Second Sight's work in the Post Office Complaint Review and Mediation Scheme, insofar as those documents satisfy the test of standard disclosure in relation to the cases asserted in the Generic Statements of Case and relate to a Relevant Branch.
- e) Disclose and make available for inspection any settlement agreements between the Defendant and any Claimant.

3. By 25 January 2018 [same date as further info on quantum], each Claimant who asserts a claim for personal injury in his Schedule of Information shall disclose and make available for inspection his hospital and GP records on which he intends to rely in support of his claim, or in the alternative confirm in writing that he is not claiming damages for personal injury.

4. Post Office to Subpostmaster. By 25 January 2018, the Defendant shall disclose and make available for inspection the following documents in relation to each Potential Lead Claimant who in their Schedule of Information is asserting a claim as a Subpostmaster:

- a) Any application to be a Subpostmaster submitted by the Potential Lead Claimant to the Defendant.
- b) Any signed Confirmations of Appointment and/or signed Preface between the

Defendant and the Potential Lead Claimant.

- c) Records of any assistants employed by the Potential Lead Claimant recorded in the Defendant's HR database.
- d) [Transaction and Event data recorded on Horizon for the Potential Lead Claimant's Relevant Branch(es).] [As explained further in the letter from Bond Dickinson on 4 October 2017, the provision of this disclosure and wording of this paragraph is subject to Post Office's ongoing discussions with Fujitsu and the reasonableness and proportionality of extracting and providing this data.]
- e) Customer Account from POLSAP or Core Finance (as applicable) for the Potential Lead Claimant's Relevant Branch(es).
- f) Records of Transaction Corrections issued to the Potential Lead Claimant's Relevant Branch(es) as recorded in POLSAP.
- g) Written logs of calls to the Defendant's NBSC helpline recorded in either the Defendant's Dynamics or Remedy systems (as applicable) as having come from the Potential Lead Claimant's Relevant Branch(es).
- h) Audit Reports in relation to the Potential Lead Claimant's Relevant Branch(es).
- i) Any suspension letter sent by the Defendant to the Potential Lead Claimant.
- j) Any termination or resignation letter sent between the Defendant and the Potential Lead Claimant.
- k) Any hardcopy former agent debt file for the Potential Lead Claimant.

5. Subpostmaster to Post Office. By 25 January 2018, each Potential Lead Claimant who in their Schedule of Information is asserting a claim as a Subpostmaster shall disclose and make available for inspection the following documents:

- a) Any application to be a Subpostmaster submitted by the Potential Lead Claimant to the Defendant.
- b) Any signed Confirmations of Appointment and/or signed Preface between the Defendant and the Potential Lead Claimant.
- c) Any correspondence appointing or terminating the employment of an assistant of the Potential Lead Claimant.
- d) Any accounting records held by the Potential Lead Claimant showing the payment of a sum of money to the Defendant in relation to a shortfall in relation to the Lead Claimant's Relevant Branch(es).
- e) Any records of any calls from between the Potential Lead Claimant's Relevant Branch(es) and the Defendant's NBSC helpline.

- f) Any suspension letter sent by the Defendant to the Potential Lead Claimant.
- g) Any termination or resignation letter sent between the Defendant and the Potential Lead Claimant.
- h) Any letters or communications between the Potential Lead Claimant and the Defendant regarding the recovery of sum in relation to any shortfall.
- i) Any documents in relation to any loss of earnings or loss of investment or stigma or reputation damage (if such head of loss has been claimed in a Potential Lead Claimant's Schedule of Information).

6. Post Office to Assistant. By 25 January 2018, the Defendant shall disclose and make available for inspection the following documents in relation to each Potential Lead Claimant who in their Schedule of Information is asserting a claim as an assistant:

- a) Records in relation to the Potential Lead Claimant recorded in the Defendant's HR database.
- b) [Transaction and Event data recorded on Horizon for the Potential Lead Claimant's Relevant Branch(es).] [As explained further in the letter from Bond Dickinson on 4 October 2017, the provision of this disclosure and wording of this paragraph is subject to Post Office's ongoing discussions with Fujitsu and the reasonableness and proportionality of extracting and providing this data.]
- c) Customer Account from POLSAP or Core Finance (as applicable) for the Potential Lead Claimant's Relevant Branch(es).
- d) Record of Transaction Corrections issued to the Potential Lead Claimant's Relevant Branch(es) as recorded in POLSAP.
- e) Written logs of calls to the Defendant's NBSC helpline recorded in either the Defendant's Dynamics or Remedy systems (as applicable) as having come from the Potential Lead Claimant's Relevant Branch(es).
- f) Audit Reports in relation to a Potential Lead Claimant's Relevant Branch(es).

7. Assistant to Post Office. By 25 January 2018, each Potential Lead Claimant who in their Schedule of Information is asserting a claim as an assistant shall disclose to the Defendant the following documents:

- a) Any application to be an assistant submitted by the Potential Lead Claimant in relation to the Potential Lead Claimant's Relevant Branch(es).
- b) Any confirmation of appointment and/or other document recording the Potential Lead Claimant's appointment relation to the Potential Lead Claimant's Relevant

Branch(es).

- c) Any correspondence between the Potential Lead Claimant and the Subpostmaster(s) for whom he worked in relation to his appointment and/or termination.
- d) Any records of any calls to the Defendant's NBSC helpline.
- e) Any documents in relation to any loss of earnings or loss of investment or stigma or reputation damage (if such head of loss has been claimed in a Potential Lead Claimant's Schedule of Information).

8. In relation to the disclosure provided for above:

- a) The disclosure / inspection provided for in paragraphs 2a) and 2b) above shall be conditional on the Claimants' IT expert first entering into a Non-Disclosure Agreement with Fujitsu.
- b) The disclosure provided for in paragraphs 4 to 7 above shall only be given if and insofar as it relates to a Relevant Branch (and is thus limited to the period referred to in paragraph VI above).
- c) The disclosing party shall undertake a reasonable and proportionate search for the documents to be disclosed.
- d) Save as aforesaid, and save for the inspection provided for in paragraph 2b above, disclosure shall be given by list, with inspection 7 days later, and in accordance with CPR Part 31.

## **CLAIM QUESTIONNAIRES**

9. [ ].

## **PRELIMINARY ISSUES**

10. Subject to any decision made by the Court as provided for in paragraph 13 below, the issues set out in Schedule 3 hereto shall be tried as preliminary issues (**the Preliminary Issues**).

11. By 15 February 2018 [3 weeks after disclosure], the Claimants' solicitors and the Defendant's solicitors shall seek to agree 20 Claimants from the pool of Potential Lead Claimants whose claims shall be Lead Cases for the purposes of the Preliminary Issues (**the PI Lead Claimants**). If they fail to agree the PI Lead Claimants by then, the parties shall have liberty to apply.

12. In respect of the claims brought by the PI Lead Claimants, the PI Lead Claimants and the Defendant shall serve and file statements of case, as follows:
  - a) Each PI Lead Claimant shall file and serve his Particulars of Claim by 4:00pm on 12 April 2018. [8 weeks after agreeing PI Lead Claimants]
  - b) The Defendant shall file and serve its Defence and any Counterclaim to each PI Lead Claimant's Particulars of Claim by 4:00pm on 7 June 2018. [8 weeks after POC]
  - c) Each PI Lead Claimant shall file and serve his Reply and Defence to Counterclaim (if any) by 4:00pm on 2 August 2018. [8 weeks after Defence]

## **SECOND CMC**

13. By 6 September 2018, [5 weeks after Reply] the Claimants' solicitors and the Defendant's solicitors shall seek to agree:
  - a) Whether, in the light of the statements of case served and filed in the claims brought by the PI Lead Claimants, the Preliminary Issues should be tried or the Preliminary Issues and/or the Lead Claimants should be varied in any way.
  - b) Further directions for the trial of the Preliminary Issues, including appropriate directions (if any) as to disclosure or witness statements.
14. There shall be a Case Management Conference listed for 1 day held on the first available date after 3 October 2018 to consider the matters described in paragraph 12 and any other matters as may be appropriate.

## **STRIKE OUT**

15. The claims for unlawful means conspiracy, misfeasance in a public office and under the European Convention of Human Rights and Human Rights Act 1998 asserted in the Claim Forms are struck out and the Claimants shall amend and re-serve their Claim Forms accordingly by 16 November 2017 [1 month after the CMC].
16. If and to the extent the Claimants identified in Schedule 4 hereto do not by 14 December 2017 [2 months after CMC] serve on the Defendant the evidence on which they intend to rely to show that, notwithstanding their bankruptcies, they have standing to bring the claims they advance in these proceedings, those claims shall be struck out.

17. If and to the extent that the lawfully appointed personal representatives of Enid Mummery (Claimant No 122) do not by 14 December 2017 [2 months after CMC] serve on the Defendant an application to be substituted as Claimants along with evidence on which they intend to rely to identify and support the basis on which they say they have standing to assert the claims asserted in these proceedings, the claim of Enid Mummery shall be struck out.
18. If and to the extent that those Claimants identified in Schedule 5 hereto do not by 14 December 2017 [2 months after CMC] serve on the Defendant evidence on which they intend to rely to identify and support the basis on which they say they have standing to assert the claims asserted in these proceedings, they shall be struck out.

## **FURTHER INFORMATION**

### **Potentially Time-Barred Claims**

19. Each of the Claimants identified in Schedule 6 hereto shall by 25 January 2018 [same time as disclosure] provide the Defendant with the following information regarding their reliance on section 32 Limitation Act 1980:
  - a) brief details of the fraud(s) of the Defendant alleged by the relevant Claimant and brief details of the fact(s) which the Defendant is alleged to have concealed from the Claimant;
  - b) brief details of the act(s) or omission(s) of the Defendant alleged to have concealed such fact(s) from the Claimant;
  - c) the grounds on which it is alleged that the Defendant deliberately concealed such facts from the Claimant; and
  - d) when and how the Claimant became aware of such fraud(a) and concealed fact(s).

This information shall be confirmed by a Statement of Truth from each of the relevant Claimants.

### **Potentially Settled Claims**

20. Each of the Claimants for whom a settlement agreement is disclosed pursuant to paragraph 2e) above shall by 25 January 2018 provide the Defendant with the following information:
  - a) whether the Claimant admits that he entered into the settlement agreement disclosed by the Defendant;

- b) whether he admits that such settlement agreement would, unless set aside, prevent him asserting the claims that he asserts in these proceedings;
- c) if the answer to b) is in the negative, the grounds on which he contends that the settlement would not have that effect;
- d) if the answer to b) is in the affirmative, the grounds on which he asserts a right to set aside the settlement agreement, including (where applicable) brief details of any fraudulent or other misrepresentation(s) that he alleges was made to him and induced him to enter into the settlement agreement.

This information shall be confirmed by a Statement of Truth from each of the relevant Claimants.

#### **Accounting to Post Office**

21. Each Claimant shall by 25 January 2018 inform the Defendant whether he signed off cash declaration(s) and/or branch trading statement(s) that were not consistent with the stock and cash held by the Relevant Branch at the relevant time and (ii) any Claimant who signed off any such cash declaration(s) and/or branch trading statement(s) shall also:
  - a) identify the incorrect declarations and statements he signed off;
  - b) state whether he alleges that such incorrect declarations and statements were made:
    - (1) in reliance on any advice or encouragement from the Defendant;
    - (2) in reliance on any fraudulent or other misrepresentation(s) by the Defendant;
    - (3) as a result of any material breach(es) of contract by the Defendant;
    - (4) as a result of any failure(s) on the part of the Defendant to disclose material facts which the Defendant ought to have disclosed;
    - (5) under economic duress; and/or
    - (6) as a result of unconscionable dealing by the Defendant; and
  - c) if and to the extent that any of the matters referred to in b) above are alleged, provide brief details of the alleged acts, omissions and/or frauds, misrepresentations or statements by the Defendant that are relied upon.

This information shall be confirmed by a Statement of Truth from each of the relevant Claimants.

#### **Quantum**

22. Each Claimant shall by 25 January 2018 [same time as disclosure] provide the Defendant with his best estimate of the amount of each head of his claim (excluding any claims

for personal injury) based on a methodology that is consistent with the Amended Generic Particulars of Claim. This information shall be confirmed by a Statement of Truth from each of the relevant Claimants.

23. Each Claimant who asserts a claim for personal injury in his Schedule of Information shall by 25 January 2018 inform the Defendant within which chapter and bracket in the Judicial College Guidelines their personal injury claim falls. This information shall be confirmed by a Statement of Truth from each of the relevant Claimants.

#### **ADR**

24. At all stages, the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging in any such means proposed by another must serve a witness statement giving reasons within 21 days of that proposal; such witness statement must not be shown to the trial judge until questions of costs arise.

#### **COSTS**

25. The parties shall regularly report their costs to each other and to the Court, as they pass the following milestones: £500,000, £750,000, £1 million and any increment of £250,000 thereafter.
26. There shall be no costs budgeting in this case.
27. The Claimants shall pay the Defendant's common costs incurred in relation to the claims struck out pursuant to paragraph 15 above, in a sum to be assessed if not agreed.
28. The Claimants listed in Schedule 7 hereto whose claims have been discontinued shall pay the Defendant's individual costs in relation to his Claim and an equal proportionate share of the Defendant's common costs incurred up to the date on which his Notice of Discontinuance was served on the Defendant, in a sum to be assessed if not agreed.
29. Any Claimant whose claim is struck out pursuant to paragraphs 16 to 18 above shall pay the Defendant's individual costs in relation to his Claim and an equal proportionate share of the Defendant's common costs incurred up to 14 December 2017, in a sum to be

assessed if not agreed.

30. Save as aforesaid, the costs of this CMC are common costs in the case.
31. The costs of the Defendant's Application dated 26 July 2016, reserved by the Consent Order dated 14 February 2017, are common costs in the case.
32. Costs of the Claimants' Application dated 20 September 2017 for an extension of time for filing the Generic Reply are common costs in the case.

**SCHEDULE 1**  
**TECHNICAL DOCUMENTS**

- 1) Horizon Core Audit Process dated 30 January 2014
- 2) Horizon Online Data Integrity for Post Office Ltd dated 28 November 2013
- 3) Horizon Data Integrity dated 3 December 2013
- 4) High level architectural overview of Horizon Online reference document (undated)

## **SCHEDULE 2**

### **FURTHER DOCUMENTS**

Please refer to Excel spreadsheet provided by email to Freeths on 4 October 2017

## SCHEDULE 3

### PRELIMINARY ISSUES

**“AGPoC” refers to the Amended Generic Particulars of Claim; “Defence” refers to the Generic Defence and Counterclaim; “Reply” refers to the Generic Reply and Defence to Counterclaim**

#### 1. CONTRACTUAL CONSTRUCTION AND RELATED ISSUES

##### **The True Agreement**

1.1 Do the express written terms of the following agreements between Post Office and Subpostmasters represent the “true agreement” between the parties:

- 1.1.1 the SPMC;
- 1.1.2 the Temporary SPMC;
- 1.1.3 the Community Subpostmaster Agreement;
- 1.1.4 the NTC.

[See AGPoC, paras 50, 69-71; Defence, paras 86, 110-112]

1.2 If not, was the “true agreement” between the parties as alleged at AGPoC, para. 71?

[Denied at Defence, para. 112].

##### **Onerous or unusual terms**

1.3 At AGPoC, para. 66, the Claimants alleges that many terms in the following contracts are “onerous and unusual” (“**the Challenged Terms**”).

- 1.3.1 the SPMC;
- 1.3.2 the Temporary SPMC;
- 1.3.3 the Community Subpostmaster Agreement;
- 1.3.4 the NTC.

Are the Challenged Terms onerous and unreasonable?

[Denied at Defence, para. 108]

1.4 Was Post Office under any obligation to draw a Subpostmaster’s attention specifically to the Challenged Terms prior to the Subpostmaster agreeing to his appointment before those terms became enforceable terms of the contract between Post Office and that Subpostmaster?

[See AGPoC, para. 66; Defence, para. 108(2)]

1.5 If so, what steps was Post Office required to take to draw such terms to the attention of the Subpostmaster?

[See AGPoC, para. 66; Defence, para. 108(2)]

1.6 Were the Challenged Terms unenforceable pursuant to the Unfair Contract Terms Act 1977?

[See AGPoC, paras. 67-68; Defence, para. 109; Reply, para. 49]

### **Accounting to Post Office**

1.7 What is the correct construction of section 12, clause 12 of the SPMC? Specifically:

1.7.1 is the Subpostmaster only liable for actual losses caused by the negligence, carelessness or error of the Subpostmaster, or of his assistants?

1.7.2 are Subpostmasters responsible for all losses disclosed in their branch accounts save for losses which were neither caused by any negligence, any carelessness, or any error on their part nor caused by any act or omissions on the part of their assistants?

1.7.3 must a “loss” within the meaning of the clause be a “real loss”?

1.7.4 if so, what is a “real loss” and who, if anyone, bears the burden of proof as regards whether or not any given loss was “real”?

[See AGPoC, para. 55; Defence, paras 93-94]

1.8 Does the Subpostmaster bear the burden of proving that any account that he rendered to Post Office was incorrect?

[Defence, paras 69(3) 183; Reply, paras 64 and 92]

### **Suspension**

1.9 Was Post Office entitled to suspend Subpostmasters appointed pursuant to the contracts referred to in 1.10 where it suspected that the Subpostmaster and/or his Assistants had, at or in relation to his branch, (i) committed false accounting or (ii) acted dishonestly or (iii) otherwise misconducted himself?

[See AGPoC, paras 34-3, 60 and 99; Defence, paras 66-72, 99 and 142; Reply, para. 92]

### **Summary termination for false accounting**

1.10 Was Post Office entitled summarily to terminate the following contracts (i) for false accounting, (ii) for acting dishonestly, (iii) for other material breach of the contracts and (iv) for other repudiatory breach of the contracts:

1.10.1 the SPMC;

- 1.10.2 the Temporary SPMC;
- 1.10.3 the Community Subpostmaster Agreement;
- 1.10.4 the NTC?

[See AGPoC, paras 34-37, 61 and 99; Defence, paras 66-72, 100 and 142; Reply, para. 92]

#### **Summary termination for material and repudiatory breach of contract**

1.11 What, if any, restrictions (whether express or implicit) were there on Post Office's (i) contractual rights to terminate for material breach of contract by the Subpostmaster and (ii) common law right to terminate for repudiatory breach of contract by the Subpostmaster in the following agreements:

- 1.11.1 the SPMC;
- 1.11.2 the Temporary SPMC;
- 1.11.3 the Community Subpostmaster Agreement;
- 1.11.4 the NTC?

[See AGPoC, paras 61 and 64; Defence, paras 100 and 104-106, Reply, para. 92]

#### **Termination on notice and without cause**

1.12 Was Post Office entitled to terminate the following contracts on notice and without cause or other restriction:

- 1.12.1 the SPMC;
- 1.12.2 the Temporary SPMC;
- 1.12.3 the Community Subpostmaster Agreement;
- 1.12.4 the NTC?

[See AGPoC, paras 61, Defence, para. 100; Reply, para. 92]

#### **Compensation for loss of office**

1.13 Where the following contracts were validly terminated in accordance with their terms (i.e. termination on notice or without notice for cause), was the Subpostmaster entitled to any compensation for loss of office or wrongful termination:

- 1.13.1 the SPMC;
- 1.13.2 the Temporary SPMC;
- 1.13.3 the Community Subpostmaster Agreement;

1.13.4 the NTC?

[See AGPoC, para. 62; Defence, para. 101; Reply, para. 92]

1.14 Under the following contracts, in what, if any, circumstances are Subpostmaster's breach of contract claims for loss of business, loss of profit and consequential losses (including reduced profit from linked retail premises) limited to such losses as would not have been suffered if Post Office had given the notice of termination provided for in those contracts:

1.14.1 the SPMC;

1.14.2 the Temporary SPMC;

1.14.3 the Community Subpostmaster Agreement;

1.14.4 the NTC?

[See AGPoC, para. 131; Defence, para. 171; Reply, paras 81-82]

**Subsequent appointments**

1.15 Were there any restrictions on Post Office's discretion as to whether or not to appoint as a Subpostmaster the prospective purchaser of a Subpostmasters' business in the following contracts and, if so, what were those restrictions:

1.15.1 the SPMC;

1.15.2 the Temporary SPMC;

1.15.3 the Community Subpostmaster Agreement;

1.15.4 the NTC?

[See AGPoC, para. 62; Defence, para 102; Reply, para. 92]

**Implied terms**

1.16 Which, if any, of the terms alleged by the Claimants at AGPoC, para. 64 are to be implied into the following contracts?

1.16.1 the SPMC;

1.16.2 the Temporary SPMC;

1.16.3 the Community Subpostmaster Agreement;

1.16.4 the NTC?

[Denied at Defence, paras 104-106]

1.17 If and to the extent that the terms alleged at AGPoC, paras 64(16), 64(17), 64(18) and/or 64(19) are to be implied, to what contractual powers, discretions and/or functions do such terms apply?

1.18 Is the term alleged by the Claimants at Reply, para. 96.1 to be implied into the contracts referred to in 1.16 above?

1.19 Which, if any, of the terms alleged by Post Office at Defence, para. 105, are to be implied into the contracts referred to in 1.16 above?

[Denied at Reply, para. 92]

### **Supply of Goods and Services Act 1982**

1.20 Are any of the following contracts "relevant contracts for the supply of services" for the purposes of the Supply of Goods and Services Act 1982 as regards any services provided by Post Office to Subpostmasters and, if so, what are the relevant services so provided:

1.19.1 the SPMC;

1.19.2 the Temporary SPMC;

1.19.3 the Community Subpostmaster Agreement;

1.19.4 the NTC?

[See AGPoC, para. 63A; Defence, para. 104]

1.21 Was it an implied term of the contracts that Post Office would carry out services of supplying Horizon, the Helpline and training/materials with reasonable care and skill?

[See AGPoC, para. 63A; Defence, para. 104]

### **Agency**

1.22 Was the legal relationship between Post Office and Subpostmasters under the following contracts that of principal and agent (where Post Office is the principal and where the Subpostmasters owed to Post Office the duties alleged at Defence, para. 91):

1.20.1 the SPMC;

1.20.2 the Temporary SPMC;

1.20.3 the Community Subpostmaster Agreement;

1.20.4 the NTC?

[See AGPoC, para. 53; Defence, paras 90-91; Reply, paras 59-60 ]

## 2. DUTIES TO ASSISTANTS

### Assistants

2.2 Did SPMC section 15, clause 7.1; NTC, Part 2, clauses 2.3 and 2.5 and/or any of the implied terms contended for by the parties and found by the Court purport to confer a benefit on Assistants for the purposes of section 1 of the Contracts (Rights of Third Parties) Act, and if so which of these terms did so?

[See AGPoC, para. 74; Defence, para. 116; Reply, para. 92]

2.3 Were Subpostmasters responsible under the following agreements for the training of their Assistants:

- 2.3.1 the SPMC;
- 2.3.2 the Temporary SPMC;
- 2.3.3 the Community Subpostmaster Agreement;
- 2.3.4 the NTC?

[See AGPoC, para. 56; Defence, para. 95(4); Reply, para. 92]

**SCHEDULE 4****CLAIMANTS WITH BANKRUPTCIES**

Thomas Brown (No. 32)	Donna Marie Lanaghan (No. 359)
Deirdre Connolly (No. 45)	Martin Holgate Legat (No. 362)
Donna Gosney (No. 65)	Deborah Mann (No. 372)
Francis Maye (No.114)	Gordon Martin (No. 374)
Dominic Savio (No. 160)	Jacqueline McDonald (No. 377)
Hughie Noel Thomas (No. 177)	Lewis Lavern McDonald (No. 378)
Elizabeth Barnes (No. 219)	Doreen Anne McQuillam (No. 384)
David Charles Blakey (No. 225)	Senapathy Ponnampalam (No. 395)
Gillian Blakey (No. 226)	Carl Page (No. 410)
Lisa Brennan (No. 229)	Suzanne Lesley Palmer (No. 412)
Lee Castleton (No. 240)	Geoffrey Pound (No. 430)
Chris Dawson (No. 265)	James Richards (No. 440)
Julie Dell (No. 270)	Sandra Richardson (No. 441)
Lesley Dunderdale (No. 275)	Balvinder Singh Gill (No. 473)
Tracey Ann English (No. 282)	Gail Lesley Ward (No. 506)
Richard Andrew Finlow (No.293)	Penelope Jane Williams (No. 511)
Manjit Kaur (No. 348)	James Withers (No. 514)

## SCHEDULE 5

### DECEASED CLAIMANTS

Claimant No 75 - Marion Holmes the personal representative of Peter Holmes (deceased)
Claimant No 130 - Wendy Ann Owen the personal representative of John Owen (deceased)
Claimant No 215 - Jasvinder Barang the personal representative of Rajbinder Singh Barang (deceased)
Claimant No 296 - Menna Garland-Ellis and Jonathan Garland the personal representatives of Mr Michael Garland (deceased)
Claimant No 477 - Janet Smith the personal representative of David Smith (deceased)
Claimant No 488 - Sonya Sultman the personal representative of David Graham (deceased)
Claimant No 497 - David Thornton the personal representative of Amy Thornton (deceased)

**SCHEDULE 6****POTENTIALLY TIME-BARRED CLAIMS**

Claimant Name	Number
Naushad Abdulla	3
Oyetju Omotara Adedayo	4
Nichola Arch	8
Kamran Ashraf	10
Virendra Bajaj	14
Tracy Felstead (formerly Banks)	16
Margaret Bateman	18
Alan Bates	19
Arun Bhanote	20
Revti Raman Bhanote	21
Ram Pratap Bhardwaj	23
Janet Bradbury	29
Timothy Brentnall	30
Thomas George Brown	32
Wendy Buffrey	34
Sarah Burgess-Boyde	37
Julie Louvain Carter	40
Ghazala Chishty	42
Wendy Cousins	47
Philip Cowan	48
Scott Darlington	51

Claimant Name	Number
Nirmala Fatania	58
Stanley Fell	59
Joanne Foulger	60
David John Gilbert	63
Donna Lynn Gosney	65
Josephine Hamilton	69
Susan Hazzleton	71
Allison Henderson	73
Peter John Holloway	74
Marion Holmes (personal representative for Peter Holmes)	75
Mrs Elaine Illidge	81
Veronica Dorothy Irvine	83
Michael Ernest Jones	89
Harish Joshi	90
Parmod Kumar Kalia	92
Siema Kamran	93
Anish Kavi	94
Antony Afzal Khan	96
Amir Hamza Khan	97
Lorraine Kirkman (nee Piner)	100

Kamaljit Kooner	103
Saifudin Kutianawala	106
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**SCHEDULE 7**  
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Vijay Parekh (No. 132)
Sarah Javed (No.86)
Usman Kiyani (No. 101)
Mario Lummi (No. 109)
Dermot Lynch (No. 110)
Chelsea News Limited (No. 244)
Anil Kumar (No. 358)
Hums Group Ltd (No. 325)
Ling Ma (No. 368)
Nalin Patel (No. 418)
Potential Estates Limited (No.429)



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26 April 2017

For the Attention of Mr J Hartley  
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Our ref:  
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Dear Sirs

**Bates & Others -v- Post Office Limited**  
Claim number: HX16X01238  
Group Register

Thank you for providing us with an updated Group Register on 21 April 2017.

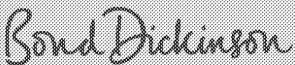
We note that various press releases mention that over 1,000 individuals have registered their interest to join the Group Action. So as to assist Post Office to understand the claims being brought against it and to enable the preservation of documents which relate to these additional Claimants, it would be appreciated if you could confirm whether any new Claim Forms have been issued and whether these Claimants will be included within the next Group Register.

Also, if you could provide an early indication of likely Claimants before they are added to the Group Register that would be useful.

The overriding objective seeks to enable the parties to understand the claims which are being brought against it and ensure that cases are dealt with expeditiously. If the above information could be provided at an early stage in this claim, this would assist both parties to manage the claim and ensure that its progression is not delayed.

Yours faithfully

Bond Dickinson LLP



25 May 2017

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

Email: james.hartley GRO ; imogen.randall GRO

Dear Sirs

**Bates & Others -v- Post Office Limited**  
Claim Number: HX16X01238

Over recent months we have exchanged correspondence on a number of satellite matters relevant to the Group Litigation. Although progress has been made in some areas, we have not reached common ground in others and we are each now at risk of repeating points made in earlier correspondence. We have therefore given thought as to how best to proceed from here with these case management issues and believe that a meeting between our two firms may be more productive in reaching agreement on these issues than further correspondence.

The following are possible topics that could be discussed at a meeting.

1. Access to Second Sight

The parties agree in principle on your clients being able to speak with Second Sight but the method of protecting Post Office's privileged material remains open. We have concerns over the proposal in your recent letter of 5 May 2017 which could be usefully discussed in order to try to find a mutually acceptable way forward.

2. Access to documents

Post Office has provided contractual documents in respect of the known Claimants. Our request for the Claimants' contractual documents remains outstanding, as do a number of the Claimants' disclosure requests.

3. Details of concealment

Agreement has not yet been reached on whether the date and brief details of each act of concealment alleged by your clients should be contained within each Schedule of Information.

4. Managing live postmasters

We have corresponded on the issue of how the parties should interact regarding postmasters who are in post but are also Claimants. This is principally the matters addressed in your second letter of 11 May 2017, namely (i) the lines of communication between Post Office and current / prospective Claimants and (ii) whether and when it would be appropriate to stay any enforcement action against Claimants.

We agree that it could be useful to establish some common ground for such interactions. This is an area where we believe progress could be better made through discussion than by correspondence.

5. Group register

In the interests of case management, it would be beneficial for Post Office to have early sight of new potential Claimants and we could therefore discuss whether, and if so how, Post Office may be provided with details of likely Claimants before they are formally added to the Group Register. Not providing this information on a regular basis has the potential to impact the management of the case and, in particular, cause delays.

6. Security for costs

We will write to you shortly to set out our current position in this regard but Security for Costs remains a live issue.

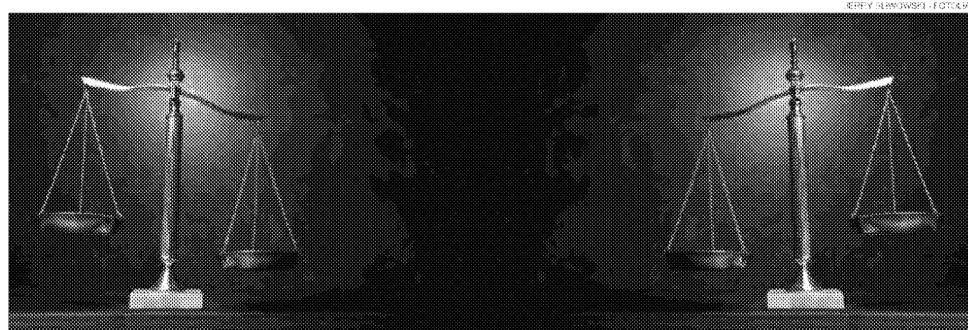
This list of topics is not exhaustive or mandatory, but it does set out the areas where we believe a face-to-face dialogue might be useful.

Please confirm if you would be willing to attend a meeting with us in London (on either an open or without prejudice basis). If you do wish to meet, please provide your dates of availability or we would invite you to call Andrew Parsons of Bond Dickinson to discuss this matter.

Yours faithfully



**Bond Dickinson LLP**



## 1,000 sub-postmasters apply to join IT-related group litigation against Post Office

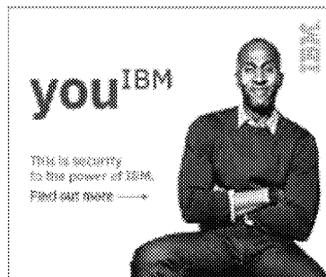


Karl Flinders  
Emea Content Editor, Computer Weekly

28 Mar 2017 11:51

Group legal action against Post Office relates to allegedly faulty Horizon computer system



The High Court has approved the group litigation order (GLO) brought against the Post Office by sub-postmasters who allege they have been wrongly punished for computer errors. About 1,000 people have now applied to take part in the action.

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In January, a High Court judge granted the GLO, which has now been approved by the president of the Queen's Bench Division of the High Court.

In 2009, Computer Weekly revealed the stories of sub-postmasters who had received heavy fines and even jail terms for alleged false accounting, which they blamed on the Horizon operating system and its supporting processes.

The action, instigated by the Justice For Sub-postmasters Alliance (JFSA) campaign group, has attracted about 1,000 sub-postmasters who want to join the action. Not all will do so, but there will be an increase on the 198 sub-postmasters currently involved.

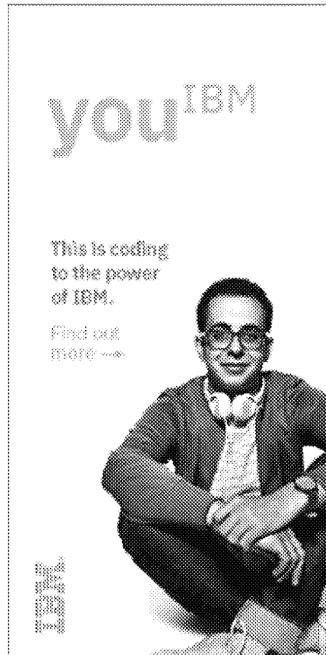
The action focuses on the true nature of the contract between the sub-postmasters and the Post Office in terms of the Horizon system, and the way in which the Post Office has dealt with alleged shortfalls.

Alan Bates of the JFSA said: "As well as a court finding of responsibility, the claimant group will be seeking appropriate financial compensation in respect of loss and damage suffered."

The Post Office denies the claims, and when the GLO was granted in January, it said it "welcomed the progress made" but said it will not otherwise comment on live litigation.

Sub-postmasters have until 26 July to join the action before the cut-off that prevents new claimants joining the claim.

The claim also seeks to establish whether sub-postmasters were put under duress by the Post Office when they signed off incorrect accounts or when they resigned, said Bates. "We are looking to establish that the Post Office acted unconscionably, in other words harshly, oppressively or beyond what would be considered normal commercial bargaining," he said.



"If that was the case, we will seek to establish whether this has a bearing on either the signing of the accounts or forced resignations."



Bates added: "There are concerns that individuals may have been unlawfully harassed and also whether the Post Office can be held liable for damages in terms of the stigma created around the affected sub-postmasters, for their loss of reputation and the stress caused as a result of these serious breaches of legal obligations."

Separately, the Criminal Cases Review Commission is also reviewing prosecutions of sub-postmasters for account shortfalls and is looking at 30 claims of wrongful prosecution.

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### Post Office Horizon: Timeline of events

- **May 2009:** Bankruptcy, prosecution and disrupted livelihoods – postmasters tell their story.
- **September 2009:** Postmasters form action group after accounts shortfall.
- **November 2009:** Post Office theft case deferred over IT questions.
- **February 2011:** Post Office faces legal action over alleged accounting system failures.
- **October 2011:** 85 sub-postmasters seek legal support in claims against Post Office computer system.
- **June 2012:** Post Office launches external review of system at centre of legal disputes.
- **January 2013:** Post Office admits that Horizon system needs more investigation.
- **January 2013:** Post Office announces amnesty for Horizon evidence.
- **January 2013:** Post Office wants to get to bottom of IT system allegations.
- **June 2013:** Investigation into Post Office accounting system to drill down on strongest cases.
- **July 2013:** Post Office Horizon system investigation reveals concerns.
- **October 2013:** End in sight for sub-postmaster claims against Post Office's Horizon accounting system.
- **October 2013:** Former Lord Justice of Appeal Hooper joins Post Office Horizon investigation.



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1 September 2017

**Third Letter**

For the Attention of Mr J Hartley  
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Our ref:  
AP6/AP6/364065.1369  
Your ref:  
JXH/1684/2113618/1 /KL

Dear Sirs

**The Post Office Group Litigation**  
Claim Numbers: HQ16X01238 and HQ17X02637  
Schedules of Information

- 1.1 We write to express our serious concerns about the Schedules of Information (**SOIs**) you provided on 20 June 2017 and to seek your cooperation in dealing with the problems they are creating.
- 1.2 The purpose of the SOIs was to provide our client, your clients and the Court with a sufficient understanding of the nature and features of the claims being brought against our client to enable effective decisions to be made regarding the management of those claims. The SOIs so far provided do not achieve this purpose and we fear that this will also be true of the remaining SOIs due to be served by 6 September 2017.
- 1.3 The SOIs provided so far raise many difficulties, including:
  - 1.3.1 A number of them are contradictory, in the sense that they assert claims / give details which are inconsistent with other claims / details in the same SOI, or which are inconsistent with the claims / details alleged in your clients' Amended Generic Particulars of Claim (**Amended GPOC**).
  - 1.3.2 Imprecise and/or evasive language is used which makes it very difficult and in some cases impossible to make sense of what is being claimed.
  - 1.3.3 In response to many questions in the SOIs, no relevant details are provided at all and, insofar as any details are provided, they are often provided with such brevity that they are of little or no help in understanding the essential features of the claims asserted.

In this regard, we note that 88 of the original 198 Claimants participated in the mediation scheme and have therefore had professional advice, a Post Office investigation report and a Second Sight report on their cases. But even in their SOIs, the details provided are grossly inadequate. Post Office is therefore left not knowing whether these Claimants are asserting the claims they raised in the mediation scheme or different claims raising different issues.

1.3.4 In many cases, inadequate or no information has been provided on critical issues such as false accounting, deceit, concealment, harassment, duress or unconscionable dealing. This is despite the Amended GPOC relying heavily on the concept that Post Office behaved oppressively; a theme that runs through all your correspondence with this firm.

1.3.5 It was intended that the SOIs would provide Post Office with a fair indication of the value of most of the Claimants' claims and thus a fair idea of the total value of their claims. From the SOIs provided, it is not possible to ascertain even approximate claim values.

1.4 We infer from these problems that the SOIs may have been produced with little or no input from, or even review by, your firm. Whether this is the case or not, they are inexcusable. The SOIs are not a mere formality but are important documents and we cannot see how they assist the Court when they are produced in an evasive, imprecise or inconsistent way. By paragraphs 26 and 27 of the GLO, each Claimant was required to submit an SOI which clearly answered the questions asked, provided the details specified in Schedule 3 to the GLO and to confirm their answers and details by a signed Statement of Truth. The primary objective of these requirements was to make it possible for everyone to understand the nature of the claims being brought, the essential features of those claims and the amounts being claimed.

1.5 The expectation was that, armed with this understanding, the parties and the Court should be able to organise the claims into classes which can reliably be said to have sufficient similarities that they can be managed together (e.g. by identifying lead Claimants whose claims are representative of a relevant class and/or by identifying common issues raised by such claims which can be disposed of). Further, they should enable the parties and the Court to determine what directions or procedures would be appropriate for particular claims or issues, having regard to the amounts which turn on those claims or issues (i.e. the total quantum of the claims which depend on a particular sort of claim or issue being decided in the relevant Claimants' favour).

1.6 With the SOIs so far produced, neither of these things is possible. To its consternation, Post Office cannot even assess the broad scale of the amounts claimed by the original Claimants. Nor can it categorise the Claimants into groups. This will hamper both parties' and the Court's effort in making effective, proportionate case management decisions.

1.7 In order to illustrate these points, we set out below some examples of the problems we have encountered with the SOIs provided, addressed in the order in which the relevant requirements are imposed in Schedule 3 to the GLO rather than in order of importance. We emphasise that they are just examples.

**2. Question 1.3**

2.1 Each Claimant was required to provide details of each branch associated with their claims. For a number of Claimants the details provided are not consistent with the Group Register. For example, the SOI of Carol Bains (13) confirms that she is the postmistress at 66-68 Whinney Lane however, the Group Register additionally includes details of her appointment at the Featherstone Post Office between October 2012 and November 2016. Post Office therefore does not know whether Carol Bains is bringing claims against Post Office in relation to one or two branches.

2.2 A similar issue can also be seen in the SOIs of David John Gilbert (63) and Momonah Khan (98).

2.3 This issue will create a problem when it comes to disclosure as Post Office's records are in part organised by branch and therefore unless Post Office knows which branches are affected and during which periods, disclosure cannot be given.

2.4 The Group Register and SOI must be consistent with each other. This requires either an amendment to the Group Register or to the SOIs.

**3. Question 1.5**

3.1 Question 1.5 required the Claimants to identify the contracts on which their claims were based. For the majority of the Claimants, the SOIs are qualified by the wording "*pending access to any contractual document and records that Post Office may hold...*". However, back in April 2017, Post Office disclosed contractual documents for 140 of the original 198 Claimants (it has not located documents for the other 58). Wording of this sort is wholly inappropriate for Claimants whose contractual documents have been disclosed.

3.2 Further, the contractual documents which Post Office has disclosed do not appear to have been taken into account in the preparation of the SOIs. By way of example:

3.2.1 Paula Gorman (64) recalls in her SOI signing an Acknowledgment of Appointment on 2 March 2011 and Conditions of Appointment on 31 January 2011. In addition to these, Post Office also disclosed Ms Gorman's termination request letter and Mains Agreement which were signed on 28 February 2013. No mention of Ms Gorman being engaged by Post Office on a Mains Agreement is made in her SOI.

3.2.2 Post Office disclosed the following in relation to Sally Grahams (67):

- (a) A signed Acknowledgement of Appointment showing she was engaged on the Subpostmaster Contract dated 28 May 2010.
- (b) A termination letter dated 12 February 2013.
- (c) A Mains Agreement dated 12 February 2013.

Despite being provided with her contractual documents her SOI states "*I commenced in 2010 but do not recall signing any contractual documents prior to or at that time. I believe I entered into a Franchise Agreement on or around 13 March 2013...*".

3.3 These answers are worrying. You have sent many letters demanding early disclosure from our client, and in response our client has gone to significant trouble and expense in disclosing relevant documents. The contractual documents were disclosed 10 weeks before the SOIs were served. However, it appears that, when compiling the SOIs, neither you nor your clients even looked at them.

**4. Questions 1.7 & 1.8**

4.1 Question 1.7 required the Claimants to state the end date of their engagements. As you know, this could have an important bearing on limitation, a significant issue in this case. However, some Claimants have not specified dates, either sufficiently or at all.

4.2 For example, Dr Saifudin Kutianawala (106) does not state a date on which his appointment at the Ardwick Branch ended and, while Damian Peter Owen (128) states that his contract was terminated in "*August 2010*", his claim may or may not be time-barred depending on whether this termination was on or after 3 August 2010, 6 years before his claim was deemed issued (as per the Consent Order dated 14 February 2017).

4.3 Further, we note that Claimants Aslam Ramtoola (144), Michael Rudkin (156) and Rachell Anne Williams (193) state at section 1.7 that their engagement with Post Office has been terminated, yet also state at question 1.8 that they are currently employed / engaged by Post Office. This is further evidence of a lack of care in preparing the SOIs.

**5. Questions 2.2 & 2.3**

5.1 These questions were designed to draw out the aspects of the training provided by Post Office about which a complaint is made. The Claimants were required to provide the date and brief details of the training which was either inadequate or inappropriate. Three problems have been encountered with the SOIs so far provided.

5.2 First, in the majority of the SOIs, a date for the relevant training has not been provided. Although we appreciate that Claimants who were engaged with Post Office a long time ago may not be able to provide exact dates, we would expect even these Claimants to have indicated an approximate period.

5.3 Second, many of the SOIs are lacking any information on the aspects of Post Office's training alleged to be inadequate. They simply refer in general terms to the training provided. However, these sections required the Claimants to identify the training that was inadequate. To assert these claims the Claimants must know and be able to articulate what was inadequate. We note that your clients will have first-hand knowledge of the training which was provided to them and the areas on which they felt that the training was inadequate. Therefore, this is not an area dependent on disclosure from Post Office. Although several Claimants mention that the training was inadequate, they do not say how it was inadequate.

5.4 Post Office is therefore left not knowing which elements of the training were inadequate or how this affected the relevant Claimant's ability to operate a branch or follow Post Office procedures. Examples of this problem can be found in the SOIs of Claimants Marion Drydale (55), Kamaleswaren Kunabalasingam (105) and Mohammad Sabir (157).

5.5 Third, some Claimants have asserted a claim for training in section 7.1(i) but have stated in sections 2.2 and 2.3 that they felt adequately trained. For example:

5.5.1 Bashir Choglay (43) asserts a claim for inadequate training but states "*I felt the training was intense because there was a lot of information to absorb but I managed*".

5.5.2 Megan Robinson (155) asserts a claim for inadequate training but states "*I felt that after the training, I was competent and understood how to operate [Horizon]*."

5.6 Again, these contradictory answers reflect a lack of care in preparing the SOIs. Post Office is left not knowing what is actually being asserted in relation to training, or even whether a claim is being asserted at all.

**6. Question 2.4**

6.1 Question 2.4 was intended to provide Post Office with information regarding the interactions which the Claimants had with the helpline, including the date and brief details of any advice given that is alleged to be inadequate or inappropriate. We note that your clients will have first-hand knowledge of advice that was provided to them and therefore this is not an area dependent on disclosure from Post Office.

6.2 The majority of the Claimants' SOIs do not provide the dates on which they allege inadequate / inappropriate advice was given. They also appear to treat the advice provided by the helpline as having been given throughout the entirety of a Claimant's engagement rather than on particular occasions and in relation to particular matters, as would have been the case. This is a critical omission as without this information Post Office cannot ascertain when the Claimant is claiming that deficient advice is alleged to have been given by helpline staff, or how the advice is said to be deficient. Therefore, Post Office cannot understand the case it is being asked to meet.

6.3 Further, when some details are provided they are often vague, with many of the Claimants stating that the helpline staff were either unhelpful or were of not much use, but no further details of the specific advice provided (or not) have been given or details of the matter in relation to which advice was sought.

6.4 Based on the Amended GPOC, we had expected that a portion – for all we know a large portion – of the deceit claims asserted by the Claimants relate to advice allegedly given by the helpline. But neither we nor our client have any way of knowing whether this is the case or not. We had expected that we would be able to identify the statements or advice provided by Post Office that was alleged to be wrong and thus understand the areas that might be subject to allegations of deceit. However, the SOIs so far provided give few clues as to the basis of any of the Claimants'

allegations of deceit. They therefore do not assist Post Office to understand the case it is being asked to meet or enable the parties to identify common issues.

7. **Question 3.1(d)**

7.1 Question 3.1(d) requires each Claimant to confirm how they accounted for each shortfall (in their branch) of which they raise a complaint. The purpose of this requirement was to draw from the Claimants whether they had signed off accounts which included the shortfalls whose existence they are now seeking to dispute. As can be seen from the Amended GPOC and the Generic Defence, this is a central issue in this case. For example, it is a major focus of the Claimants' economic duress claim (as Senior Master Fontaine noted, see paragraph 1440 of the GLO hearing transcript).

7.2 In many of the SOIs, the answers provided do not achieve this purpose. Nor are they consistent. For example:

- 7.2.1 The SOI for Amir Khan (97) explains that he settled centrally two shortfalls in August 2007 and November 2007, however his response to (d) is "*I did not know about the shortfall until was demanded of me*". This answer is confusing, in that he claims to have settled the shortfalls centrally which means he must have signed off the branch accounts including the shortfalls as they could not have been settled centrally otherwise.
- 7.2.2 The SOI for Peter Holloway (74) explains that there was a shortfall of £2,548.09 on 12 November 2007 and that deductions were taken from his "salary" for this sum. In response to (d) Mr Holloway states "*I received a letter dated 12 November 2007 stating that I had an outstanding debt of £2548.09. It did not explain how the loss was incurred. As stated above I repaid this sum.*" His response does not indicate the treatment of the shortfall in the branch accounts as required. We infer from the fact that it was deducted from his remuneration that the shortfall would have been included in the accounts he signed off. But as he does not say so, we cannot be sure that this is his case.
- 7.2.3 The SOI for Scott Darlington (51) explains that "Shortfall 4" had risen incrementally over the months since September 2008. In response to (d), Mr Darlington states "*I was suspended on the day of the audit and therefore did not carry out the accounts*". Mr Darlington has not indicated how he treated the shortfalls which arose between September 2008 and February 2009 (the date of his suspension). We note that Mr Darlington pleaded guilty to criminal charges of false accounting.

7.3 Putting it at its lowest, there appears to be a reluctance on the part of your clients to state important matters that they are required to state and that are relevant to their own pleaded case. We note that only 19 Claimants indicate that they submitted incorrect accounts to Post Office despite there being 29 Claimants who have previously pleaded guilty to false accounting.

7.4 In some cases, Post Office may not have visibility of shortfalls that have arisen. This would occur where postmasters make a shortfall good prior to submitting their accounts or where they submit inaccurate accounts. Quite apart from anything else, the brief details required by section 3.1(d) require the Claimants to state whether they have made good the shortfall without declaring it to Post Office; whether the shortfall was declared and settled centrally / made good; or whether inaccurate accounts were submitted (e.g. the Claimant approved or signed off accounts that were not, on their face, consistent with the stock and cash held by in their branch).

7.5 The fact of whether a Claimant has submitted accounts which include shortfalls that they are now arguing are either "not real" or did not exist is a critical issue in this case. Whether they have done so is entirely within their own knowledge and no disclosure or information is needed from Post Office on this point; Post Office having relied on the accounts submitted by the Claimants. Your clients are required to state the position, confirmed by a Statement Truth. There can be no excuse for their refusal to do so.

**8. Question 4.2**

- 8.1 The Claimants' responses to question 4.2 should confirm with a "yes/no" whether there was an investigation undertaken by Post Office and, if yes, then the Claimants are required to give the date and brief details of any investigations in relation to which they raise a complaint.
- 8.2 The majority of the SOIs do not provide a yes/no answer but state that they have not seen any evidence of an adequate investigation. This is not an answer to the question. If a Claimant believes that no investigation was carried out then the response to section 4.2 should simply be "no".
- 8.3 This is key question since if no investigation was carried out by Post Office then it follows that there cannot have been any deceit or misrepresentation made during an investigation for the Claimant to rely upon. Nor could any duress have been applied, harassment have occurred or unconscionable dealing undertaken during the course of an investigation.
- 8.4 If it is the Claimants' case that an investigation gave rise to claims of this nature then details of that investigation (including what was said, by whom, when and in what context) should be provided in the SOI. The Claimants must assert a positive case. Again, these are matters that will be in their own knowledge as they must have experienced these matters in order to sustain claims for deceit, duress, unconscionable dealing and / or harassment.

**9. Question 5.5**

- 9.1 Section 5.5 of the SOI relates to the notice provided by Post Office. It required a simple answer of "yes/no" and, if yes, then a statement of the period of notice given. However, a number of the Claimants have provided either confusing or inconsistent responses, for example:
  - 9.1.1 Michael Rudkin (156) has stated in his SOI that "*I was not given proper notice. I was suspended, then reinstated, then suspended again, at which point I appealed, and I was then terminated.*" This response clearly does not provide the details which were required since it neither provides a yes/no answer nor the period of notice which was given.
  - 9.1.2 Christopher Trousdale (181) states in his SOI that his contract was immediately terminated by Post Office but then continues in section 5.5 to claim that Post Office gave notice.
- 9.2 It would seem that these responses have not been vetted by any lawyer.

**10. Question 5.6**

- 10.1 This question was aimed at Claimants who resigned and asks them to set out (i) whether they resigned under pressure and, if so, (ii) the date and details of that pressure. Although this section applies to a smaller number of Claimants, those Claimants do not give sufficient details to enable any analysis to be undertaken so as to identify any common issues or themes or for Post Office to understand the case it is being asked to meet. For example:
  - 10.1.1 Lawrence Glyn Bailey (7) merely states in his SOI that Post Office said that his reinstatement would be conditional on the payment of the alleged shortfall. No details of how / when this pressure was applied by Post Office or how this would be illegitimate pressure have been provided.
  - 10.1.2 Virendra Bajaj (14) states she resigned due to "*Post Office's failure to deal with the shortfall issues I had been having with Horizon...*". On these facts, no pressure appears to have been applied on the Claimant to resign.
  - 10.1.3 Gary Brown (33) states in his SOI that he was advised by his "*union representative*" to resign since "*it would look better than if I was terminated to potential new employers*". Mr Brown tendered his resignation prior to the final audit at which the shortfalls were

found. No details of the pressure applied by Post Office which led to his resignation have been provided.

10.2 We note again that this information will be within your clients' knowledge and disclosure from Post Office is not required to address this issue.

**11. Question 7.3**

11.1 At question 7.3 (in relation to deceit), a large number of the Claimants have used a scripted response (presumably provided by your firm) of "*Yes, as I was led to believe that I had no alternative but to pay the shortfall!*".

11.2 As we have noted in previous correspondence, claims of deceit can only be advanced where you have instructions to make such a claim and you have material which you reasonably believe shows a case for fraud (see IB (5.7) of the Solicitors' Code of Conduct). The SOIs are also verified by Statements of Truth. We are therefore concerned by the use of a stock answer to this most important of questions.

11.3 Our concern is increased by the fact that the essential factual allegation on which the deceit claims are based (allegations that your firm was required to establish for each Claimant before asserting a claim for deceit in an SOI) do not appear to be set out elsewhere in the SOIs as we have explained above. This is important as without this information Post Office is unable to meet the claim which is being brought against it and such claims may be vulnerable to strike out.

**12. Section 8 – Inadequate quantum information**

12.1 Senior Master Fontaine intended that Section 8 of the SOIs would provide Post Office with a clear indication of the value of most of the Claimants' claims and thus a fair idea of the total value of their claims. This is clearly shown in the transcript from the GLO hearing.

1667. **Mr de Garr Robinson QC:** *Well it would be helpful, it does occur to me that it would be helpful if each form should in one small section the figure which can be added up to produce the total claim, if it's just, if my learned friend is simply saying it's a bit duplicative it won't cost any money to put it in twice.*

1668. **Senior Master Fontaine:** *So in other words it's in the quantum section.*

1669. **Mr de Garr Robinson QC:** Yes.

1670. **Senior Master Fontaine:** *Alright. Yes.*

1671. **Mr Green QC:** *But we've already got the amount provided for in 8.1.*

1672. **Senior Master Fontaine:** *We don't need to put the date in, just put the amounts which you can just duplicate ...*

12.2 Whilst the Senior Master did not require values to be given for stigma / reputational damage, personal injury, bankruptcy / insolvency losses and prosecution losses, she did require values for every other head of claim. However, in the SOIs provided, most of the Claimants have not given indications of value even where they were required to do so. Consequently, it is not possible to assess the overall value of most of the claims being brought or to estimate the likely total value of the claims brought. It is also not possible to judge the value of dealing with any particular issue in this case, nor is it possible to judge the proportionality of any particular case management step.

12.3 In 6 cases, the Claimants have not stated any values at all (Reviti Bhanote (21), Shamsudin Pyarali Govani (66), Steve Bryan Phillips (141), Christopher Sharples (163), Brian Skirrow (170), and Sally Mary Kathleen Stringer (173)). But even where figures are mentioned, these are not sufficient to enable an estimate to be made as to the value of any claim. It would appear that most of the Claimants have not even attempted to make such an estimate, even though they

were required to do so. To illustrate these points, we enclose in Schedule 1 of this letter representative extracts of responses provided to the quantum questions.

- 12.4 Further, as addressed at paragraph 167 of Post Office's Generic Defence, the losses claimed in the SOIs provided to date fail to specify the breaches of contract or other legal wrongs on Post Office's part from which the loss and damage resulted and/or consider matters of mitigation or remoteness.
- 12.5 Post Office has been asking you to provide quantification of the Claimants' claims since its Letter of Response on 28 July 2016 and subsequently in (but not limited to) our letters of 31 August 2016, 13 October 2016 (paragraph 8.15), 17 November 2016 (paragraph 8.6) and 30 November 2016 (paragraph 1.3.3).
- 12.6 In addition to this general concern, we address below specific quantification sections which have been inadequately responded to.

**13. Question 8.4**

- 13.1 In paragraph 132 of their Amended GPOC, the Claimants allege that "*Claimants who were ... terminated without notice have lost the income they would have received during the ... notice period*". In paragraph 71, they also allege that they were entitled to a 12 month notice period. On this basis, Post Office's understanding of the Claimants' case was that Post Office should have provided each Claimant with a minimum of 12 months' notice.
- 13.2 Despite this, a number of the Claimants have set out losses based on either 3, 6 or 12 month notice periods (for example, see the SOI for Kamajiit Kooner (103)). The claims asserted in the SOIs are therefore inconsistent with the Amended GPOC. This therefore either requires a further amendment to the Amended GPOC or to the SOIs; the two elements must be aligned.

**14. Question 8.5**

- 14.1 Section 8.5 has been inconsistently addressed by different Claimants, who each appear to be claiming different types of loss of earnings.
- 14.2 First, some Claimants appear to be claiming loss of Post Office remuneration after their notice period ended (ie. in addition to any claim under section 8.4) but this head of claim is not referenced in the Amended GPOC. The only sections of the Amended GPOC that we can see that might relate to this type of claim are:
  - 14.2.1 Paragraph 131 which refers to "*reduced profit to linked retail premises*". This however relates to earnings in a related retail business, not remuneration paid by Post Office.
  - 14.2.2 Paragraph 135 which refers to "*prejudice to future employment*" as a consequence of stigma / reputation damage. This loss would be picked up in question 8.6 of the SOI, so we do not believe that this is relevant to question 8.5.
- 14.3 We cannot therefore see any part of the Amended GPOC that sets out a legal basis for claiming loss of Post Office remuneration beyond the end of a notice period but nevertheless this type of claim is advanced in the SOIs (for example, see the SOIs for Lesley Abbott (2), Mohammed Zubair Amir (6) and Marion Drydale (55)).
- 14.4 Secondly, we note that other Claimants are claiming loss of income from associated retail businesses and/or from other general loss of earnings through being unable to work. However, it is not clear whether these claims are for lost revenue or profit or something else.
- 14.5 Thirdly, many Claimants are seeking to claim losses up to retirement, though different retirement ages are used throughout the SOIs.
- 14.6 Fourthly, there is also in some cases clear duplication or inconsistency between the claims for loss of earnings under question 8.5 and the claims for loss of capital investment covered under

question 8.2. This is despite question 8.5 expressly stating that the questions are linked and there should not be duplicate claims. For example, Francis Maye (114) states that he sold his business and claims a £45,000 capital loss whilst simultaneously claiming he would have continued to work for another 10 years and so claims £325,000 in lost earnings.

14.7 This section again reflects the general lack of care used in preparing the SOIs, the clear need for legal assistance in preparing this type of document and a failure to comply with the GLO. It also highlights inconsistencies in the calculation of losses between the Amended GPOC and SOIs. The lack of a consistent approach means that Post Office cannot extract common themes and issues.

**15. Question 8.7**

15.1 We are surprised by the high proportion of Claimants who have claimed personal injury (at least 65% of the 198 Claimants). However, on reviewing the details of their claims, we see that many of the Claimants appear to be alleging distress and anxiety rather than a recognised psychiatric condition. As such, these Claimants have not passed the threshold for bringing a personal injury claim.

15.2 The SOIs are verified by Statements of Truth. The Claimants should therefore only be asserting personal injury claims where they have genuinely suffered an injury and as their lawyers it is your duty to advise them on what amounts to a recoverable personal injury. Again, the number of claims for personal injury suggests a lack of involvement from your firm in the preparation of the SOIs.

15.3 Please ensure that the personal injury claims are limited to real cases of recognised psychiatric harm or physical injury. We note that in personal injury cases the Civil Procedure Rules require medical reports to be annexed to pleadings and our client reserves the right to call for such reports at an early stage in the litigation process.

**16. Action required**

16.1 The purpose of the SOIs was to allow the parties and the Court to identify Claimants who would fall within distinct categories and enable case management decisions to be made in respect of these. For this purpose, clear and accurate information and a consistent approach is required from all the Claimants. However, the details given by the majority of the Claimants are insufficient to allow us and the Court to understand the basic details of the claims brought against Post Office.

16.2 To obtain a proper coherent and consistent approach in all of the SOIs was always going to require legal assistance and, as far as we were aware, the GLO hearing proceeded on the basis that this would be provided by your firm. However, the SOIs do not seem to have been prepared on this basis, which is preventing analysis of the claims and is requiring our client to incur additional costs in trying (and in many cases failing) to understand the claims it is facing.

16.3 We are writing now to draw your attention to the most serious deficiencies and to ask that you ensure that that next round of SOIs avoid these problems and are consistent, coherent and compliant with the GLO.

16.4 The first tranche of SOIs also need to be corrected. We recognise that this will require some time and invite your proposals as to how and by when this could be done.

Yours faithfully

*Bond Dickinson LLP*

**Bond Dickinson LLP**

<b>Question 8.1 Repayment of alleged shortfalls (Yes/No and amount)</b>	<b>Jennifer O'Dell (claimant 124)</b>	<b>Shamsudin Govani (claimant 66)</b>	<b>John Robert Moir (claimant 120)</b>
	<i>I cannot estimate how much I repaid to make good alleged shortfalls</i>	Yes	Yes, Post Office have a charge over my house to cover the alleged shortfalls
<b>Question 8.2 Loss of investment (Yes/No, and approximate value, subject to expert evidence)</b>	<b>Jennifer O'Dell (claimant 124)</b>	<b>David Carney (claimant 39)</b>	<b>Margery Williams (claimant 194)</b>
	<i>...I do not consider this to be an accurate reflection of my true investment loss as I anticipated running the Post Office for many years and I believe that my loss is higher than this.</i>	Yes, as I would have retained the value of the business had Post Office not acted as they did	Yes, I have lost value of the business. I am unable to quantify without expert valuation evidence. However, I recall that I paid £5k when took retail shop over.
<b>Question 8.3 Loss of earnings during suspension (approximate value and brief details)</b>	<b>Shamsudin Govani (claimant 66)</b>	<b>Francis Maye (claimant 114)</b>	<b>Margery Williams (claimant 194)</b>
	Yes	<i>I was not paid any sums that would have been due to me during my period of suspension.</i>	Yes, to be quantified.
<b>Question 8.4 Loss of earnings for failure to give notice (approximate value)</b>	<b>Stanley Fell (claimant 59)</b>	<b>Joanne Foulger (claimant 60)</b>	<b>Margery Williams (claimant 194)</b>
	Yes	Yes	Yes, to be quantified.
<b>Question 8.5 Loss of earnings post termination (period claimed and approximate value) [If not already dealt with at 8.2 above]</b>	<b>Alan Riddell (claimant 152)</b>	<b>Joanne Foulger (claimant 60)</b>	<b>Peter Holloway (claimant 74)</b>
	<i>We were planning to retire at 55 and make a healthy profit out of the branch. However, because of the shortages we had to use all of our insurance and pension pots, so we were left with no money to retire on.</i>	Yes	Yes — substantial damages claim to be assessed: <i>(a) Had I not been terminated it was my intention to remain in the branch for another 6 years as this is when the loan would have been paid off.</i>

IN THE HIGH COURT OF JUSTICE

Claim No. HQ16XO1238

QUEEN'S BENCH DIVISION

THE POST OFFICE GROUP LITIGATION

**BETWEEN:**

**ALAN BATES & OTHERS**

Claimants

**- and -**

**POST OFFICE LIMITED**

Defendant

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**SCHEDULE OF INFORMATION**

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1.	Claimant & Branch Details	
1.1.	Name	Mr Peter John Holloway
1.2.	Home address	<b>GRO</b>
1.3.	Branch address	<b>Branch 1:</b> Wareham Post Office, North Street, Wareham, Dorset BH20 4AW <b>Branch 2:</b> Swanage, King Street Swanage
1.4.	Subpostmaster (Yes / No, if No give details, e.g. Crown Office Employee, guarantor of Franchisee)	<b>Branch 1:</b> Subpostmaster <b>Branch 2:</b> Temporary Subpostmaster
1.5.	Date and form of any contract entered into with Post Office	Pending access to any contractual documents and records that Post Office may hold, my recollections are as follows:  I believe that on 12 <sup>th</sup> September 2001 I signed a 1 page "Acknowledgement of Appointment" form.  Prior to taking over the Wareham Post Office, I had previously been a Subpostmaster at the

		<p>Steeple Aston branch for around 3 years.</p> <p>On 12 September 2001, the day before I was due to take over the Wareham branch, I had to attend the branch to witness the audit of the final accounts and to be handed control of the branch. Before handing over control of the branch, the audit provided me with a copy of a Contract and stated that I had to sign it before they would give me control of the branch. As I needed to open the following day, I simply had to sign the document without being able to read and consider it.</p> <p>Whilst I am unable to confirm the exact date, following the termination of contract of the Subpostmaster at the branch in Swanage, the Post Office asked if I would take over the branch as a temporary Subpostmaster. I had a sign a Modified Subpostmaster Contract.</p>
1.6.	Start date of appointment/engagement	<p>Wareham: 12 September 2001</p> <p>Swanage: Around Jan 2005</p>
1.7.	End date of appointment/engagement	<p>Wareham: 7 April 2009</p> <p>Swanage: Around June 2006</p>
1.8.	Currently employed / engaged? (Yes/No)	No
1.9.	Lived in linked residential premises? (Yes/No)	No
1.10.	Employed assistants? (Yes/No, and if yes identify number as at date of termination of appointment)	<p>Yes</p> <p>4</p>
1.11.	Operated a retail business from same premises (Yes/No)	Wareham Post Office had a small retail section.

2.	Training and Support	
2.1.	Received initial training from Defendant re: Horizon when introduced in 1999/2000 (Yes/No)	<p>Pending access to any training records that Post Office may hold, my recollections are as follows:</p> <p>Yes I did the initial training whilst Postmaster at Steeple Aston.</p>
2.2.	Received initial training from Defendant re: Horizon when took up position? (Yes/No, and if yes give date and brief details of any training said to have been inadequate or inappropriate)	I received one days training on Motor Vehicle Licences at the Post Office Area Office
2.3.	Received any further training from Defendant re: Horizon? (Yes/No, and if yes give date and brief details of any training said to have been inadequate or inappropriate)	<p>Yes</p> <p>When we took over Warham we received further training in branch whilst it was open to the public. This was not specific to Horizon, but more on running the bigger branch that had many more services offered, bigger turnover and more till positions.</p> <p>The trainers seemed more interest in drinking coffee and chatting amongst themselves outside the secured area, as it came at a time when their training unit was being re-organised.</p> <p>When the trainers were with me at Wareham their Line Manager arrived, and held a meeting for a couple of hours, in the secure area of my office, regarding the PO's pending restructure of the training section. That was also their main topic of conversation for much of the time they were with me.</p> <p>One of the male trainers seemed more interested in the young lady customers than training me commenting on them and what they were wearing on many occasions. All my staff noticed and commented on this.</p> <p>I was actually taught more by the existing members of staff than I was by any of the trainers provided by the Post Office.</p>
2.4.	Contacted Helpline to seek advice re:	Pending access to any helpline call logs that

	<p>Horizon and/or alleged shortfalls? (Yes/No, and if yes give approximate date and brief details of any advice and responses said to have been inadequate or inappropriate)</p>	<p>Post Office may hold, my recollections are as follows:</p> <p>Yes I would contact the helpline 2-3 times per month following the introduction of swipe cards.</p> <p>Initially, once we became more experienced after a short while we contacted the helpline infrequently. We generally found them unhelpful. Generally, any shortfall was small and most of the time we could sort the problem and take corrective action without their support as we had a paper audit trail.</p> <p>It was only after the introduction of swipe cards with the amended software and paperless transactions when we started to have problems.</p> <p>This left me with no audit trial to establish transaction errors and reasons for shortages. It was also after this modification to the software that stock errors started to appear.</p> <p>I cannot provide dates or accurate frequency as the Telephone log I kept was removed from the office by unknown persons after my suspension from the office. Staff were unaware of what happened to it as they were aware of it and would normally use it in my absence.</p> <p>The advice was usually unhelpful, telling me to check things that I had already checked, telling me it was my responsibility to make good any losses.</p> <p>They usually refused to investigate any issues I had and on the rare occasions they did their efforts were half hearted and never produced any positive results.</p> <p>They would often claim the shortages were probably due to theft by staff and they would regularly claim that we were the only office having a problem so it must be something we are doing or not doing.</p> <p>I once contacted the helpline in relation to a £2000 loss that had been incurred by the branch. I identified a transaction where a</p>
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		<p>member of my staff may have made a mistake in relation to a National Savings transaction. As the receipt did not contain customer information, I contacted the helpline to inform them of the error and to ask if they could contact National Savings to see if they could trace the customer, to allow us to contact them to confirm the error. The helpline simply stated that this was not possible and there was nothing that they could do.</p> <p>There were also an occasion where on carrying out a cash rem, £20,000 of money was transferred out correctly but this was lost by Horizon. No help was provided by the helpline. Horizon also appeared to misplace stock transfers between tills on occasions. Again when you contacted the helpline, they simply advise that their was nothing they could do.</p>
3.	<b>Apparent or Alleged Shortfalls</b>	
3.1.	<p>For each apparent or alleged shortfall attributed by the Defendant to the Claimant and in relation to which complaint is made, specify:</p> <ul style="list-style-type: none"> <li>(a) Amount(s):</li> <li>(b) Date(s):</li> <li>(c) Paid by the Claimant to the Defendant? (Yes/No, and dates of payment).</li> <li>(d) How did the Claimant treat the above amounts in the accounts and why?</li> </ul>	<p>Pending access to full transaction and account records from Horizon, I am only able to give approximate figures:</p> <p><b>Shortfall 1:</b> (a) £2548.09</p> <p>(b) 12 November 2007 stating that I had an outstanding debt of £2548.09. It did not explain how the loss was incurred.</p> <p>(c) Yes the sum was deducted my salary by 1 payment of £637.09 and 3 payments of £637.</p> <p>(d) I received a letter dated 12 November 2007 stating that I had an outstanding debt of £2548.09. It did not explain how the loss was incurred. As stated above I repaid this sum.</p> <p><b>Shortfall 2:</b> (a) Around £1000</p>

	<p>(b) December 2007</p> <p>(c) Yes</p> <p>(d) I received a further letter following a discrepancy after remitting accumulation of special stamps and philatelic items, which showed a serious shortfall in stock. Despite checking the transactions, no errors were found and I had to pay around £1000.</p> <p><b>Shortfall 3:</b> (a) £24,625.16 plus the sums deducted from my wages between 26 August 2008 to 18 March 2009.</p> <p>(b) 26 August 2008 to 18 March 2009.</p> <p>(c) Yes, I am not sure of the dates and the amounts that were deducted from my wage. I cannot confirm when exactly I paid the £24,625.16. I did not have that amount of money readily available so I was forced to draw the money out of the lump sum section of my pension fund.</p> <p>(d) From August 2008 to March 2009, I received a total of 13 letters requesting payment or reminders of the requests for payment. The letters never however explained what the discrepancies were or how they may have occurred.</p> <p>I seemed to be having issues at the end of day or monthly balancing. I spoke to the contracts manager and told him that I believed the problems were due to the introduction of paperless banking. He agreed to give me a period to see if the errors would correct themselves and if not the sum would be placed into the suspense account. After a few months had passed and the errors had not corrected themselves, Post Office began to make deductions from my salary as the accrued shortfall had become too large to settle in one payment.</p> <p><b>Shortfall 4:</b> (a) £unknown</p> <p>(b) Various</p> <p>(c) Various</p>
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		<p><b>(d)</b> Once the paperless system came in there were regularly small value shortfalls that I made good with my own cash. These would typically be between £20-£50. No tally was kept of those but over time they amounted to a significant amount.</p>
<b>4.</b>	<b>Audit and Investigation</b>	
4.1.	Did the Defendant conduct one or more audits of the branch prior to termination? (Yes/No, and if yes give date and brief details)	<p>I can vividly remember the audits taking place, however, in relation to specific dates, I will require access to Post Office's audit records. In the meantime, I can give approximate details as follows:</p> <p>Yes, regular unannounced annual Adults dates unknown normally around March/April each year.</p>
4.2.	Was there an investigation carried out by the Defendant relating to alleged shortfalls? (Yes/No, and if yes give date and brief details of any investigation(s) in relation to which the Claimant raises a complaint)	No I have seen no evidence of any adequate investigation.
<b>5.</b>	<b>Suspension and Termination</b>	
5.1.	Was the Claimant suspended for a reason related to alleged shortfalls? (Yes/No, and if yes give date and brief details of any suspensions in relation to which the Claimant raises a complaint)	<p>Yes, On 17 March 2009 due to a shortage in my personal bank account, following the deductions in my monthly wage received and the increase in rent for the branch premises, I noted that I had insufficient funds to pay the staff wages the next day. In order to ensure I could pay the wages, I was going to withdraw money out on credit card at lunchtime.</p> <p>Before I was due to go out, the branch had a problem with the Horizon system and I had to reset all the computers, which took all afternoon. The office closed for business in the evening and I had not been able to get</p>

		<p>out to withdraw cash.</p> <p>I was panicking as I was not making enough to live on and keep the business afloat. Sick with worry and not really thinking straight due to all the pressure I was under, I sold to myself £323 of first class stamps and paid for these with my credit card. I reversed the transaction and was going to return the money to myself in the form of cash. I left the money in the safe overnight with the intention of removing it in the morning.</p> <p>On 18 March 2009 auditors arrived at the branch to carry out an audit. The auditor found that the cash was over. I immediately advised that auditors about the above transaction. I was immediately suspended by the auditor.</p> <p>Following my suspension, I believe the temporary sub postmaster placed in the branch had similar problems with regular significant losses.</p>
5.2.	<p>If the Claimant was suspended:</p> <p>(a) Was the branch closed by the Defendant? (Yes/No, and if yes give date)</p> <p>(b) Was a temporary Subpostmaster appointed by the Defendant? (Yes/No, and if yes give date)</p> <p>(c) Was the Claimant prevented from accessing records within the branch? (Yes/No, and if yes give date and brief details)</p>	<p>(a) Yes 18 March 2009 until a temporary Subpostmaster was appointed.</p> <p>(b) Yes but I am unsure of the date that the temporary Subpostmaster was appointed.</p> <p>(c) I was not allowed into the office or to communicate with the temporary Sub Poster master about Post Office Business.</p>
5.3.	How did the Claimant's appointment end? (Terminated by Defendant / Resigned)	My contract was terminated by Post Office
5.4.	If the Claimant's appointment was terminated by Defendant, was this for a reason related to alleged shortfalls?	Yes, the Post Office stated that I had misused Post Office Funds, failed to keep accounts in the prescribed form and stated

	(Yes/No)  Was that reason stated by Post Office? (Yes/No)	that I had lost control of my branch.
5.5.	Did the Defendant give notice? (Yes/No, and if yes, state period of notice)	No
5.6.	If the Claimant resigned, was this under pressure from Defendant for a reason related to alleged shortfalls (Yes/No, and if yes give date and brief details)?	N/a
5.7.	Did the Defendant prevent or impede sale or transfer of the Claimant's business? (Yes/No, and if yes give date and brief details)	<p>Yes, I had two separate offers of £85,000 from established local business people, which, whilst still below the true value of the business, I accepted due to the position I was in. The Post Office however rejected the applications of the business people for undisclosed reasons.</p> <p>After a protracted period I received an offer an offer of £50,000. The Post Office approved the application. The offer was worth less than 60% of the value of the business. In addition the purchaser didn't want any of the retail stock or equipment on lease agreements, which I had to settle out of the sum I received from the sale of the business.</p>
6.	<b>Civil and Criminal Proceedings</b>	
6.1.	Did the Defendant pursue recovery of any alleged shortfalls by civil proceedings? (Yes/No, and if yes give date and brief details)	No
6.2.	<p>If yes, what was outcome of proceedings? (Settled, Judgment for Claimant, Judgment for Defendant, currently stayed)</p> <p>Please give date and brief details.</p>	N/a

6.3.	Did the Defendant pursue any criminal proceedings against the Claimant? (Yes/No)	No
6.4.	If yes, specify (with dates):  (a) charges (Theft, False Accounting, and any other charges); (b) outcome (guilty after contested trial, acquitted after contested trial, guilty plea, not pursued).	N/a
6.5.	Has any conviction been referred to the Criminal Case Review Commission or is the subject of any appeal? (Yes/No)	N/a
7.	<b>Nature of claims pursued</b>	

*In this section, indicate whether the Claimant relies on generic Particulars of Claim in respect of the types of claim identified (in each case, Yes/No).*

7.1.	Contract, tort & fiduciary duty	Yes
(i)	Training	Yes
(ii)	Support	Yes
(iii)	Availability of transactional information	Yes
(iv)	Execution / reconciling transactions	Yes
(v)	Inappropriate attribution of alleged shortfalls	Yes
(vi)	Demands for payment	Yes
(vii)	Investigation	Yes
(viii)	Suspension	Yes
(ix)	Termination	Yes

(x)	Pressure to resign	No
(xi)	Impeding sale / transfer	Yes
(xii)	Concealment	Yes
(xiii)	Breaches of overarching duties	Yes
7.2.	Harassment	No
7.3.	Deceit	Yes, as I was led to believe that I had no alternative but to pay the shortfalls.
7.4.	Malicious Prosecution	No
7.5.	Unjust Enrichment	Yes
<b>8.</b>	<b>Nature of claims for loss</b>	
8.1.	Repayment of alleged shortfalls (Yes/No and amount)	Yes £28,173.25, plus the sums deducted directly from my wage received between August 2008 and March 2009.  Plus all sums found to be repayable following disclosure and upon investigation by the court.
8.2.	Loss of investment (Yes/No, and approximate value, subject to expert evidence)	Yes – see 5.7 above. Subject to expert evidence, I lost in the region of £64,000 out of the £100,000 capital investment plus interest, in purchasing the goodwill and lease £75,000, the stock of £2000 and completing the required renovations at a cost of £25,000 and having to pay £12,000 to terminate the lease of the copier in the branch as this was not required by the purchaser.
8.3.	Loss of earnings during suspension (approximate value and brief details)	Yes, My gross salary at the time of the suspension was approximately £95,000. I would estimate that my loss of earnings from 18 March 2009 to 7 April 2009 at £8000.

8.4.	Loss of earnings for failure to give notice (approximate value)	I am not sure of the notice period, however my gross monthly wage was just under £8000.
8.5.	Loss of earnings post termination (period claimed and approximate value) [If not already dealt with at 8.2 above]	<p>Yes – substantial damages claim to be assessed:</p> <p>(a) Had I not been terminated it was my intention to remain in the branch for another 6 years as this is when the loan would have been paid off.</p>
8.6.	Stigma and/or reputational damage (Yes/No and brief details)	I was very much involved in the community in Wareham. I was Chairman of the local Chamber of Commerce, a Member of Rotary, holding many offices including twice president. I worked closely with the local council elected members sitting on a number of working groups they set up to improve Wareham as an area and trading center. I belonged to a number of social groups and organisations, all of which I was forced to stand down from. Many of my previous associates ceased any contact or association with me or my wife, believing we had committed fraud or theft. When I managed to get a part time job delivering vegetables a customer of that company refused to deal with me as he considered I was a thief and untrustworthy. He had been a regular customer at the Post Office. When I was Post Master at Wareham, I would walk down a street nearly everyone I passed would acknowledge me, that changed greatly after my suspension.
8.7.	Personal Injury (Yes/No and brief details, subject to expert evidence)	I was under considerable stress during this process until the business was sold and we managed to sell our house in Dorset and relocate to Northumberland where property is much cheaper. This enabled us to buy a property and repay some of the debts incurred through this issue. My wife suffered with <b>GRO</b> which is still being medically treated and has received <b>GRO</b> . Her general health has also deteriorated and

		over the intervening period she has been treated for many conditions.
8.8.	Losses related to bankruptcy/other insolvency procedures (Yes/No and brief details)	No
8.9.	Losses related to prosecution (Yes/No and brief details)	No
8.10.	Any other loss not covered above (identify category and provide, brief details and amount).	<p>£17646 in interest only loan repayments from March 2009 –June 2014 when we sold our home. After I was suspended I had to reduce the payments of the business loan to interest only payments due to our financial situation.</p> <p>After my Termination, we tried to sell our home it was valued at £430,000 by the Estate Agent. We now have a property worth £200,000, the equity of the property was used to pay off debts and the business loan acquired after termination of my contract. I would like to claim the £230,000 difference.</p> <p>Whilst I am unable to provide figures, I regularly had to use credit cards and overdraft facilities to survive, which has amounted to several thousands of pounds in interest and fees.</p> <p>Plus any further losses found to have been suffered following disclosure and expert quantum evidence.</p>

The information provided in this Schedule is true to the best of the Claimant's knowledge and belief on the basis of the information presently available to the Claimant. However, the information is provided prior to disclosure by the Defendant, prior to any expert evidence, and figures provided in relation to loss are approximations only.

I believe that the facts stated in this Schedule are true.

**GRO**

Signed: .....

Date: 10<sup>th</sup> June 2017

Ref: NXA/2114336/1

**IN THE HIGH COURT OF JUSTICE**

**Claim No. HQ16XO1238**

**QUEEN'S BENCH DIVISION**

**THE POST OFFICE GROUP LITIGATION**

**BETWEEN:**

**ALAN BATES & OTHERS**

**Claimants**

**- and -**

**POST OFFICE LIMITED**

**Defendant**

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**SCHEDULE OF INFORMATION**

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1.	<b>Claimant &amp; Branch Details</b>	
1.1.	Name	Mr Shamsudin Pyarali Govani
1.2.	Home address	
1.3.	Branch address	<b>GRO</b>
1.4.	Subpostmaster (Yes / No, if No give details, e.g. Crown Office Employee, guarantor of Franchisee)	Subpostmaster
1.5.	Date and form of any contract entered into with Post Office	Pending access to any contractual documents and records that Post Office may hold, my recollections are as follows:  I believe that on 21 <sup>st</sup> December 1998 I signed a 1 page "Acknowledgement of Appointment" document, which I understand made reference to a Standard Subpostmaster Contract.
1.6.	Start date of appointment/engagement	October 1998
1.7.	End date of appointment/engagement	N/A

1.8.	Currently employed / engaged? (Yes/No)	Yes
1.9.	Lived in linked residential premises? (Yes/No)	Yes
1.10.	Employed assistants? (Yes/No, and if yes identify number as at date of termination of appointment)	Yes – 2 part-time staff currently. Before that there were 4 of us in total working across both the PO and the store.
1.11.	Operated a retail business from same premises (Yes/No)	Yes – mini-market, off-licence, newsagent.
<b>2.</b>	<b>Training and Support</b>	
2.1.	Received initial training from Defendant re: Horizon when introduced in 1999/2000 (Yes/No)	<p>Pending access to any training records that Post Office may hold, my recollections are as follows:</p> <p>In 1998 when I first took the PO I was originally trained by a Mr Harris with the old paper system. I come from a family who have run branches for a number of years including my father who ran The Common Post Office on Staines Road in Twickenham in the 1970s. In those days the balancing took approximately 4-5 hours so when Horizon was first introduced we thought it would be great and would simplify a lot of things.</p> <p>When Horizon was introduced I went to a Hotel for 2-3 days of training with approximately 10 other people who were also Subpostmasters. There were 10 Horizon systems set up and we were shown how to carry out basic transactions. I was fascinated by the system at the beginning but having been used to the old paper system, I quickly realised that I was reliant on feeding the information into the system everyday.</p> <p>I thought the training that I received was okay in terms of how to operate the system but it did not go beyond that and it did not teach you about how it worked.</p>

		With the old paper system if I had a shortfall then I had access to the paperwork in the branch which I could then go back through to work out where the shortfall had occurred. However, with the Horizon system I no longer had this capability as I could not access historical data.
2.2.	Received initial training from Defendant re: Horizon when took up position? (Yes/No, and if yes give date and brief details of any training said to have been inadequate or inappropriate)	N/A
2.3.	Received any further training from Defendant re: Horizon? (Yes/No, and if yes give date and brief details of any training said to have been inadequate or inappropriate)	When the system was actually installed at my branch I recall a lady from the PO coming in for a few days to help out with any issues as they arose.
2.4.	Contacted Helpline to seek advice re: Horizon and/or alleged shortfalls? (Yes/No, and if yes give approximate date and brief details of any advice and responses said to have been inadequate or inappropriate)	Pending access to any helpline call logs that Post Office may hold, my recollections are as follows:  Yes but less than once a month.  On one occasion I spoke with "Sean" about a £1,000 shortfall I had. The assistance from the Helpline was focused on establishing whether I had pressed a wrong button or whether I had pressed withdrawal rather than deposit. It was therefore all about establishing user error and there was never any question or possibility that it was the Horizon system at fault.
3.	<b>Apparent or Alleged Shortfalls</b>	
3.1.	For each apparent or alleged shortfall attributed by the Defendant to the Claimant and in relation to which complaint is made, specify:  (a) Amount(s): (b) Date(s): (c) Paid by the Claimant to the	Pending access to full transaction and account records from Horizon, I am only able to give approximate figures, although I do have a clear recollection of payments having been made by me.

	<p>Defendant? (Yes/No, and dates of payment).</p> <p>(d) How did the Claimant treat the above amounts in the accounts and why?</p>	<p>I would estimate that throughout my position in branch, I paid (or Post Office deducted) in excess of £6,000 over the 17 odd years since Horizon was introduced. This figure is an accumulation of lots of smaller shortfalls with the maximum shortfall I ever incurred in one instance was £1,100.</p>
<b>4.</b>	<b>Audit and Investigation</b>	
4.1.	<p>Did the Defendant conduct one or more audits of the branch prior to termination? (Yes/No, and if yes give date and brief details)</p>	<p>I can vividly remember the audits and/or investigations taking place, however, in relation to specific dates, I will require access to Post Office's audit records. In the meantime, I can give approximate details as follows:</p> <p>Over the years at Lawrence Hill I have had 4/5 audits.</p> <p>One audit was in August 2012. Paul Hammond was my Auditor who I knew from my previous dealings helping out at other branches. He attended with two ladies and I had a perfect audit as I was in the PO's acceptable limits.</p> <p>However, as my audit was being done 2 gentlemen from Grapevine (the PO Security) walked in one of whom was particularly arrogant and very aggressive looking like he was an undercover CID officer.</p> <p>He came over to me and confirmed that he wanted to search my property as the PO was conducting an investigation of me. I took him around my property and asked him what he was looking for. His reply was "we'll tell you when we find it". He then asked me for my bank statements which I remember showing him. I was immediately suspended but I was not told anything about why that was the case. I was then invited to go along with the gentlemen to an interview at Filton Patchway Royal Mail Office which I did on the same day. The interview was awful – I was treated like a criminal with the two gentlemen from Grapevine shouting at me and banging their fists on the desk. I was still completely in the</p>

		<p>dark about what this was about and I eventually said "look if you tell me what this is about I can answer your questions".</p> <p>The jist of the whole thing investigation was that the gentlemen from Grapevine simply could not understand why I had thousands of pounds worth of reversals on my postage.</p> <p>At this point it dawned on me that the PO had got completely the wrong end of the stick and that what they were referring to was the way I transacted with Ebay customers who I had lots of. One lady customer I had in particular spent £1,500 every week in mailing out about 400 parcels.</p> <p>When someone brings in such a large number of parcels it is simply not practical to do the postage there and then otherwise the customer would be stood there in the branch for over an hour and I would not be able to serve any other customers. I therefore would keep the parcels and do the postage later on when the branch was shut. On that basis I did not take the payment from the customer straight away because I could not take money from the customer without providing the service there and then and a receipt. I would therefore pay the postage myself once I completed it that evening and then obtain a reimbursement from the customer whenever they next came into the branch. At no time was the PO out of pocket at all.</p> <p>This process was why reversals were required. I had paid the postage so the system was balanced. When the customer then came into pay they obviously want an official PO receipt so I ring in the postage again, the customer pays the bill and I give them a receipt. However, this means that the postage has been paid twice so to ensure that everything is balanced I then reverse the transaction.</p> <p>As they did not understand the system the gentlemen from Grapevine simply thought that I was pocketing hundreds of thousands of pounds. My suspension was therefore</p>
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		<p>continued whilst Grapevine were apparently investigating and at this stage I involved Mark Baker who was my CW Union representative. Mark is also a Subpostmaster and understood straight away what I explained to him as he knew of other people who did the same thing and there was absolutely nothing wrong with it.</p> <p>Mark was immediately concerned with the approach that the PO had taken with me and that I had been suspended even though there was no shortfall and that they had no warrant to search my property.</p> <p>Mark asked for the recording of my interview only to be told that the PO had lost it. PO eventually reinstated me without any finding of wrongdoing at all but the whole process took about 2 months.</p>
4.2.	Was there an investigation carried out by the Defendant relating to alleged shortfalls? (Yes/No, and if yes give date and brief details of any investigation(s) in relation to which the Claimant raises a complaint)	I have seen no evidence of any adequate investigation and again, the recording of my interview was unfortunately lost by the PO.
5.	<b>Suspension and Termination</b>	
5.1.	Was the Claimant suspended for a reason related to alleged shortfalls? (Yes/No, and if yes give date and brief details of any suspensions in relation to which the Claimant raises a complaint)	No
5.2.	<p>If the Claimant was suspended:</p> <p>(a) Was the branch closed by the Defendant? (Yes/No, and if yes give date)</p> <p>(b) Was a temporary Subpostmaster appointed by the Defendant? (Yes/No, and if yes give date)</p> <p>(c) Was the Claimant prevented from accessing records within the branch? (Yes/No, and if yes give date and brief details)</p>	<p>The PO accepted my Brother-in-Law as a temporary Subpostmaster during my suspension but I received no pay and was not reimbursed when the suspension was lifted so I am still owed that.</p> <p>Whilst I was suspended I was not allowed anywhere near the office and I was not allowed access to any information at all.</p>

5.3.	How did the Claimant's appointment end? (Terminated by Defendant / Resigned)	N/A
5.4.	If the Claimant's appointment was terminated by Defendant, was this for a reason related to alleged shortfalls?	N/A
5.5.	Did the Defendant give notice? (Yes/No, and if yes, state period of notice)	N/A
5.6.	If the Claimant resigned, was this under pressure from Defendant for a reason related to alleged shortfalls (Yes/No, and if yes give date and brief details)?	N/A
5.7.	Did the Defendant prevent or impede sale or transfer of the Claimant's business? (Yes/No, and if yes give date and brief details)	In October 2016 a local PO about a mile away shut down. I therefore became incredibly busy and about 3 months ago I had an interested buyer who was willing to put down a £10,000 deposit and offered me £150,000 for the leasehold. However we then found out that the PO was moving the closed branch to within half a mile of my branch meaning that my business is bound to suffer and my interested buyer understandably got cold feet.
6.	<b>Civil and Criminal Proceedings</b>	
6.1.	Did the Defendant pursue recovery of any alleged shortfalls by civil proceedings? (Yes/No, and if yes give date and brief details)	No
6.2.	If yes, what was the outcome of the proceedings? (Settled, Judgment for Claimant, Judgment for Defendant, currently stayed)  Please give date and brief details.	N/A
6.3.	Did the Defendant pursue any criminal proceedings against the Claimant?	No

GRO

	(Yes/No)	
6.4.	If yes, specify (with dates):  (a) charges (Theft, False Accounting, and any other charges); (b) outcome (guilty after contested trial, acquitted after contested trial, guilty plea, not pursued).	N/A
6.5.	Has any conviction been referred to the Criminal Case Review Commission or is the subject of any appeal? (Yes/No)	N/A
7.	<b>Nature of claims pursued</b>	
<p><i>In this section, indicate whether the Claimant relies on generic Particulars of Claim in respect of the types of claim identified (in each case, Yes/No).</i></p>		
7.1.	Contract, tort & fiduciary duty	
(i)	Training	Yes
(ii)	Support	Yes
(iii)	Availability of transactional information	Yes
(iv)	Execution / reconciling transactions	Yes
(v)	Inappropriate attribution of alleged shortfalls	Yes
(vi)	Demands for payment	No
(vii)	Investigation	Yes
(viii)	Suspension	Yes
(ix)	Termination	No
(x)	Pressure to resign	No

(xi)	Impeding sale / transfer	Yes
(xii)	Concealment	Yes. I spoke to Shaun at PO's transaction centre <b>GRO</b> on 17 April 2017 about a shortfall I had. Even then Shaun said it cannot be anything other than user error.
(xiii)	Breaches of overarching duties	Yes
7.2.	Harassment	No
7.3.	Deceit	Yes, as I was led to believe that I had no alternative but to pay the shortfalls and I believed that a thorough and fair investigation had determined that payment was due.
7.4.	Malicious Prosecution	No
7.5.	Unjust Enrichment	Yes
<b>8.</b>	<b>Nature of claims for loss</b>	
8.1.	Repayment of alleged shortfalls (Yes/No and amount)	Yes
8.2.	Loss of investment (Yes/No, and approximate value, subject to expert evidence)	No
8.3.	Loss of earnings during suspension (approximate value and brief details)	Yes
8.4.	Loss of earnings for failure to give notice (approximate value)	N/A
8.5.	Loss of earnings post termination (period claimed and approximate value) [If not already dealt with at 8.2 above]	N/A
8.6.	Stigma and/or reputational damage	Yes – I was called a liar and a thief by PO

	(Yes/No and brief details)	when they interviewed me and suspended me.
8.7.	Personal Injury (Yes/No and brief details, subject to expert evidence)	Yes – Stress.
8.8.	Losses related to bankruptcy/other insolvency procedures (Yes/No and brief details)	No
8.9.	Losses related to prosecution (Yes/No and brief details)	No
8.10.	Any other loss not covered above (identify category and provide, brief details and amount).	Any further losses found to have been suffered following disclosure and expert quantum evidence.

The information provided in this Schedule is true to the best of the Claimant's knowledge and belief on the basis of the information presently available to the Claimant. However, the information is provided prior to disclosure by the Defendant, prior to any expert evidence, and figures provided in relation to loss are approximations only.

I believe that the facts stated in this Schedule are true.

Sig: **GRO**

Date: 14/06/2017

Ref: DAH/2375/2117812/1

**IN THE HIGH COURT OF JUSTICE**

**Claim No. HQ16XO1238**

**QUEEN'S BENCH DIVISION**

**THE POST OFFICE GROUP LITIGATION**

**BETWEEN:**

**ALAN BATES & OTHERS**

**Claimants**

**- and -**

**POST OFFICE LIMITED**

**Defendant**

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**SCHEDULE OF INFORMATION**

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<b>1. Claimant &amp; Branch Details</b>		
1.1.	Name	Mrs Jennifer O'Dell
1.2.	Home address	<b>GRO</b>
1.3.	Branch address	24 The Highway (288230) Great Staughton St. Neots Cambridgeshire PE195DA
1.4.	Subpostmaster (Yes / No, if No give details, e.g. Crown Office Employee, guarantor of Franchisee)	Yes, Subpostmistress
1.5.	Date and form of any contract entered	Pending access to any contractual

	into with Post Office	<p>documents and records that the Post Office may hold, my recollections are as follows:</p> <p>I was offered the position as a subpostmistress on 26 September 2000 and I accepted it on 3 October 2000, and I became a subpostmistress on 20 November 2000</p> <p>On 3<sup>rd</sup> October 2000 I signed a short 1 page document called "Conditions of Appointment". I don't recall ever having been provided with a full copy of a contract.</p> <p>There has been some confusion with the status of my contract, I was initially on a Restricted Hours Office contract, then in 2001 told I was on a Community Contract then later informed it was a Restricted Hours Office again. This is indicative of the nature of my contractual relationship with Post Office Limited having never being clear.</p> <p>I eventually received a copy of a contractual document in August 2002. However, I am still not entirely clear what the nature of the contract was.</p>
1.6.	Start date of appointment/engagement	20 November 2000
1.7.	End date of appointment/engagement	19 February 2010
1.8.	Currently employed / engaged? (Yes/No)	No
1.9.	Lived in linked residential premises? (Yes/No)	Yes
1.10.	Employed assistants? (Yes/No, and if yes identify number as at date of termination of appointment)	Yes: 1, my son worked in the Post Office up until the time of my suspension
1.11.	Operated a retail business from same premises (Yes/No)	Yes

<b>2.</b>	<b>Training and Support</b>	
2.1.	Received initial training from Defendant re: Horizon when introduced in 1999/2000 (Yes/No)	Yes
2.2.	Received initial training from Defendant re: Horizon when took up position? (Yes/No, and if yes give date and brief details of any training said to have been inadequate or inappropriate)	<p>Pending access to any training records that Post Office may hold, my recollections are as follows:</p> <p>I received a half day of classroom training in the branch on Horizon approximately 4-6 months before the system was installed at my branch. This training consisted of mainly front office type tasks. I was given a leaflet explaining reversals of cash to cheques and vice versa. There was no training on balancing or remittances of cash and stock. The training was almost completely useless because I had forgotten most of it by the time the Horizon was installed a short time after.</p>
2.3.	Received any further training from Defendant re: Horizon? (Yes/No, and if yes give date and brief details of any training said to have been inadequate or inappropriate)	No, I was not aware of any further training available.
2.4.	Contacted Helpline to seek advice re: Horizon and/or alleged shortfalls? (Yes/No, and if yes give approximate date and brief details of any advice and responses said to have been inadequate or inappropriate)	<p>Pending access to any Helpline call logs that Post Office may hold, my recollections are as follows:</p> <p>In the first 9 years I called the Helpline approximately once per month, usually for an administrative reason rather than anything to do with Horizon. If I called about Horizon then it would have been to reverse a transaction that I had processed incorrectly. I found the Helpline to be occasionally useful but most of the time not at all. It was apparent that the assistants operating the Helpline were reading answers off a screen and had not received adequate training themselves to understand and find solutions to errors that I was experiencing with</p>

	<p>Horizon.</p> <p>In 2009 I began to suffer large cash discrepancies. I called the Helpline on 4th August 2009 to report a problem with Horizon. When I had performed the account balancing in May 2009, the system had indicated an alleged shortfall of approximately £1,000, the same amount kept appearing on the system when performing the account balancing in subsequent months since May 2009.</p> <p>When I contacted the Helpline, the assistant persistently told me to "Pay the money back". I kept repeating to her that no monies had been taken from the account and that there was a problem with the Horizon system. She continued to tell me that the only solution was to repay the money, to the point where she was shouting at me.</p> <p>Between August and October 2009, I called the Helpline several times to speak to my area manager, Bob Sinclair. I kept leaving messages asking for him to contact me, as this was the only way to make contact with an area manager, however he never contacted me.</p> <p>On 9 September 2009 I called the Helpline, and informed them again that there was a problem with the system, and that a shortfall of approximately £1,000 per month had been showing since May. The assistant told me to pay the money back. Again I told her that no monies had gone missing. She then asked me if my PIN pad had been playing up, to which I said that it had. She advised me to print out a daily transaction listing and advised me on how to do this. She then told me again to pay the monies back. On 23 October 2009 I called the Helpline again regarding the system shortfall which had been growing at about £1,000 per month since May. The assistant informed me that she would get an engineer to ring me and would also send out a cleaning card for the PIN pad, but this didn't happen. On 4 November 2009 I rang the Helpline and</p>
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		<p>again told them the system was faulty, and that shortfalls accumulated had now reached approximately £7,000 to date. The assistant kept saying "pay the money back". She eventually asked me if I wanted the problem escalated to "tier two". I asked why I hadn't been offered this option before, and she couldn't answer that.</p> <p>On 5th November 2009 I received a call from Ms. Muddeman, the Contracts Manager. She told me that I no longer had an area manager, which explained why my messages that I had left for Bob Sinclair had been ignored. I told her that there was a problem with the Horizon system as I had been experiencing shortfalls of approximately £1000 per month since May 2009 she informed me that I would have to prove it and if I wasn't able to then I would have to make the apparent shortfall good. She asked me why I had not transferred the shortfall to the suspense account, but I didn't know what this meant.</p> <p>When I went for mediation, POL reported that I had never told them how much money was allegedly missing and the Helpline logs also indicted this. POL suggested that it was not until November 2009 that I declared the full alleged losses. I dispute this entirely as I kept the Helpline informed continuously, including details of the value of any alleged shortfalls.</p>
3.	<b>Apparent or Alleged Shortfalls</b>	
3.1.	<p>For each apparent or alleged shortfall attributed by the Defendant to the Claimant and in relation to which complaint is made, specify:</p> <ul style="list-style-type: none"> <li>(a) Amount(s):</li> <li>(b) Date(s):</li> <li>(c) Paid by the Claimant to the Defendant? (Yes/No, and dates of payment).</li> <li>(d) How did the Claimant treat the above amounts in the accounts and why?</li> </ul>	<p>Pending access to full transaction and account records from Horizon, I am only able to give approximate figures, although I do have a clear recollection of payments having been made by me.</p> <p>I cannot estimate the a figure in regards to monies paid back as any surplus was often used to make good minor discrepancies and I did not pay back any of the larger alleged losses. .</p>

	<p>In respect to alleged shortfalls from 2009:</p> <p><b>Shortfall 1</b></p> <p>(a) £1,006</p> <p>(b) May 2009</p> <p>(c) I repaid approximately £6 so that the shortfall was exactly £1,000, this came from a previously surplus which I had removed from the system and put it to one side.</p> <p>(d) I informed the helpline of the discrepancy and their response was to inform obligation to make good the alleged shortfall</p> <p><b>Shortfall 2</b></p> <p>a) £1,000</p> <p>b) July 2009</p> <p>c) I made good £750 of this alleged shortfall in cash withdrawn using my Barclaycard.</p> <p>d).</p> <p>I was confident that there was a fault with the system and so when I put the £750 in, it was to establish whether this actually had an effect on the alleged losses. However, when I put the cash in, it made no difference and the alleged loss continued to show at £2,000 (the £1,000 of July 2009 plus the previous alleged shortfall of May 2009). I reported the shortfall to the Helpline on 4 August 2009</p> <p>On 5 November 2009 the alleged shortfall was approximately £6,000 - £7,000. I decided to take the £750 back to see if it made any difference to the figure. It did not, so it was obvious that Horizon was malfunctioning. On 16 December 2009 the shortfall was £8,506, however by 21 December 2009 it showed a gain of approximately £7,000, which I thought must have been the correct figure.</p> <p>Two POL employees attended my branch on 6 January 2010 (detailed below) and I was</p>
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		<p>told that the total alleged shortfall had accumulated to £9,616.66. The 'audit' report purports the cash discrepancy at various dates between June and December 2009. I do not think that this is correctly reflects the true nature of my accounts and it leads me to believe that the Post Office has different data to that available to me. In 2010 I was threatened by the Post Office with civil proceedings, but noting materialised.</p>
<b>4.</b>	<b>Audit and Investigation</b>	
4.1.	Did the Defendant conduct one or more audits of the branch prior to termination? (Yes/No, and if yes give date and brief details)	<p>I can clearly remember the audit taking place, however, in relation to specific dates, I will require access to Post Office's audit records. In the meantime, I can give approximate details as follows:</p> <p>My branch was "audited" on 6 January 2010 by Lesley Frost and Keith Skelton. However I do not accept that I received a thorough and proper audit. I understand that Mr Skelton and Ms Frost were administrative staff employed by the Post Office and were not trained or qualified to audit the branch. I got the impression that they did not have a comprehensive understanding of the workings of a Post Office. For example, Mr Skelton, was counting the stamps and asked me why Christmas stamps had not been declared, These had actually been declared and when I informed him of such, he made a response which I was unable to hear and would not repeat himself.</p> <p>They visited the branch at 9:00am and the branch was subsequently closed for the day. It was my understanding that the employees had come to fix the Horizon. In the investigation neither of the supposed auditors looked at my Horizon terminal. I have had sight of the "audit" report and I note that it states that I had settled the shortfall with the Post Office of £1,853.13 centrally.</p> <p>If this was true, I was not aware of having made any such payments. If upon disclosure I discover that the Post Office deducted this</p>

		<p>from my salary without telling me, I believe reserve the right to bring a claim in respect of this potential loss. At the end of this supposed "audit" I was suspended.</p> <p>POL later produced a Horizon print out suggesting that on this day, at approximately, 10.55, I had used the terminal. This could not be true because I had logged in at 8.55 and then been automatically logged out after 20 minutes and then did not use the terminal again thereafter (described in detail below).</p>
4.2.	Was there an investigation carried out by the Defendant relating to alleged shortfalls? (Yes/No, and if yes give date and brief details of any investigation(s) in relation to which the Claimant raises a complaint)	<p>Between January and August 2010 I was interviewed under caution by Jon Longman and Lisa Allen. My son had accompanied me to this audit in case he was called upon as a witness. When I left the room on completion of my interview, Jon and Lisa asked if they could speak to my son, Daniel O'Dell, who was a branch assistant at the time that I was suspended, to have an 'Off the record' conversation. During this conversation, my son was asked 'do you love your mother?' to which he answered yes and was then briefly questioned as to whether he thought I had taken the money.</p> <p>After these interviews my son sent Mr Longman a letter explaining how he thought that an error on one stock unit had caused the losses.</p> <p>On 17 July 2010 Mr Longman sent me a caution by post to sign which I did not sign. On 23 July 2010 he telephoned me chasing the return of the signed caution and I said that I would not and that I had not had a reply to my son's letter. Mr Longman said that he had consulted with other Post Office employees and concluded that a fault on the stock unit was highly unlikely. Mr Longman also made some remarks about possible charges for false accounting as opposed to</p>

		<p>fraud but I cannot recall the exact details of this comment.</p> <p>Mr Longman wrote to me again on 18 August 2000 stating that he would not be taking any further action. In that letter he stated that he "<i>found no weight</i>" in my son's theory.</p>
<b>5.</b>	<b>Suspension and Termination</b>	
5.1.	Was the Claimant suspended for a reason related to alleged shortfalls? (Yes/No, and if yes give date and brief details of any suspensions in relation which the Claimant raises a complaint)	Yes, on 6 January 2010.
5.2.	<p>If the Claimant was suspended:</p> <ul style="list-style-type: none"> <li>(a) Was the branch closed by the Defendant? (Yes/No, and if yes give date)</li> <li>(b) Was a temporary Subpostmaster appointed by the Defendant? (Yes/No, and if yes give date)</li> <li>(c) Was the Claimant prevented from accessing records within the branch? (Yes/No, and if yes give date and brief details)</li> </ul>	<p>(a) Yes, on 6 January 2010.</p> <p>(b) No</p> <p>(c) Yes, I was not able to access the Horizon system.. In August 2012 and again in 2015, I made Freedom of Information requests for documents held by the Post Office, including daily transaction logs and records of the conversations that I had had with the Helpline.</p> <p>On 1 April 2009, I was told at the interview with Jon Longman that I would not be able to have access to the accounting records as it would cost too much to request from a third party, in excess of £2,000.</p> <p>I had a meeting with Angela van den Bogerd of the Post Office on 9 March 2015. The night before the interview I had come across a computer printout that I had requested regarding the</p>

		<p>above mentioned transaction supposedly made on 6 January 2010, long after my access to Horizon had been revoked.. I was told that I must have made these entries as they had been made under my name. Ms Van Den Bogard told me to bring this up at the mediation meeting as she did not know what that entry was and could offer no explanation there and then</p> <p>During the mediation, Post Office brought a copy of another document that specified when I had carried out the account balancing on the 29 December 2009 - but they had altered the date to 06 January 2010. Ms Van Den Bogard was trying to prove that I was on the system on this date. Post Office refused to let me see this document properly but relied on it in order to present their interpretation of the accounts. I was sent this later but I believe at the time that the Post Office was trying to manipulate me into accepting a settlement while still refusing to provide me with the information I required to make such a decision.</p>
5.3.	How did the Claimant's appointment end? (Terminated by Defendant / Resigned)	I was terminated by the Post Office on 19 February 2010.
5.4.	<p>If the Claimant's appointment was terminated by Defendant, was this for a reason related to alleged shortfalls? (Yes/No)</p> <p>Was that reason stated by Post Office? (Yes/No)</p>	<p>Yes</p> <p>Yes</p>
5.5.	Did the Defendant give notice? (Yes/No, and if yes, state period of notice)	No

5.6.	If the Claimant resigned, was this under pressure from Defendant for a reason related to alleged shortfalls (Yes/No, and if yes give date and brief details)?	N/A
5.7.	Did the Defendant prevent or impede sale or transfer of the Claimant's business? (Yes/No, and if yes give date and brief details)	<p>Yes. When I applied for the Post Office I renovated part of my house into a shop and Post Office. When my contract was terminated I had no more use for this so I intended to return the room to residential use.</p> <p>I was suspended on 6 January 2010 but the safe was not removed until 12 October 2010. This prevented me from proceeding with my intended renovation, to return the room to its original state prior to the Post Office. I issued proceedings against the Post Office in respect of unpaid costs for the storage of its equipment on my premises and the Post Office paid these in full on 24 May 2011.</p>
6.	<b>Civil and Criminal Proceedings</b>	
6.1.	Did the Defendant pursue recovery of any alleged shortfalls by civil proceedings? (Yes/No, and if yes give date and brief details)	No
6.2.	If yes, what was outcome of proceedings? (Settled, Judgment for Claimant, Judgment for Defendant, currently stayed)  Please give date and brief details.	N/a
6.3.	Did the Defendant pursue any criminal proceedings against the Claimant? (Yes/No)	No
6.4.	If yes, specify (with dates):  (a) charges (Theft, False Accounting, and any other charges);	N/a

	(b) outcome (guilty after contested trial, acquitted after contested trial, guilty plea, not pursued).	
6.5.	Has any conviction been referred to the Criminal Case Review Commission or is the subject of any appeal? (Yes/No)	N/a
7.	<b>Nature of claims pursued</b>	

*In this section, indicate whether the Claimant relies on generic Particulars of Claim in respect of the types of claim identified (in each case, Yes/No).*

7.1.	Contract, tort & fiduciary duty	
(i)	Training	Yes
(ii)	Support	Yes
(iii)	Availability of transactional information	Yes
(iv)	Execution / reconciling transactions	Yes
(v)	Inappropriate attribution of alleged shortfalls	Yes
(vi)	Demands for payment	Yes
(vii)	Investigation	Yes
(viii)	Suspension	Yes
(ix)	Termination	Yes
(x)	Pressure to resign	No

(xi)	Impeding sale / transfer	Yes
(xii)	Concealment	<p>Yes.</p> <p>I believe Post Office concealed the true nature and details of the shortfalls.</p>
(xiii)	Breaches of overarching duties	Yes
7.2.	Harassment	Yes
7.3.	Deceit	<p>Yes, as I was led to believe that I had no alternative but to pay the shortfalls and I believed that a thorough investigation had determined that payment was due.</p>
7.4.	Malicious Prosecution	No
7.5.	Unjust Enrichment	Yes
<b>8.</b>	<b>Nature of claims for loss</b>	
8.1.	Repayment of alleged shortfalls (Yes/No and amount)	<p>Pending access to full transaction and account records from Horizon, I cannot estimate how much I repaid to make good alleged shortfalls.</p> <p>Although it was alleged in the audit that I repaid a certain amount to the Post Office as a settlement, I have no knowledge of this and would require evidence from the Post Office to substantiate this alleged settlement.</p>
8.2.	Loss of investment (Yes/No, and approximate value, subject to expert evidence)	<p>Yes, I lost the value of the business.</p> <p>I spent approximately £30,000 renovating my premises so that the Post Office could be installed. I also spent between £3,000 and £5,000 towards the security screens, which the Post Office also contributed to. I paid £350 to convert the branch back into residential use.</p>

		<p>When I opened the branch I also ran a small side line. I sold handmade items, made by local residents of the village and the branch also was a local collection point for a dry-cleaning company. The gross income for the business was approximately £50 per week. It was impossible to operate the shop without the Post Office so I lost this income when the Post Office was closed.</p> <p>My branch had been considered for network transformation closure and compensation. Post Office may have terminated my contract in order to avoid making a payment to me for closing my branch under the scheme. On the basis that I was appointed in November 2000, my redundancy payment would have been three years at approx £10,000, total £30,000 based on my average annual income. However I do not consider this to be an accurate reflection of my true investment loss as I anticipated running the Post Office for many years and I believe that my loss is higher than this.</p>
8.3.	Loss of earnings during suspension (approximate value and brief details)	£900, this is in respect of my net income for the 6 weeks that I was suspended for.
8.4.	Loss of earnings for failure to give notice (approximate value)	£1,950, this is in respect of my net income for the 3 month notice period that was not honoured.
8.5.	Loss of earnings post termination (period claimed and approximate value) [If not already dealt with at 8.2 above]	N/A
8.6.	Stigma and/or reputational damage (Yes/No and brief details)	There was a lot of gossip in the village when the branch was closed. I heard rumours that said that I had stolen a quarter of a million pounds. The Post Office also had a letter printed in our local 'Life' magazine claiming that I had resigned. An employee of the Post Office had emailed a local resident informing

		<p>him that I had resigned. This made people think that I had abandoned the Post Office which caused people to have a bad perception about me in the community. There had been a Post Office in my village for many years before I became subpostmistress, so it was something that the community had become dependent on.</p> <p>I had been selected as Prospective Parliamentary Candidate for the 2010 General Election for the <b>GRO</b> party. I resigned from the position because I felt so ill, and because I did not want any untoward publicity for myself or the party. I had been supporting the party for nearly 20 years and withdrawing from this position was a significant personal setback for me.</p>
8.7.	Personal Injury (Yes/No and brief details, subject to expert evidence)	<p>I suffered significantly from stress, anxiety, insomnia, depression and lack of appetite from the time that the shortfalls began throughout the termination and investigation process, and ever since.</p> <p><b>GRO</b></p>
8.8.	Losses related to bankruptcy/other insolvency procedures (Yes/No and brief details)	No
8.9.	Losses related to prosecution (Yes/No and brief details)	No
8.10.	Any other loss not covered above (identify category and provide, brief details and amount).	<p>Any further losses found to have been suffered following disclosure and expert quantum evidence.</p> <p>I have travel expenses from attending interviews, and appeals with the Post Office. There were 2 meetings in Cambridge and 1 in Peterborough. This meant covering approximately 170 miles.</p>

The information provided in this Schedule is true to the best of the Claimant's knowledge and belief on the basis of the information presently available to the Claimant. However, the information is provided prior to disclosure by the Defendant, prior to any expert evidence, and figures provided in relation to loss are approximations only.

I believe that the facts stated in this Schedule are true.

**GRO**

Signed

Date 16<sup>th</sup> June 2017

Ref: ER/OR/GC/2113848/1

**IN THE HIGH COURT OF JUSTICE**

**Claim No. HQ17X012637**

**QUEEN'S BENCH DIVISION**

**THE POST OFFICE GROUP LITIGATION**

**BETWEEN:**

**ALAN BATES & OTHERS**

**Claimants**

**- and -**

**POST OFFICE LIMITED**

**Defendant**

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**SCHEDULE OF INFORMATION**

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<b>1.</b>	<b>Claimant &amp; Branch Details</b>	
1.1.	Name	<b>ANONYMITY ORDER</b>
1.2.	Home address	<b>GRO</b>
1.3.	Branch address	<b>GRO</b>
1.4.	Subpostmaster (Yes / No, if No give details, e.g. Crown Office Employee, guarantor of Franchisee)	Yes, Subpostmaster
1.5.	Date and form of any contract entered into with Post Office	Pending access to any contractual documents and records that Post Office may hold, my recollections are as follows:  I don't remember exactly what I signed but I know I signed some documents on or around July 2000. I no longer have a copy of these documents.

1.6.	Start date of appointment/engagement	20/07/2000
1.7.	End date of appointment/engagement	18/05/2016  I wasn't working the post office counter in last 2 or 3 years due to an accident. My wife was running the counter on a daily basis, although I still carried out the balances and management of the Post Office.
1.8.	Currently employed / engaged? (Yes/No)	No
1.9.	Lived in linked residential premises? (Yes/No)	Yes
1.10.	Employed assistants? (Yes/No, and if yes identify number as at date of termination of appointment)	Yes – 2 / 3 part time staff.
1.11.	Operated a retail business from same premises (Yes/No)	Yes, I ran a small retail business selling greetings cards, stationary, toys etc. The business only made around £200 per week.
<b>2.</b>	<b>Training and Support</b>	
2.1.	Received initial training from Defendant re: Horizon when introduced in 1999/2000 (Yes/No)	Pending access to any training records that Post Office may hold, my recollections are as follows:  When we first bought the post office in July 2000, Horizon had not yet been rolled out to our branch; it was introduced in the November of that year.  Horizon at this time was very basic, all it really did was replace desktop calculators. It just meant instead of using manual spreadsheets, you recoded everything through the system but a lot of processes were still done manually, for example pensions and benefits.  I had one day of training in a hotel

		<p>somewhere in outer Leeds and three days with an instructor who came into branch. The training came with a lot of manuals which were too complicated to read. I was very conversant with computers having used them since the 1970s but even I found the manuals complicated. The system itself was crude and basic.</p> <p>I remember leaving the training feeling the trainers were inadequate as when I had to pass along the knowledge to my wife and staff I struggled.</p>
2.2.	Received initial training from Defendant re: Horizon when took up position? (Yes/No, and if yes give date and brief details of any training said to have been inadequate or inappropriate)	N/A
2.3.	Received any further training from Defendant re: Horizon? (Yes/No, and if yes give date and brief details of any training said to have been inadequate or inappropriate)	<p>Pending access to any training records that Post Office may hold, my recollections are as follows:</p> <p>When "Horizon 2" was introduced, we had a few hours of training at a hotel. My wife attended the training as well as a couple of the staff. We came away from the training more confused; they were not qualified to be trainers.</p> <p>In general it seemed that Regional Network Managers, who were not "trainers" were more on hand to help than the trainers were. The Regional Network Managers didn't know any more than the subpostmaster did, but they would try and help as a favour.</p> <p>My reflections are that the whole training program was flawed and inadequate.</p>
2.4.	Contacted Helpline to seek advice re: Horizon and/or alleged shortfalls? (Yes/No, and if yes give approximate date and brief details of any advice and	<p>Pending access to any helpline call logs that Post Office may hold, my recollections are as follows:</p>

	<p>responses said to have been inadequate or inappropriate)</p>	<p>I estimate that I contacted the Helpline more than 5 times per week with regard to problems relating to alleged shortfalls and /or balancing.</p> <p>Overall I had negative experiences. They could create more problems than they could solve for me.</p> <p>It was like phoning a call centre: being transferred, being put on hold, they were going through a script, "<i>is it plugged in</i>", "<i>is it dusty</i>", it was manned by inexperienced call centre people, not technicians.</p> <p>As I mentioned, the Helpline could actually make situations worse. You could have a loss and the Helpline would actually make it double by giving you wrong information about the accounting processes they told you to follow, which did not make sense.</p>
<b>3.</b>	<b>Apparent or Alleged Shortfalls</b>	
3.1.	<p>For each apparent or alleged shortfall attributed by the Defendant to the Claimant and in relation to which complaint is made, specify:</p> <p>(a) Amount(s):            (b) Date(s):            (c) Paid by the Claimant to the Defendant? (Yes/No, and dates of payment).            (d) How did the Claimant treat the above amounts in the accounts and why?</p>	<p>Pending access to full transaction and account records from Horizon, I am only able to give approximate figures, although I do have a clear recollection of payments having been made by me.</p> <p>I would estimate that throughout my position in the branch, I paid, or Post Office deducted many thousands of pounds, but I cannot recall exactly how much.</p> <p><b><u>Shortfalls under £100</u></b></p> <p>Yes</p> <p>Adopting the paragraph numbering in the question:</p> <p>(a) The amount varied; often there were shortfalls of, £10, £20, £30, £40, £50 pounds etc.</p> <p>(b) Over the 16 years of my tenure.</p>

		<p>(c) Yes, I paid back the money myself out of money I took from the retail side of my business. I kept a cash box behind the counter and the money came out of there.</p> <p>(d) I paid back the shortfalls myself and balanced the accounts. I expected the amounts to come back as credits but they never did.</p> <p>Sometimes the discrepancy in the morning would be different to what it had been the previous night; I knew something was wrong because this could not be possible.</p> <p><b><u>Shortfalls over £100</u></b></p> <p>Yes</p> <p>Adopting the paragraph numbering in the question:</p> <p>(a) The amounts varied, I have specific recollections of a shortfall of £1200 and another of £2500.</p> <p>(b) The shortfalls were revealed on balance nights.</p> <p>(c) I paid in full out of my own money.</p> <p>(d) I checked back through my records and transaction history. I called the Helpline. Normally, when the amounts were large I paid by cheque or settled centrally and the money was deducted at source from my salary. In respect of the £1200 and the £2500, I paid this back monthly from my salary.</p> <p>I expected the large amounts to come to come back as transaction corrections but they never did.</p> <p>I wasn't able to go back through the system to check, so it wasn't possible</p>
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		<p>to do your own audit. You could not run a transaction log. I have spent hours looking at rolls of paper looking for what could be a mistake.</p>
<b>4.</b>	<b>Audit and Investigation</b>	
4.1.	Did the Defendant conduct one or more audits of the branch prior to termination? (Yes/No, and if yes give date and brief details)	<p>I can remember the audits taking place, however, in relation to specific dates, I will require access to Post Office's audit records. In the meantime, I can give approximate details as follows:</p> <p>The audits were always done on a Thursday morning. I had a few audits over my time in the branch but they were always fine, no problems. I was only picked up on small things such as keeping keys in safe.</p> <p>I requested audits when I had large shortages and Post Office Ltd were not prepared to do it. Post Office Ltd said I would have to pay for an audit if I wanted one. The auditors were ex Crown Post Office workers. They were not proper qualified auditors.</p>
4.2.	Was there an investigation carried out by the Defendant relating to alleged shortfalls? (Yes/No, and if yes give date and brief details of any investigation(s) in relation to which the Claimant raises a complaint)	I have seen no evidence of any adequate investigation.
<b>5.</b>	<b>Suspension and Termination</b>	
5.1.	Was the Claimant suspended for a reason related to alleged shortfalls? (Yes/No, and if yes give date and brief details of any suspensions in relation	No

	which the Claimant raises a complaint)	
5.2.	If the Claimant was suspended:  (a) Was the branch closed by the Defendant? (Yes/No, and if yes give date) (b) Was a temporary Subpostmaster appointed by the Defendant? (Yes/No, and if yes give date) (c) Was the Claimant prevented from accessing records within the branch? (Yes/No, and if yes give date and brief details)	N/A
5.3.	How did the Claimant's appointment end? (Terminated by Defendant / Resigned)	The branch was closed down by Network Transformation. The branch was chaged to a Post Office Local located within a Londis shop.  I was paid £105,000 as compensation for Network Transformation, based on best my 26 months of business out of the last three years.
5.4.	If the Claimant's appointment was terminated by Defendant, was this for a reason related to alleged shortfalls? (Yes/No)  Was that reason stated by Post Office? (Yes/No)	No, my appointment was ended by the Network Transformation.
5.5.	Did the Defendant give notice? (Yes/No, and if yes, state period of notice)	N/A
5.6.	If the Claimant resigned, was this under pressure from Defendant for a reason related to alleged shortfalls (Yes/No, and if yes give date and brief details)?	N/A
5.7.	Did the Defendant prevent or impede sale or transfer of the Claimant's business? (Yes/No, and if yes give date and brief details)	N/A

<b>6.</b>	<b>Civil and Criminal Proceedings</b>	
6.1.	Did the Defendant pursue recovery of any alleged shortfalls by civil proceedings? (Yes/No, and if yes give date and brief details)	No
6.2.	If yes, what was the outcome of the proceedings? (Settled, Judgment for Claimant, Judgment for Defendant, currently stayed)  Please give date and brief details.	N/A
6.3.	Did the Defendant pursue any criminal proceedings against the Claimant? (Yes/No)	No
6.4.	If yes, specify (with dates):  (a) charges (Theft, False Accounting, and any other charges); (b) outcome (guilty after contested trial, acquitted after contested trial, guilty plea, not pursued).	N/A
6.5.	Has any conviction been referred to the Criminal Case Review Commission or is the subject of any appeal? (Yes/No)	N/A
<b>7.</b>	<b>Nature of claims pursued</b>	
<i>In this section, indicate whether the Claimant relies on generic Particulars of Claim in respect of the types of claim identified (in each case, Yes/No).</i>		
7.1.	Contract, tort & fiduciary duty	
(i)	Training	Yes
(ii)	Support	Yes

(iii)	Availability of transactional information	Yes
(iv)	Execution / reconciling transactions	Yes
(v)	Inappropriate attribution of alleged shortfalls	Yes
(vi)	Demands for payment	Yes
(vii)	Investigation	Yes
(viii)	Suspension	No
(ix)	Termination	No
(x)	Pressure to resign	No
(xi)	Impeding sale / transfer	No
(xii)	Concealment	Yes
(xiii)	Breaches of overarching duties	Yes
7.2.	Harassment	No
7.3.	Deceit	Yes, as I was led to believe that I had no alternative but to pay the shortfalls.
7.4.	Malicious Prosecution	No
7.5.	Unjust Enrichment	Yes
<b>8.</b>	<b>Nature of claims for loss</b>	
8.1.	Repayment of alleged shortfalls (Yes/No and amount)	Yes – See Section 3 for details.  Plus all sums found to be repayable following disclosure and upon investigation by the

		court.
8.2.	Loss of investment (Yes/No, and approximate value, subject to expert evidence)	I lost value in the business but am unable to quantify this without expert valuation evidence.  I paid the following for the purchase of the Post Office business: £200,000.  I paid the following for the purchase of stock: around £2500.
8.3.	Loss of earnings during suspension (approximate value and brief details)	N/A
8.4.	Loss of earnings for failure to give notice (approximate value)	N/A
8.5.	Loss of earnings post termination (period claimed and approximate value) [If not already dealt with at 8.2 above]	If it were not for the events that occurred, my future plans in my role were to keep the business until retirement, with the income maintained at a decent level, before selling it: however I was forced into closure..
8.6.	Stigma and/or reputational damage (Yes/No and brief details)	Yes, the community feels let down that "their" post office, which was the jewel of the village has now gone.
8.7.	Personal Injury (Yes/No and brief details, subject to expert evidence)	Yes, I felt and still feel personally damaged by Post Office Ltd which is not easy for me to say because I don't like to admit that I have weaknesses.
8.8.	Losses related to bankruptcy/other insolvency procedures (Yes/No and brief details)	N/A

8.9.	Losses related to prosecution (Yes/No and brief details)	N/A
8.10.	Any other loss not covered above (identify category and provide, brief details and amount).	<p>Any further losses found to have been suffered following disclosure and expert quantum evidence.</p> <p>In the latter years the Post Office cut basic salaries, in the last two years my wife and I didn't take any wages out ourselves. I had to take out loans to prop the post office up and the shortages certainly played a part in that as they put further strain on an already diminishing business.</p>

The information provided in this Schedule is true to the best of the Claimant's knowledge and belief on the basis of the information presently available to the Claimant. However, the information is provided prior to disclosure by the Defendant, prior to any expert evidence, and figures provided in relation to loss are approximations only.

I believe that the facts stated in this Schedule are true.

**GRO**

Signed:

**ANONYMITY ORDER**

Date: 04/09/2017

**Freeths Reference:** BJW/2122691/1

**IN THE HIGH COURT OF JUSTICE**

**Claim No. HQ17X012637**

**QUEEN'S BENCH DIVISION**

**THE POST OFFICE GROUP LITIGATION**

**BETWEEN:**

**ALAN BATES & OTHERS**

**Claimants**

**- and -**

**POST OFFICE LIMITED**

**Defendant**

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**SCHEDULE OF INFORMATION**

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<b>1.</b>	<b>Claimant &amp; Branch Details</b>	
1.1.	Name	Mrs Sonya Sultman
1.2.	Home address	<div style="border: 1px dashed black; padding: 10px; text-align: center;"><b>GRO</b></div>
1.3.	Branch address	Horsley Hill Post Office 19 Horsley Hill Square South Shields Tyne and Wear NE34 7HQ
1.4.	Subpostmaster (Yes / No, if No give details, e.g. Crown Office Employee, guarantor of Franchisee)	Subpostmistress. I took over when my late husband, David, passed away in 2004.
1.5.	Date and form of any contract entered into with Post Office	Pending access to any contractual documents and records that Post Office may

		hold, my recollections are as follows:  Due to the passage of time I cannot recall the form of contractual document which I received or whether/when I signed anything.
1.6.	Start date of appointment/engagement	2004
1.7.	End date of appointment/engagement	I cannot recall the exact end date.
1.8.	Currently employed / engaged? (Yes/No)	No
1.9.	Lived in linked residential premises? (Yes/No)	No
1.10.	Employed assistants? (Yes/No, and if yes identify number as at date of termination of appointment)	Yes, but I am unsure as to the exact number
1.11.	Operated a retail business from same premises (Yes/No)	Yes, I operated a newsagents
<b>2.</b>	<b>Training and Support</b>	
2.1.	Received initial training from Defendant re: Horizon when introduced in 1999/2000 (Yes/No)	Not applicable
2.2.	Received initial training from Defendant re: Horizon when took up position? (Yes/No, and if yes give date and brief details of any training said to have been inadequate or inappropriate)	Pending access to any training records that Post Office may hold, my recollections are as follows:  Due to the passage of time I am unable to recall any training which I may have received.
2.3.	Received any further training from Defendant re: Horizon? (Yes/No, and if yes give date and brief details of any training said to have been inadequate or inappropriate)	Pending access to any training records that Post Office may hold, my recollections are as follows:  I am unable to recall whether I received any further training.
2.4.	Contacted Helpline to seek advice re:	Pending access to any helpline call logs that

	Horizon and/or alleged shortfalls? (Yes/No, and if yes give approximate date and brief details of any advice and responses said to have been inadequate or inappropriate)	Post Office may hold, my recollections are as follows:  I am unable to recall the dates on which I contacted the Helpline. When I did call I was told that the shortfalls could not be the fault of the system, but must be caused by human error. No genuine help was ever offered.
3.	<b>Apparent or Alleged Shortfalls</b>	
3.1.	<p>For each apparent or alleged shortfall attributed by the Defendant to the Claimant and in relation to which complaint is made, specify:</p> <p>(a) Amount(s):            (b) Date(s):            (c) Paid by the Claimant to the Defendant? (Yes/No, and dates of payment).            (d) How did the Claimant treat the above amounts in the accounts and why?</p>	<p>Pending access to full transaction and account records from Horizon, I am only able to give approximate figures, although I do have a clear recollection of payments having been made by me.</p> <p>I would estimate that throughout my position in the branch, I paid (or Post Office deducted) in excess of £60,000 from 2004.</p> <p><u>Shortfalls under £100</u></p> <p>I experienced smaller alleged shortfalls at the end of almost every balancing period</p> <p>Adopting the paragraph numbering in the question:</p> <p>(a) Several thousand pounds in total            (b) At the end of every balancing period throughout my position in branch            (c) Yes, I put in my own money to ensure the accounts balanced as soon as the alleged shortfalls occurred            (d) Please see my answer to (c) above</p> <p><u>Shortfalls over £100</u></p> <p>Yes, I experienced many larger alleged shortfalls throughout my position in branch. I called the Helpline and was told to put my own money in to balance the account.</p> <p>Adopting the paragraph numbering in the question:</p> <p><b>Shortfall 1:</b></p>

		<p>(a) £3,500</p> <p>(b) I am unsure as to the exact date on which the alleged shortfall occurred</p> <p>(c) Yes, I paid the amount in full as soon as I discovered it</p> <p>(d) Please see my answer to (c) above</p>
<b>4.</b>	<b>Audit and Investigation</b>	
4.1.	Did the Defendant conduct one or more audits of the branch prior to termination? (Yes/No, and if yes give date and brief details)	Due to the passage of time I am unable to recall whether my branch was ever audited.
4.2.	Was there an investigation carried out by the Defendant relating to alleged shortfalls? (Yes/No, and if yes give date and brief details of any investigation(s) in relation to which the Claimant raises a complaint)	I have seen no evidence of any adequate investigation.
<b>5.</b>	<b>Suspension and Termination</b>	
5.1.	Was the Claimant suspended for a reason related to alleged shortfalls? (Yes/No, and if yes give date and brief details of any suspensions in relation which the Claimant raises a complaint)	No
5.2.	<p>If the Claimant was suspended:</p> <p>(a) Was the branch closed by the Defendant? (Yes/No, and if yes give date)</p> <p>(b) Was a temporary Subpostmaster appointed by the Defendant? (Yes/No, and if yes give date)</p> <p>(c) Was the Claimant prevented from accessing records within the branch? (Yes/No, and if yes give date and brief details)</p>	N/A

5.3.	How did the Claimant's appointment end? (Terminated by Defendant / Resigned)	I sold the branch.
5.4.	If the Claimant's appointment was terminated by Defendant, was this for a reason related to alleged shortfalls? (Yes/No)  Was that reason stated by Post Office? (Yes/No)	N/A
5.5.	Did the Defendant give notice? (Yes/No, and if yes, state period of notice)	N/A
5.6.	If the Claimant resigned, was this under pressure from Defendant for a reason related to alleged shortfalls (Yes/No, and if yes give date and brief details)?	N/A
5.7.	Did the Defendant prevent or impede sale or transfer of the Claimant's business? (Yes/No, and if yes give date and brief details)	No
6.	<b>Civil and Criminal Proceedings</b>	
6.1.	Did the Defendant pursue recovery of any alleged shortfalls by civil proceedings? (Yes/No, and if yes give date and brief details)	No
6.2.	If yes, what was the outcome of the proceedings? (Settled, Judgment for Claimant, Judgment for Defendant, currently stayed)  Please give date and brief details.	N/A
6.3.	Did the Defendant pursue any criminal proceedings against the Claimant? (Yes/No)	No
6.4.	If yes, specify (with dates):	N/A

	(a) charges (Theft, False Accounting, and any other charges); (b) outcome (guilty after contested trial, acquitted after contested trial, guilty plea, not pursued).	
6.5.	Has any conviction been referred to the Criminal Case Review Commission or is the subject of any appeal? (Yes/No)	N/A
7.	<b>Nature of claims pursued</b>	

*In this section, indicate whether the Claimant relies on generic Particulars of Claim in respect of the types of claim identified (in each case, Yes/No).*

7.1.	Contract, tort & fiduciary duty	
(i)	Training	No
(ii)	Support	Yes
(iii)	Availability of transactional information	Yes
(iv)	Execution / reconciling transactions	Yes
(v)	Inappropriate attribution of alleged shortfalls	Yes
(vi)	Demands for payment	Yes, as per 3.1 above
(vii)	Investigation	Yes
(viii)	Suspension	No
(ix)	Termination	No
(x)	Pressure to resign	No
(xi)	Impeding sale / transfer	No

(xii)	Concealment	Yes
(xiii)	Breaches of overarching duties	Yes
7.2.	Harassment	No
7.3.	Deceit	Yes, as I was led to believe that I had no alternative but to pay the shortfalls and I believed that a thorough and fair investigation had determined that payment was due.
7.4.	Malicious Prosecution	No
7.5.	Unjust Enrichment	Yes
8.	<b>Nature of claims for loss</b>	
8.1.	Repayment of alleged shortfalls (Yes/No and amount)	Yes, in excess of £60,000 Plus all sums found to be repayable following disclosure and upon investigation by the court.
8.2.	Loss of investment (Yes/No, and approximate value, subject to expert evidence)	No
8.3.	Loss of earnings during suspension (approximate value and brief details)	No
8.4.	Loss of earnings for failure to give notice (approximate value)	No
8.5.	Loss of earnings post termination (period claimed and approximate value) [If not already dealt with at 8.2 above]	No
8.6.	Stigma and/or reputational damage (Yes/No and brief details)	No

8.7.	Personal Injury (Yes/No and brief details, subject to expert evidence)	Yes, I found the situation intensely stressful and my mental and physical wellbeing suffered.
8.8.	Losses related to bankruptcy/other insolvency procedures (Yes/No and brief details)	No
8.9.	Losses related to prosecution (Yes/No and brief details)	No
8.10.	Any other loss not covered above (identify category and provide, brief details and amount).	Any further losses found to have been suffered following disclosure and expert quantum evidence.

The information provided in this Schedule is true to the best of the Claimant's knowledge and belief on the basis of the information presently available to the Claimant. However, the information is provided prior to disclosure by the Defendant, prior to any expert evidence, and figures provided in relation to loss are approximations only.

I believe that the facts stated in this Schedule are true.

Signed: .....

**GRO**

Mrs Sonya Sultman

Date: 30/08/2017

**Freeths Reference: MB/2133860/1**

# FREETHS

Andrew Parsons  
Bond Dickinson LLP  
DX38517 Southampton 3

**GRO**

Switchboard:  GRO  
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20 September 2017  
SECOND LETTER

By email only: .com">andrew.parsons@.com **GRO**

Our Ref: JXH/1684/IT106/2/KL

Dear Sirs

**BATES & OTHERS v POST OFFICE LIMITED – GROUP ACTION**  
**CLAIM NO: HQ16X01238**  
**SCHEDULES OF INFORMATION**

We write in response to your third letter of 1 September 2017.

Your letter of 1 September 2017 expressed concerns, across 10 pages, about the Schedules of Information (SOIs) provided to you on 20 June 2017.

Your approach and professed concerns about the SOIs are flawed. The purpose of SOIs in Group Litigation is to provide a minimum amount of information about all Claimants who are part of the Claimant cohort. It is not necessary or proportionate for all claims in the Group to be worked up to the level of detail that would be provided in a unitary action – that is expressly not the point of Group Litigation, not what is intended by the SOI process, nor what was intended in this case. In fact, the SOIs which have been provided in this case are very substantially more detailed than would normally be expected in Group Litigation. Your clients are much better informed about the circumstances of individual claimants than a Defendant to Group Litigation would normally be at this stage.

The process of Lead Case selection, which we have proposed at paragraph 2 of the directions we sent to you on 6 July 2017 will permit further information to be provided in respect of cases that are identified as Lead Cases. As we have said many times before, it is only Lead Cases that will in due course have fully particularised individual Particulars of Claim.

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It is completely disproportionate for you to cherry pick individual queries and complaints, across the cohort of Claimant SOIs. Your approach is costly and wasteful, and undermines the efficiencies that are intended by the Group Litigation process.

What you purport to require of us, by way of detailed clarification of SOIs for hundreds of individual Claimants, is in stark contrast to the approach Post Office has adopted in its Generic Defence and refusal to respond to many of our Requests for Information. Moreover, as to proportionality, it is proportionate for Post Office to provide fundamental information in its Generic Defence and in response to RFIs, when those answers affect hundreds of Claimants; it is not proportionate to criticise individual SOIs as you have, nor to make extravagant wider criticisms on the basis of alleged lack of particularity. Less still is it reasonable or proportionate to make such criticisms on bases which are flawed or wholly misconceived, as we further address below.

We reject the criticisms of the process, and our firm, which are entirely misplaced. To the extent there are minor errors or differences in approach in or between individual SOIs, these are to be expected in an exercise of this scale.

We respond shortly to each the headline points you raise below, but make clear that we do not intend to do this again, and this should not be seen as an open door to repeated rounds of further minor criticisms of individual SOIs. We do this to make clear that not only is Post Office's approach disproportionate and ill-suited to proceedings managed under a GLO, but that the criticisms are, in many respects, misplaced or misconceived.

It will therefore be apparent that we neither accept your approach nor your required actions. However, by way of sensible compromise, we accept that if you have legitimate queries arising on individual SOIs which are being considered as potential Lead Cases from the initial pool, sensible provisions can be built into the process of Lead Case selection, to cater for any necessary corrections or clarifications of information required in the SOIs to be given for that purpose. We therefore propose amending paragraph 2 of the draft directions sent to you on 6 July 2017, to insert a new sub-paragraph (c) as follows:

## LEAD CASES

2. In respect of the selection of Lead Cases: -
  - a. By [date], the Claimants' solicitors and the Defendant's solicitors shall each select [20] individual claims which will together form the pool of [40] Claimants from which Lead Cases will be selected.
  - b. By [date], the parties do provide standard disclosure of documents relating to the pool of Claimants identified above.
  - c. By [date], the Defendant may request corrections or clarifications of any information required in the SOIs of individual Claimants in the pool at (a) above, and, by [date], the Claimants will respond.

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- d. By [date], the parties do seek to agree [16] Lead Cases from the pool of Claimants aforesaid. Any disagreement on any question of lead case selection shall be determined at the next CMC.
- e. Further directions in relation to Lead Cases to be given at the next CMC.

We now turn to respond briefly to each the headline criticisms which you raise in your letter, for convenience, in the table below.

Headline Criticism	Summary Response
Q 1.3. Group Register and SOI are in some cases not consistent re: branch	The Claimants have identified on the Group Register all branches at which they worked (as potentially relevant for training records etc). The SOIs make clear the branch in respect of which alleged shortfalls arose and which form the substance of the claim. The "problem" you have identified is illusory.
Q1.5 Disclosed individual contracts not taken into account	We do not know if Post Office has provided full disclosure of contractual records, and the qualified wording reflects the fact that the SOIs are signed by a statement of truth: most Claimants do not specifically recall the precise contractual position. In fact, limited individual contractual documentation has been disclosed by Post Office for the original 198 Claimants (and none for the later Claimants). Around 60% of the documents disclosed in this category are simply acknowledgement slips or acknowledgements of appointment, which do not specify the version or variation and do not annex a full copy of the relevant contractual terms. If there are individual cases in which relevant documents have been overlooked in the preparation of SOIs this can be addressed, but evidently this is information which Post Office has available.
Q1.7 and Q1.8 end date of appointments not provided or not clear	Some Claimants are only able to give a month, not a specific date. Your criticism is absurd: Post Office could of course check its own records on this point. As to continued engagement, if you review the SOI of Aslam Ramtoola (144) fully it is obvious what the position is in his case and there is no inconsistency. Mr Rudkin (156) responded erroneously to the question as to whether he was currently employed in any capacity, and this can be simply corrected.
Q2.2 and Q2.3 training dates and details inadequate	There is no foundation for this criticism. Details are given in many SOIs as to why Claimants consider their training inadequate, but this is fundamentally a generic issue pleaded in the Generic Particulars of Claim. Disclosure and (potentially) expert evidence will be required on this issue. As to dates of training, of course most Claimants don't recall this, but the way in which section 2.2 is drafted itself identifies the approximate date i.e. whether training when Horizon was installed, or when first taking up appointment. The same points arise in relation to helpline advice – Claimants cannot be expected to remember the dates of individual calls.
Q2.4 details of helpline advice inadequate	The SOIs are not intended to stand as individual Particulars of Claim as to specific

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Headline Criticism	Summary Response
	training or advice given on the Helpline (or in other respects) as pointed out at the GLO hearing before the Senior Master – this is a separate stage in the process which will be completed for a much smaller number of the Claimant group, after disclosure. Post Office is in a much better position than the Claimants to identify relevant dates and details, as it is able to access Helpline records and training records. In context, these criticisms of the SOIs are unfair and misplaced.
Q3.2(d) accounting for shortfalls not sufficiently explained	Similar points arise as above. Not all Claimants are able to give this information, and those that can recall have provided sufficient details at this stage. As above, it is likely that following disclosure in individual cases which are being considered as or have been selected as Lead Cases, further details can be provided. The purpose of section 3.1 of the SOI, as ventilated at the GLO hearing, was to help categorise Claimants, not to provide full particulars of each individual case. Post Office needs to recognise that in this process there is some uncertainty on both sides as to the full extent of individual cases and circumstances, but not all cases will be fully particularised in the way Post Office seems to expect, because this process is being managed as Group Litigation.
Q4.2 Claimants don't make clear whether an investigation was undertaken by Post Office	Many Claimants do not know if an investigation was carried out. Indeed, this reflects the more general asymmetry of information between them and Post Office. In those cases, Claimants have sensibly (and rightly) answered this question to that effect: they cannot just give a yes/no answer as you suggest. The answers given fairly reflect the position of each Claimant, e.g. those that were told Post Office would look into a shortfall but in fact saw no evidence of this actually happening. Of course Post Office will always know if an investigation was carried out, will have kept relevant records of such investigations and will provide them on disclosure. This is yet another example of Post Office criticising Claimants for not providing information which is in fact in Post Office's knowledge and, understandably, not known by Claimants. Your suggestion that each Claimant should identify what was said by them, by whom and in what context is completely wrong. These are matters which would be appropriate for individual Particulars of Claim in Lead Cases, not SOIs for all Claimants.
Q5.6 notice answers not clear	Of the two examples you give, in Mr Rudkin's case, it is unclear whether Post Office gave notice (as is reflected in the SOI), and in Mr Trousdale's case, it is obvious from the SOI that there was no notice. These minor criticisms are nit-picking, unnecessary and inappropriate.
Q7.3 factual basis of deceit claim insufficient	Only a yes/no answer is required to this section of the SOI. No further details are required to be identified. Section 7 of the SOI is designed to enable the parties to identify how many Claimants are pursuing each cause of action. As repeatedly explained above, full particulars of individual claims are not required at this stage.

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Section 8, quantum information insufficient	<p>We do not agree. Your extract from the transcript is selective; we refer you specifically to lines 1650 to 1654, as follows:</p> <p>1650. <b>Mr de Garr Robinson QC :</b> Could I ... could I suggest that 8.2 does require, certainly requires a date and brief details, we need to know what the investment was and how it was lost.</p> <p>1651. <b>Senior Master Fontaine :</b> Well you need to know that in due course, you don't need to know it right now I don't think.</p> <p>1652. <b>Mr de Garr Robinson QC :</b> Well Master in order to make a decision about dicing and slicing it would be helpful to have that sort of information at the next CMC.</p> <p>1653. <b>Senior Master Fontaine :</b> Well I suppose brief details could encompass something like, I don't know had to sell my house to pay off the, or sell a bau to let property to pay off whichever, I mean it can only ... it need only be one sentence ...</p> <p>1654. <b>Mr Green QC :</b> Yes.</p> <p>This section was plainly intended to provide brief details of the types of losses claimed. In the vast majority of cases specific amounts and details cannot be provided – much of the detailed quantum information relating to shortfalls is held by Post Office, and there will need to be expert evidence relating to quantum in most cases. Where Claimants are not able to estimate (as in the examples you identify), it is wrong to invite them to speculate.</p> <p>We do not otherwise respond to the further specific quantum points which represent a variation on the above theme, or are otherwise covered our observations above. We repeat these sections of the SOIs are not intended to be, nor could they sensibly be, individual schedules of loss.</p>
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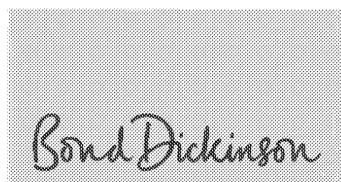
### Conclusion

We have proposed a variation in the directions that we suggested to you in our letter of 6 July 2017. In other correspondence, we have invited your co-operation in seeking to agree those directions and would ask you to confirm that what we have proposed in respect of Lead Case selection is agreed.

Yours faithfully



Freeths LLP  
Please respond by e-mail where possible



[www.bonddickinson.com](http://www.bonddickinson.com)

13 October 2016

For the Attention of Mr J Hartley  
Freeths LLP  
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Second Letter  
By email only

Email: [james.hartley](mailto:james.hartley@bonddickinson.com) **GRO**

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andrew.parsons@**GRO**  
**GRO**

Our ref:  
GRM1/AP6/364065.1369  
Your ref:  
JXH/1684/2113618/1/KL

Dear Sirs

**Bates & Others –v- Post Office Limited**  
Claim Number: HQ16X01238

- 1.1 We write further to our letter of 31 August 2016, in particular section 4 which dealt with the GLO to which we have not yet received a substantive response, your letter of 16 September 2016, your letter of 6 October 2016 in relation to your client, Dr Kutianawala and your most recent letter of 11 October 2016.
- 1.2 Although there are serious points of disagreement between our clients, we have always engaged with you professionally and constructively. In our client's Letter of Response dated 28 July 2016 (**Letter of Response**), we offered to meet with you to discuss the general management of this litigation. To date, you have not taken up that offer.
- 1.3 It is therefore regrettable that you have sought to accuse us in correspondence of acting uncooperatively and seeking to focus on satellite issues rather than addressing the real issues in this case. The issues which we have sought to address with you include security for costs, governing law and limitation. These are not satellite issues, as you would seek to characterise them, but are foundational and need to be understood so the parties can make informed case management decisions.
- 1.4 By contrast, your clients have not provided any detailed particulars of the claims alleged against our client (either in the Letter of Claim or in the significant subsequent correspondence you have sent on specific cases). Further, neither you nor your clients have responded to our proposals on the formulation of the GLO that we provided in July 2016: the GLO being the cornerstone of case management in this litigation and despite us pressing for your input for two months now, you have not engaged with this topic.
- 1.5 Nevertheless, in order to focus on the substance of this litigation, rather than your conduct, in this letter we address the outstanding substantive points, namely:
  - \* Your response of 20 October 2016
  - \* The GLO
  - \* Security for Costs
  - \* Access to Second Sight

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- Claim Form application
- Other amendments to the Claim Form
- Governing law
- Disclosure

**2. Your response on 20 October 2016**

2.1 On the basis that your response will be substantive, genuinely address the points raised in our Letter of Response, and set out in detail each of the claims raised by each of the Claimants and the facts and matter they rely upon, our client was willing to agree to a deadline of 20 October 2016 for your substantive response to the issues in dispute (**Letter of Reply**).

2.2 Recently one of your clients, Dr Kutianawala, agreed to a Consent Order in which he was obliged to provide full particulars of the grounds on which he would oppose an Order for Sale. Although you provided some particulars in your letter of 6 October 2016, this information was far from sufficient. For example:

- 2.2.1 Your referred to Dr Kutianawala's "claim" against Post Office but provided no particulars of that claim (paragraph 2.4 of your letter).
- 2.2.2 You said that the Default Judgment against Dr Kutianawala should be set aside but set out no grounds on which it should be set aside (paragraph 3.1).
- 2.2.3 You said that the settlement agreement signed by Dr Kutianawala (after he had received legal advice) should be rescinded or set aside on the grounds of deceit, but provided no particulars of the alleged deceit (paragraph 3.2). We note our comments in paragraph 6.25 of our Letter of Response, which set out the requirements for pleading a claim in deceit. Those requirements are not met by your letter of 6 October 2016.

2.3 We are concerned that the level of information provided regarding Dr Kutianawala's position may be indicative of the level of information you intend to provide in respect of the other 198 Claimants' claims in your Letter of Reply. If so this would not be adequate for the reasons set out at length in our Letter of Response.

2.4 Since your Letter of Reply will feed into matters to be discussed at the GLO hearing, and so as to assist the parties to narrow the issues in dispute prior to this (for example, the format and substance of Statements of Case), we hope that your Letter of Reply will, at a minimum:

- 2.4.1 Set out the common or related issues (of fact or law) between the Claimants to be managed collectively and identify any features which may be grouped (i.e. criminal convictions and those Claimants whose contracts were terminated more than 6 years ago);
- 2.4.2 Identify and explain the various categories of claims which are being brought, the elements of each of these categories, the Claimants which fall within each of these and the factual basis of their claims;
- 2.4.3 Provide adequate information so as to allow Post Office to investigate each of the claims brought by each Claimant;
- 2.4.4 Explain the grounds on which non-Postmasters (i.e. crown branch employees and assistants) are bringing their claims and why their claims are appropriate to be brought under the GLO; and

2.4.5 Include adequate information so as to ascertain when the various causes of action arose for each Claimant.

2.5 Despite having been instructed on this matter for at least 10 months (our client's first letter to you being in December 2015), we have not yet been provided with particularisation of each of the Claimants' claims. Only once this level of detail has been provided will the parties be able to hopefully agree the scope of the GLO and, in particular, consider whether generic Particulars of Claim (as you have proposed) would be suitable.

2.6 Please confirm that your Letter of Reply will address the above points, as we have previously requested in our Letter of Response and letter of 18 August 2016.

**3. GLO**

3.1 In preparation for the GLO hearing which is now listed for 26 January 2017, please can you respond to:

3.1.1 Our letter of 15 July 2016 regarding the GLO; and

3.1.2 The draft GLO enclosed with our client's Letter of Response.

3.2 Until you provide us with a response, we are unable to begin to work with you to narrow any points in dispute. However, in the interest of progressing these discussions, we have set out above the information and level of detail which we feel, as a minimum, should be included in your Letter of Reply.

3.3 In particular, we note from the current draft GLO that "*the Claimants shall file and serve Generic Particulars of Claim*" (section 30). No explanation has been provided by you to date as to what these "generic" Particulars of Claim are expected to include (and what they would presumably exclude) and how they would fit into a wider case management plan for this litigation. Having been instructed for nearly a year, you must by now have a view on this topic.

3.4 In preparation for the GLO hearing, it will be necessary to consider whether generic Particulars of Claim would be suitable. Due to the fact specific nature of each of the Claimants' claims, it may, for example, be necessary to produce individual Particulars of Claim for each Claimant or, alternatively, to split the claim into categories with separate Particulars for each.

3.5 Some of the recent cases that we have been discussing in correspondence show the distinctive difference between the cases and the possible need for full Particulars of Claim:

3.5.1 Mrs Stockdale was initially suspended and subsequently terminated as Postmistress of her branch as a consequence of her failure to repay losses and her acknowledged submission of false cash declarations. Throughout our correspondence you requested a number of documents specific to Mrs Stockdale, demonstrating the highly individual nature of each specific claim. Despite your repeated failure to provide any explanation of events at Mrs Stockdale's branch, it is clear from that the specifics of each Postmaster's branch and their conduct will need to be particularised in due course; and

3.5.2 Dr Kutianawala is in a different position to Mrs Stockdale, having already had judgment entered against him and then, following receipt of independent legal advice, having entered into a settlement agreement to repay part of that judgment debt. For Dr Kutianawala to even begin advancing a claim, he will first need to set out grounds for setting aside the settlement agreement and judgment. There are also questions around whether his case could be expediently advanced under a GLO given its particular circumstances.

3.6 In your most recent letter, you make reference to "Lead Claimants". The possibility of identifying lead claimants, and presumably therefore running a number of test cases, has never been raised

previously by you, nor is it part of the GLO you are seeking, nor is it mentioned in the supporting evidence to that application.

- 3.7 In our letter of 27 May 2016, we asked for you to set out your envisaged directions for cases subject to the GLO. No clear statement of your intentions has ever been provided, though clearly you have in mind the use of generic Particulars of Claim and Lead Claimants. We should be grateful if this explanation is now provided.
- 3.8 As there are a number of different ways to proceed in relation to the GLO, Statements of Case and future directions, it may be best to discuss these matters between us as soon as possible and we repeat our offer to meet with you.
- 3.9 In the meantime, it would assist if draft generic Particulars of Claim could be shared with us so that we may understand what you intend to be covered. We accept that these draft Particulars will be just that, a draft, and that you shall have complete liberty to formally file different Particulars.
- 3.10 Once we have a clearer understanding of your position in relation to the GLO, your response to our previous letters regarding the GLO and you have addressed the above points, we will then be able to determine what information may be needed in Schedule 3 to the draft GLO. It seems to us prudent for all parties to have a clearer understanding of how this litigation may be conducted in the future, before making decisions on what evidence needs to be gathered from the parties. We will nevertheless give this topic further thought pending your response.
- 3.11 Please confirm that you will address the above points in (or at the same time as) your Letter of Reply (ie. by 20 October 2016).
- 3.12 Please provide draft generic Particulars of Claim by 28 October 2016. We have intentionally proposed a date after 20 October so that you may first submit your Letter of Reply.

### **3. Security for Costs**

- 3.1 We are currently reviewing the ATE policy you have provided and shall respond separately on this matter.

### **4. Second Sight**

- 4.1 Both parties agree that the Claimants should be able to consult Second Sight, subject to adequate controls being in place to protect our client's privileged information held by Second Sight.
- 4.2 So as to ensure that any privileged information which is held by Second Sight remains protected, we propose that Second Sight, you (in your capacity as solicitors for the Claimants) and Post Office agree a tripartite Protocol which sets out the terms of access to Second Sight. Please find enclosed a draft Protocol for your review.
- 4.3 The Protocol draws a distinction between the provision of documents and information. Second Sight has confirmed to Post Office that it has provided to Post Office all documents (both hardcopy and electronic) which related to Post Office and the Mediation Scheme, and then destroyed any remaining copies. As such, we would be concerned if Second Sight were able to provide you with any documents. If you have previously sought to obtain any documents which Second Sight had sight of, please now provide us with copies of such requests. Further, any additional requests for information should be made through us.
- 4.4 Given the above, access to Second Sight should only relate to the recollections of the staff at Second Sight. Essentially this is limited to their knowledge as witnesses.
- 4.5 There are certain topics that are likely to involve substantial amounts of legally privileged material. There are also topics that may affect the privacy of individuals who are not parties to

this litigation. The Protocol therefore prohibits discussion of these high risk areas. These areas include:

- 4.5.1 Information concerning Post Office's criminal prosecutions against Claimants and generally. Prior to establishment of the Mediation Scheme, Post Office provided Second Sight with access to its internal legal files in relation to certain prosecutions, under a condition of non-waiver of privilege. It will be near impossible for Second Sight to filter privileged and non-privileged material during a discussion with your firm and therefore this topic must not be discussed;
- 4.5.2 Information concerning previous civil proceedings against Claimants. For similar reasons to above, this topic should not be discussed; and
- 4.5.3 Information relating to Postmasters who are not Claimants. As you will appreciate, this information is sensitive to individuals who may not wish to be involved in this litigation. It is also covered by confidentiality between Post Office and those individuals, as well as statutory Data Protection safeguards. These Data Protection rules only permit Post Office (and by proxy Second Sight) to release information for litigation purposes where it is "necessary" to do so. If you wish to discuss individuals who are not Claimants with Second Sight, please explain why that information is necessary and we will then seek our client's consent.

- 4.6 The Protocol also provides a framework for addressing other related matters such as data protection compliance, the sharing of information between Claimants, Second Sight's costs and the inadvertent disclosure of privileged material.
- 4.7 You will note that we are not seeking to pre-approve any interaction with Second Sight, nor yet the material they may provide to you. We are trusting your firm to comply fairly with the Protocol. In order to ensure that the above limits are maintained, the Protocol provides that the communications with Second Sight are only to be conducted by you (rather than via individual Claimants), with a single point of contact at Second Sight. This single channel of communication will help to ensure compliance with the Protocol. We note that you provided for something similar in your recent letter where you sought permission to speak to Ian Henderson.
- 4.8 We welcome your comments on the Protocol.

5. **Claim Form application**
- 5.1 The sections which you have referred us to in McGee on Limitation Periods discuss the methods by which parties can contract out of the statutory limitation period and be estopped from relying on limitation defences. However, the issue we are discussing is the date upon which the claims were brought and whether the parties can agree to a notional claim date of 3 August 2016 for all new claims. The sections which you quote do not appear to deal with this issue. If we have misunderstood, please clarify the relevance of these extracts.
- 5.2 Although you have not provided us with any assurance that your proposal is lawful, we suggest that the parties adopt the following approach:
  - 5.2.1 A draft Order is provided to Senior Master Fontaine setting a notional Claim date of 3 August 2016, along with short written submissions (e.g. one page) from both parties;
  - 5.2.2 A request that Senior Master Fontaine decides on the basis of the papers whether she is able to make the Order which is sought; and
  - 5.2.3 In the event that Senior Master Fontaine feels unable to make such an Order, then the application hearing should proceed.
- 5.3 Please find attached a revised draft Order for your review. Please provide any comments which you may have on our proposal and the draft Order by 20 October 2016.

5.4 So as to avoid this issue re-occurring in the future, we ask you, again, to confirm that if there are any further new Claimants, you will issue a new Claim Form(s) for them and will not seek to further amend the existing Claim Form.

**6. Other amendments to Claim Form**

Claims brought by companies

6.1 You have confirmed that the amendment to the Claim Form, whereby a reference to Claimant "companies" was added, was because some of the Claimants have traded through companies. However, to date, none of the Claimants are companies.

6.2 In the circumstances where the principal contracting party with Post Office is a company, the claim against Post Office should be brought by the company rather than the Postmaster in their individual capacity. By way of example, you say in your letter of 8 September 2016 that Dr Kutianawala contracts with Post Office via FSK Enterprises Limited, yet his claim has been brought by Dr Kutianawala in his individual capacity.

6.3 It appears that you may have pleaded inaccurate claims, and signed a statement of truth to this effect, as the correct party to the litigation was known to be a company but joined to the proceedings as an individual.

6.4 Please provide your proposals for amending the Claim Form to address this issue (in the case of Dr Kutianawala and any others) and confirmation of when you propose to do so.

6.5 Alternatively, if you are not proposing to amend the Claim Form further, it would appear that the reference to "companies" has been included in the expectation of later adding more Claimants who may be companies to this litigation. We must therefore insist that this will not happen and that you provide the confirmation sought in paragraph 5.4 above.

Network Reimbursement

6.6 Thank you for explaining what was meant by "*capital payment entitlements payable by the Defendant upon branch closures*". We note that the claim which relates to the Network Reimbursement has not to date been discussed in pre-action correspondence. This appears to be a new category of claim, the formal basis for and legal ramifications of which are completely unknown to Post Office.

6.7 Please confirm that you will provide full details of this claim in your Letter of Reply.

**7. Governing Law**

7.1 We note your position that English law is the applicable law for both the contractual and non-contractual causes of actions in these proceedings. Our client reserves its position in respect of this matter since without full particularisation of each of the Claimants' claims it is not possible to ascertain where the causes of action originated and any affect this may have on governing law. This is another reason why it is critical that you provide proper details in your Letter of Reply of the claims being advanced.

**8. Disclosure**

8.1 We refer to your second letter of 25 August 2016 in relation to disclosure.

Documents provided to date

8.2 On 31 August 2016, we provided you with 45 documents (totalling 592 pages) you had requested, which related to different categories of your requests. In addition to these documents, many documents were shared with your clients throughout the Complaints Review and Mediation Scheme (which was hundreds of pages of documents in most cases). We anticipate that those

Claimants will therefore have documents relevant to your requests and which you would be able to obtain from them. Our client has therefore already provided significant pre-action disclosure.

Your requests

- 8.3 As we have said previously, your requests are nothing more than a fishing expedition. Your most recent letter on this subject repeats the requests with little attempt made to (i) explain why the documents are relevant or are needed at this stage of the litigation process or (ii) narrow the requests.
- 8.4 Where possible, we have sought to identify further documents in light of the few clarifications you have provided. In the main, however, your requests remain disproportionate and unjustified. You are effectively seeking to bring forward disclosure in these proceedings before you have pleaded out your clients' claims.
- 8.5 Our principle objection to your requests is that they would put our client to significant cost because the documents requested do not exist in discrete, easily accessible locations. For example, in relation to your request 17 for "*Notes of audits and investigations...*", there are several teams in different locations that deal with audits and investigations, including audit, security and the contract teams. These teams are based across the country, with some team members working remotely. There is support for these teams based in London and Chesterfield, with further off-site archiving facilities for closed files. Consequently, this information is not easily accessible in one location.
- 8.6 We set out below a description of Post Office's organisational structure in order to show that locating the documents you have sought would require an extensive disclosure exercise. We anticipate that the cost of this exercise would run into the hundreds of thousands of pounds (if not more). At a time when your clients have not quantified their claims and are refusing to re-issue a Claim Form in order to remedy a limitation issue on the grounds that it would cost them a further £10,000, this disclosure exercise is clearly disproportionate.

Post Office's organisational structure

- 8.7 As many of your clients will be aware, Post Office Limited and Royal Mail Group Limited (**Royal Mail**) became separate companies in April 2012. This split led to significant changes to the structure of Post Office and how it was run. We note that you seek historical documents dating back 18 years, to 1998. It is self-evident that in this time, responsibilities will have moved between different teams and a full mapping exercise will be needed to ascertain where documents have been held in this period.
- 8.8 Currently, there are many different teams that are involved in the running of branches that also diverge, depending on whether the branch is run by agents or Post Office employees. Teams include those related to security, audit, remuneration, field support, NBSC, sales, training, anti-money laundering, recruitment, HR, agent contractual support, and different commercial and support teams for the various products offered across Post Office's network. It is estimated that at least dozens, if not hundreds, of employees are currently engaged by these teams (and historically there will have been many more). There are therefore many different teams and people that may have held / hold the information you seek.
- 8.9 Post Office also holds documents in several different office locations, in off-site storage and in branches. Consequently, the documents that you seek are held in many different physical locations.
- 8.10 In addition to the normal IT development that any organisation experiences, since the split with Royal Mail, there have also been changes to Post Office's IT services. Relevant documents are held in several different databases and software solutions, which have changed during the time period relevant to this matter. This will include different email systems and archiving for those emails, individuals' laptop hard drives where documents are stored (not all of whom share their documents over any network), different networked drives and cloud storage locations, database systems such as SAP and other specialised software. Post Office has several third party

suppliers of IT software and support beyond just Fujitsu, all of which will need to be liaised with to locate the information sought. These suppliers are also likely to charge Post Office for conducting a mass search and retrieval of information in the form that you are seeking.

- 8.11 Therefore, in order to locate the documents you seek at this early stage, a full disclosure exercise will be required to scope the document holders, locations of documents and how they are stored. Forensic teams will then be needed, again, at a cost, to retrieve the documents so as to preserve the metadata.
- 8.12 We anticipate, based on our experiences in the Mediation Scheme, that this exercise could return hundreds of thousands, if not millions of documents. For example, Post Office has made available to the CCRC approximately a quarter of a million documents and these documents were only generated by Post Office's security team. The documents will therefore need to be keyword searched in order to identify potentially relevant material. To do this would require Post Office to use, at a cost, an e-disclosure software solution.
- 8.13 Following this, a manual review will still be required in order to filter out *inter alia* privileged material and confidential yet irrelevant material (e.g. material related to Postmasters who are not part of the Group Action). This would require a team of paralegals to be engaged at considerable cost, performing a review that may take weeks, if not months.
- 8.14 Such an exercise may need to be repeated once your clients' claims are pleaded and full disclosure is ordered.
- 8.15 As can be seen from above, conducting this work now is therefore not cost proportionate (again noting that you have not in any way sought to quantify your clients' claims) and nor in accordance with the Overriding Objective.

Further disclosure

- 8.16 We have nevertheless, through appropriate endeavours, located additional documents for disclosure. A full list of these documents, and line by line comments on your requests, is enclosed.
- 8.17 If you wish to adopt a more co-operative approach by making more targeted requests for documents, we will of course consider these.
- 8.18 We would however ask that you focus on more important matters, namely gathering information from your own clients and presenting their cases substantively. As explained in our letter of 28 July 2016, the information held by your clients is critical but, as yet, you have presented practically none of this information. Once you have pleaded your clients' claims properly, the parties will be much better placed to provide proportionate and reasonable disclosure.

Yours faithfully



**Bond Dickinson LLP**

# FREETHS

Bond Dickinson LLP  
DX 38517  
Southampton3

**GRO**  
Switchboard:  GRO  
Email: [james.hartley@](mailto:james.hartley@) GRO

By email: [andrew.parsons@](mailto:andrew.parsons@) **GRO**

24 February 2017

Our Ref: JXH/1684/2113618/1  
Your Ref: AP6/364065.1369

Dear Sirs,

**BATES & OTHERS -V- POST OFFICE LTD**  
**Claim No: HQ16X01238**  
**SECOND SIGHT**

We write further to our recent correspondence, regarding our access to Second Sight, and to the documents delivered up by them to Post Office.

This firm will not enter into the proposed, or any, contractual arrangement to facilitate access to Second Sight. We propose to give your client a final opportunity prior to serving our Generic Particulars of Claim to specify the following:-

- 1) The categories of information that you will authorise Second Sight to discuss with us; and
- 2) Which of the documents returned by Second Sight to Post Office, your client will disclose prior to service of the Generic Particulars of Claim

We note in your letters dated 28 July 2016 and 13 October 2016 that the email data supplied by Post Office to Second Sight in May 2013 is held on an encrypted hard drive that you have not been able to decrypt. We are willing to assist in this process and instruct IT experts to attempt to decrypt this information, which we are confident will be possible. Therefore, please confirm if you will provide us with access to the hard drive to enable us to carry out this exercise.

The parties have already expended excessive time and money on this issue, and we will each be mindful of the comments of Senior Master Fontaine regarding mutual cooperation.

In the event that you impede access to documents and information from us, which we are subsequently provided with during the course of the proceedings, and if we need to amend the Generic Particulars of Claim as a result, then we will be seeking the associated costs from you.

24 February 2017  
Page 2

For the avoidance of doubt, documents generated by or for the Working Group fall into a different category to those delivered by Second Sight to Post Office, we require the above in addition to these documents, which, by their very nature, do not attract privilege status.

Please provide your response by no later than 12pm Wednesday 1 March 2017.

Yours faithfully



Freeths LLP  
Please respond by e-mail where possible

## Kizzie Fenner

**From:** James Hartley <[REDACTED]**GRO**>  
**Sent:** 15 June 2017 17:13  
**To:** Parsons, Andrew  
**Cc:** James Hartley; Imogen Randall; Lukas, Elisa; Fenner, Kizzie; Prime, Amy; Lisa Bennett  
**Subject:** Post Office - Protocol for Second Sight access  
**Attachments:** Protocol for Second Sight 14 06 17 (Csl suggested amends).docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Andy,

Attached are our proposed track changes to your 30 November 2016 revised version of the Protocol. However long the parties continue dialogue on this, the terms of the Protocol are unlikely to meet all requirements of our respective clients – there will inevitably need to be compromise on both sides, which we've tried to reflect in the attached.

Please confirm that this can be agreed, whereupon we (Freeths) shall obviously need to communicate with Second Sight to seek their agreement.

I'll await hearing from you as soon as possible on this.

Regards  
James  
**James Hartley**  
Partner  
Dispute Resolution



**FREETHS**

Freeths LLP, Floor 3, 100 Wellington Street, Leeds LS1 4LT



*Please be aware of the increasing risk of cybercrime and online fraud. If you ever receive an email stating a change in bank account details purporting to be from Freeths LLP, do not send any funds to the account and contact us immediately. We will never send you an email telling you that we have changed our bank account details.*

Chambers UK Guide 2017: Ranked in 33 categories | 63 Lawyers 'Leaders in the field'  
Legal 500 Guide 2017: 'Top Tier' in 21 categories | 93 'Recommended' Lawyers | 17 'Elite Leading Lawyers'



2017

Protocol governing Second Sight's interaction with Freeths for the  
purposes of the Claim

Freeths LLP <sup>(1)</sup>  
Post Office Limited <sup>(2)</sup> and  
Second Sight Support Services Limited <sup>(3)</sup>

**DATE**

**PARTIES**

- (1) Freeths LLP (Company No. OC304688) (in their capacity as solicitors for the Claimants) of 80 Mount Street, Nottingham, Nottinghamshire, United Kingdom, NG1 6HH (Freeths);
- (2) Post Office Limited (Company No. 02154540) of Finsbury Dials, 20 Finsbury Street, London, EC2Y 9AQ (Post Office); and
- (3) Second Sight Support Services Limited (Company No. 06844000) of 7 Canon Grove, Yarm, TS15 9XE (Second Sight).

**BACKGROUND**

- (A) A group litigation action has been brought by a number of former and current postmasters and others (the Claimants) against Post Office under Claim Number HQ16X01238 (the Claim). As part of the Claim, the Claimants wish to approach and seek information from Second Sight. The Claim is the subject of Group Litigation Order dated 22<sup>nd</sup> March 2017 (the GLO).
- (B) Post Office engaged Second Sight in June 2012 to Investigate Horizon and the issues being raised by a number of Postmasters. Second Sight's work involved (1) an original Inquiry investigating Horizon from a general perspective, which work concluded in July 2013; and (2) investigating the circumstances of individual complaints through the "Complaint Review and Mediation Scheme", which work concluded in July 2015.
- (C) Second Sight's engagement was recorded in a letter dated 1 July 2014 (the First Engagement Letter) which required Second Sight to maintain confidentiality (clause 6) and not to publicly discuss its work (clause 8) (the Confidentiality Obligations). The subsequent engagement letter dated 15 April 2015 (the Second Engagement Letter, together with the First Engagement Letter, the Engagement Letters) restated the Confidentiality Obligations.
- (D) In addition, non-disclosure agreements were entered into between Post Office and key personnel at Second Sight, including the NDAs between Ian Henderson dated 31 May 2012 and Ron Warmington dated 1 June 2012 (the NDAs). Second Sight also undertook and agreed in October 2012 that certain material was provided to them without waiver of privilege (the Privilege Undertaking).
- (E) Post Office and Second Sight obtained material from Postmasters that is or may be the subject of confidentiality obligations owed to those persons and/or covered by data protection law. None of the parties observing this Protocol thereby makes any admission or concession as to the scope or enforceability of such obligations arising thereunder or under the First Engagement Letter.
- (F) The purpose of this protocol is to maintain any such confidentiality or privilege in the material held by Second Sight, save as expressly otherwise provided in this Protocol. This protocol governs the agreed basis on which Post Office agrees that Freeths can access Second Sight and sets out the basis on which Second Sight is released from the Confidentiality Obligations, obligations under the NDA, and Privilege Undertakings so as to enable them to do so.

**AGREED TERMS**

**1. DEFINITIONS**

- 1.1 Unless otherwise defined in this protocol, capitalised terms have the same meaning as they have in the Letter of Response from Bond Dickinson dated 28 July 2016.
- 1.2 "Document" means anything in which information of any description is recorded including but not limited to emails and other communications, word processed and electronic documents, and databases, as well as copies of Documents.

1.3 "Information" has its natural meaning and includes any knowledge communicated by Second Sight to Freeths (or anyone).

## 2. COMMENCEMENT AND DURATION

2.1 This protocol shall commence on the date when it has been signed by all the parties and shall continue until the end of the Claim unless terminated in accordance with clause 8.

## 3. ACCESS TO SECOND SIGHT AND RELEASE

3.1 Subject to the provisions of paragraphs 3.1.1 to 3.1.5, Post Office hereby releases Second Sight from the Confidentiality Obligations and obligations under the NDAs solely for the purposes of discussing with Freeths (and Counsel or Expert(s) engaged by Freeths) the work undertaken by Second Sight to the extent required for the purposes of the Claim.

3.1.1 Freeths shall not request and Second Sight must not provide Freeths with any Documents. Any requests for Documents must be addressed to Post Office's solicitors, Bond Dickinson LLP (Bond Dickinson).

3.1.2 The discussions shall only be between Freeths, Counsel or Expert(s) engaged by Freeths, Alan Bates and Ian Henderson and Ron Warmington of Second Sight.

3.1.3 Subject to paragraph 3.1.5, the topics for initial discussion with Second Sight (the **Initial Topics**) pursuant to this protocol (and as agreed by Bond Dickinson's letter dated 21<sup>st</sup> March 2017) shall be as follows:

- System architecture;
- The Installation and Implementation of Horizon, and Horizon Online, and the variation between, and capability of, the two;
- Horizon updates, modifications and software versions since Installation
- Transaction corrections;
- The functionality and capability of Post Office helpline and the technical helpline operated by Fujitsu;
- Hardware problems;
- The Management Information System or Services and ability of the Horizon system to report on reconciliation;
- Errors, bugs, fixes, issues and 'peaks' including, but not limited to, those three known errors in the system listed in Schedule 6 of Bond Dickinson's letter dated 28 July 2016 (Calendar Square / Falkirk, payments mismatch, Suspense Account Bug);
- The 'known error log' document(s);
- The extent of error repellency in the Horizon system;
- The reduced reboot clause in Schedule B4.4 of Post Office's agreement with Fujitsu; and

- Post Office's access to transaction information and its agreement with Fujitsu in respect of provision of such information.

3.1.4 The parties agree to co-operate in identifying and agreeing further relevant topics for discussions to be permitted under this protocol.

3.1.5 Notwithstanding any other paragraph in this protocol, Freeths and Second Sight shall not discuss the following categories of Information unless Bond Dickinson's prior written consent is obtained:

- (a) Information concerning any actual or contemplated criminal prosecutions conducted by either Post Office, Royal Mail, the Procurator Fiscal or Public Prosecution Service for Northern Ireland and any information relating to the security investigations, internal decisions of Post Office or other steps taken by Post Office in relation to these prosecutions;
- (b) Information concerning any actual or contemplated civil proceedings and any information relating to the investigations, internal decisions of Post Office or other steps taken by Post Office in relation to these proceedings;
- (c) Information which relates to postmasters who are not Claimants;

or

- (d) any information which is (and/or Second Sight believes may be) privileged.

3.1.6 In the event that it is unclear to Freeths whether Information would fall within the above categories, Bond Dickinson's clarification should be sought prior to the Information being discussed. Post Office will ensure that Bond Dickinson provide reasonable cooperation in relation to providing such clarification.

3.2 For the avoidance of doubt, Second Sight is also released, to the extent necessary and only for the purposes of this protocol, from their obligations in the First Engagement Letter that they would not act for former or current subpostmasters against Post Office.

**4. USE OF INFORMATION**

4.1 The Information provided by Second Sight to Freeths shall be kept confidential and shall not be used otherwise than for the purpose of the Claim and the Claimants and Freeths shall treat the Information as if it had been derived from documents disclosed pursuant to standard disclosure (that is to say, subject to the restrictions in CPR 31.22).

4.2 This clause 4 shall also apply to any Documents provided by Second Sight to Freeths in breach of this protocol.

**5. PRIVILEGED MATERIALS**

5.1 If Second Sight or Freeths become aware that Documents or Information have been handled in a way not in compliance with this protocol, Bond Dickinson should be informed immediately.

5.2 If, contrary to and in breach of its obligations hereunder, Second Sight provides or supplies Documents and/or privileged Documents or Information to Freeths:

- 5.2.1 this shall not amount to a waiver of the privilege which subsists in any Documents or Information in which privilege shall apply; and
- 5.2.2 Post Office reserves its position to prevent privileged Documents or Information being relied upon or adduced as evidence in Court.

**6. SECOND SIGHT'S COSTS**

6.1 Post Office is not responsible for any fees, costs or expenses incurred or charged by Second Sight in connection with this protocol.

**7. DATA PROTECTION**

7.1 In relation to any personal data passed from Second Sight to Freeths, Second Sight and Freeths shall each be acting as data controllers in their own right.

**8. TERMINATION**

8.1 In the event that Freeths or Second Sight breach the terms of this protocol by (including but not limited to):

- 8.1.1 Freeths requesting or Second Sight providing Documents;
- 8.1.2 Freeths requesting or Second Sight providing Information which falls within the categories set out in clause 3.1.53.1.5 above; or
- 8.1.3 Freeths or the Claimants using the Information other than in accordance with clause 4 above;

then Post Office may terminate this protocol with immediate effect by giving written notice to Freeths and Second Sight.

8.2 In the event that this protocol is terminated:

- 8.2.1 the permissions and releases provided in clause 3 above will cease to have effect and any discussions between Second Sight and Freeths will stop;
- 8.2.2 the obligations under clauses 4 and 5 will remain in force insofar as they relate to Information and Documents provided prior to termination; and
- 8.2.3 clause 6 will remain in force.

**9. RESOLUTION OF ISSUES ARISING UNDER THIS PROTOCOL**

9.1 Any issues, disputes or matters for resolution or determination relating to this protocol shall be referred to the Managing Judge or the Managing Master nominated to manage the GLO.

**10. GENERAL**

- 10.1 This protocol shall not have contractual force other than between Post Office and Second Sight to the extent necessary for this protocol to be effective.
- 10.2 Any variation of this protocol shall be in writing and signed by each party.

Signed by, James Hartley, partner, for and  
behalf of Freeths LLP

**GRO**

Date 29/8/17

Signed by [name] for and on behalf of Post Office  
Limited

**GRO**

Authorised Signatory

Date 21/8/17.

Signed by [name] for and on behalf of Second  
Sight Services Limited

**GRO**

Date

1st September 2017

# FREEITHS

Andrew Parsons  
Bond Dickinson LLP  
DX38517 Southampton 3

Direct dial: **GRO**  
Direct fax:  
Switchboard:  
Email: james.hartley **GRO**

13 September 2017

**Third letter**

Our Ref: JXH/1684/2113618/1

**By email only**

Dear Sirs

**BATES & OTHERS v POST OFFICE LIMITED – GROUP ACTION  
CLAIM NO: HQ16X01238  
INSPECTION OF KNOWN ERROR LOGS**

We write in relation to the Known Error Logs and further to our letter of 6 July 2017, our second letter of 3 August 2017 and your second letter dated 1 September 2017.

**Summary**

We first requested sight of the Known Error Logs in our Letter of Claim dated 28 April 2016 and have repeatedly requested them since, including in our letter of 6 July 2017, in which we identified this as an urgent matter, stressing that the Known Error Logs were necessary for our clients' Reply. They are obviously of central relevance.

The reasons for your client's refusal to provide the Known Error Logs have changed from time to time. We do not accept any of those reasons as good reasons.

Your client referred to the Known Error Logs at paragraph 50(4) of its Defence, served on 18 July 2017. Our client may therefore inspect that document: CPR 31.14(1)(a). We formally requested inspection of the Known Error Logs, in our letter of 3 August 2017, on this basis and referred you expressly to CPR 31.14(1)(a).

You have not responded to that request, despite addressing the Known Error Logs in your letter of 1 September 2017. In any event, the content of your letter would not justify Post Office's refusal to

allow inspection of such plainly important documents. The Claimants obviously need access to the electronic documents recording errors in Horizon, which we understand to be the Known Error Logs.

We now require Post Office to provide inspection of the Known Error Logs, failing which we will issue an application for an order that you do so, without further reference to you.

Please confirm by 5pm on Friday, 15 September 2017, that Post Office will provide inspection of the Known Error Logs by 5pm on Friday, 22 September 2017.

#### A. Recent Correspondence

For convenience, we briefly summarise the most recent correspondence to which we have referred above.

1. 6 July 2017 – On 6 July 2017, in anticipation of service of the Generic Defence and the CMC listed on 19 October 2017, we wrote to you proposing sensible directions for the CMC and highlighting the “*urgent matter of disclosure of the Known Error Log(s)*”. We stated that the case obviously involved whether there were errors associated with Horizon that impacted upon branches, as well as what Post Office knew of them; the refusal to provide the Known Error Log to the Claimants prevented them from setting out any detailed particulars of bugs, errors or defects in the Generic Particulars of Claim. We emphasised that we needed to be in a position to give these issues careful consideration well in advance of the CMC, and in any event when considering our clients’ Reply. We invited provision of the Known Error Logs with your client’s Generic Defence on 18 July 2017.
2. 18 July 2017 – On 18 July 2017, we were served with Post Office’s Generic Defence. The Known Error Logs were not provided. Paragraph 50(4) of the Generic Defence expressly referred to the Known Error Log in the following terms:

*“It is admitted that Fujitsu maintain a “Known Error Log”. This is not used by Post Office and nor is it in Post Office’s control. To the best of Post Office’s information and belief, the Known Error Log is a knowledge base document used by Fujitsu which explains how to deal with, or work around, minor issues that can sometimes arise in Horizon for which (often because of their triviality) system-wide fixes that have not been developed and implemented. It is not a record of software coding errors or bugs for which system-wide fixes have been developed and implemented. To the best of Post Office’s knowledge and belief, there is no issue in the Known Error Log that could affect the accuracy of a branch’s accounts or the secure transmission and storage of data.”* [emphasis added]

3. 3 August 2017 – As noted in the Summary above, we wrote to you and specifically requested inspection of the Known Error Log pursuant to CPR 31.14(1)(a) on the basis that the Known Error Logs were mentioned in Post Office's Defence. We also made the point that the Schedule 1 to your letter of 13 October 2016 stated that a review of the Known Error Log had been undertaken (by Fujitsu, apparently at Post Office's behest) –directly contradicting the pleading in the Generic Defence, as to control.
4. 1 September 2017 – Your final correspondence on this issue failed to acknowledge or engage with the request in our letter of 3 August 2017 and changed tack yet again, now asserting:

*"Access to the Known Error Log (KEL) can also be considered as part of these wider disclosure issues. The KEL is not a document, but a live and proprietary database with approximately 4,000 entries. Since the KEL is a constantly rolling document, the current version in use has evolved over time and may not reflect the version in place at time (sic) which is relevant to the Claimants' claims. Providing "disclosure" of it is therefore not easy to do and prone to being a disproportionately expensive exercise if not handled carefully. Addressing whether and, if so, how your client should have access to the KEL therefore needs to be considered in the context of any wider directions that are made."*

[emphasis added]

## B. Post Office's Objections

We address below the objections which we now understand Post Office to rely upon.

### Not a Document

Your contention that "*The KEL is not a document*" is unsustainable and obviously wrong for two reasons:

1. First, CPR 31.4 expressly provides that "*In this Part – 'document' means anything in which information of any description is recorded.*"
2. You have repeatedly referred to the Known Error Logs as being a document in correspondence (e.g. in the letter of 1 September above) and have pleaded that "*the Known Error Log is a knowledge base document*": Defence, paragraph 50(4), above.

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#### Not in Post Office's Control

As we set out in our letter of 3 August 2017, it is clear from Schedule 1 to your letter of 13 October 2016 that the Known Error Logs are in Post Office's control. You have not responded to that. Indeed, your letter of 1 September 2017, that you are no longer advancing this argument.

CPR 31.8(2) provides that: "*a party has or has had a document in his control if –*

- (a) it is or was in his physical possession;*
- (b) he has or has had a right to possession of it; or*
- (c) he has or has had a right to inspect or take copies of it.”*

We have sought express confirmation from you, by Requests 30 to 33 in our Request for Further Information, that Post Office has, at the very least, a contractual entitlement to data derived from the known error log. We regard it as inconceivable that Post Office does not have any contractual rights to obtain or inspect the Known Error Logs or data derived therefrom.

#### Difficult and disproportionate disclosure

Paragraph 1.5 of your 1 September 2017 letter states contends that there is a great difficulty in disclosing the Known Error Log in a relevant form given that the current version "*has evolved over time*" and "*has approximately 4,000 entries*". You have been expressly on notice of your duty to preserve documents since our letter of 16 December 2015 and, given the sensitivity and seriousness of the issues raised in the Mediation Scheme, we would have expected you to have preserved all relevant documents from that time in any event.

More specifically, the Known Error Log was a document which we specifically requested in our Letter of Claim and have consistently pursued thereafter. We also consider it significant that in your letter to us on 6 May 2016, you stressed the need "*to ensure that all metadata in any electronic documents are preserved*" and asked us to confirm that we had "*advised [our] clients on a method of making mirror copies of documents that preserves the metadata*".

At present we do not believe that there should be any difficulty in providing inspection, as required by the CPR, such as would justify the objection which Post Office advances. It is inconceivable that there is no sensible and proportionate way in which inspection can be given in usable form.

#### **C. Conclusion**

Our client is entitled to inspection of the Known Error Log.

13 September 2017  
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# FREETHS

Please confirm by 5pm on Friday, 15 September 2017, that Post Office will provide inspection of the Known Error Logs by 5pm on Friday, 22 September 2017, failing which we will issue an application under CPR 31.14 for inspection.

Yours faithfully



Freeths LLP  
Please respond by e-mail where possible

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22 September 2017

For the Attention of Mr J Hartley  
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By email only

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andrew.parsons GRO  
GRO

Our ref:  
AP6/AP6/364065.1369  
Your ref:  
IFR/1803/212876/1/ER

Dear Sirs

**The Post Office Group Litigation  
Known Error Log ("KEL")**

We refer to your third letter of 13 September 2017.

We note that in your letter you have sought to portray Post Office as refusing to provide access to the KEL. The possibility of accessing the KEL was not refused by Post Office. Our client's position was that the KEL was not relevant to these proceedings for the reasons stated in its Generic Defence, but that it would try to facilitate access to the KEL at an appropriate time. We had stated that in our view the appropriate time was at the same time as similar disclosure was given.

Whilst we disagree with a number of the points in your letter (including your right to inspect the KEL under CPR 31.14), given your anxiety to inspect it Post Office has discussed with Fujitsu the methods by which access can be provided.

The KEL is a database which cannot easily be downloaded and provided to you. Fujitsu has therefore kindly agreed that the Claimants' IT expert may inspect the KEL at its premises in Bracknell. This will enable your expert to understand the nature of the KEL and to satisfy himself as to the relevance of any of the entries in it.

Please could you confirm the name and details of your expert and his dates of availability over the next two weeks. As the KEL contains some information that is confidential and commercially sensitive, Fujitsu has asked that your expert signs a routine non-disclosure agreement. We have asked Fujitsu to provide a draft for your approval.

Yours faithfully

**Bond Dickinson LLP**



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29 September 2017

For the Attention of Mr J Hartley  
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Our ref:  
AP6/AP6/364065.1369  
Your ref:  
IFR/1803/212876/1/ER

Dear Sirs

**The Post Office Group Litigation  
Known Error Log ("KEL")**

We refer to your fourth letter of 27 September 2017 and the conversation between James Hartley (of Freeths) and Andrew Parsons (of Bond Dickinson) of the same date in which it was confirmed that the Claimants' expert was Jason Coyne of IT Group.

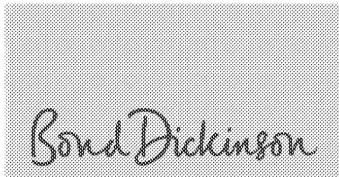
Fujitsu has agreed that the Claimants' IT expert may inspect the KEL at its premises in Bracknell. Post Office's therefore proposes that Mr Coyne meets with Fujitsu to review the KEL. This will enable Mr Coyne to understand the nature of the KEL and the relevance of any of the entries in it. We do not believe that an initial call between Mr Coyne and Fujitsu is necessary since a review of the KEL may answer any queries. Any further access to the KEL which is required can be discussed between the parties following this initial inspection.

The above proposal is without prejudice to the parties' respective positions on the disclosure of the KEL as set out in the previous correspondence.

Yours faithfully

*Bond Dickinson LLP*

**Bond Dickinson LLP**



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6 October 2017

For the Attention of Mr J Hartley  
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Our ref:  
AP6/AP6/364065.1369  
Your ref:  
IFR/1803/212876/1/ER

Dear Sirs

**The Post Office Group Litigation  
Known Error Log ("KEL")**

Further to our letter dated 4 October 2017, we are able to confirm the arrangements for the meeting between Fujitsu and the Claimants' expert, Mr Coyne.

The meeting will be attended on behalf of Fujitsu by Pete Newsome (Post Office's account manager at Fujitsu) and a member of the support services team. Fujitsu's preferred date/time for the meeting is Monday, 9 October 2017 at 10am. Please confirm that your expert will attend this meeting.

As explained in our letter of 29 September 2017, the purpose of the meeting and the attendance of Fujitsu at this is to enable Mr Coyne to understand the nature of the KEL and the relevance of the entries it contains. If following his review Mr Coyne has any queries on the substance of these entries or otherwise these should be placed in writing and addressed to Bond Dickinson.

In our letter dated 20 September 2017, we informed you that Fujitsu had asked for a non-disclosure agreement to be signed to protect its confidential and commercially sensitive information. We have now received drafts from Fujitsu. Accordingly, we enclose an individual confidentiality undertaking for Mr Coyne to sign, together with a corporate non-disclosure agreement for IT Group Ltd. Since we/Fujitsu are not aware of the capacity in which Mr Coyne is connected with IT Group Ltd (ie whether he is an employee or contractor), you will see that this information needs to be completed within the relevant documents. Routine information such as IT Group Ltd and Mr Coyne's address details also needs to be inserted.

We should be grateful if you would attend to these details and then return the signed agreements to us prior to the meeting between Fujitsu and Mr Coyne.

We look forward to hearing from you.

Yours faithfully

**Bond Dickinson LLP**

**Enclosures**

1. Confidentiality undertaking
2. Non-disclosure agreement



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10 April 2017

**Sixth Letter**

For the Attention of Mr J Hartley  
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By special delivery and email

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Our ref:  
GRM1/AP6/364065.1369  
Your ref:  
JLH/1684/2113618/1/OR

Dear Sirs

**Bates & Others -v- Post Office Limited**  
Claim Number: HQ16X01238  
Disclosure of Contractual Documents

We refer to our letter dated 31 March 2017.

Post Office has conducted a search of the likely locations where core contractual documents (the **Contractual Documents**) may be held, despite being under no obligation to do so at this time.

We now disclose the relevant Contractual Documents that Post Office has located to date.

**Disclosure of Contractual Documents**

We enclose with this letter an encrypted USB device, which stores disclosed Contractual Documents. The password for the USB device will be sent to Mr Hartley in a separate email.

Please also find enclosed an Index to the Contractual Documents contained on the USB device. For ease of reference, the enclosed Index lists the Claimants in alphabetical order and details the name and date of their Contractual Documents respectively. The document numbers listed in the Index match the document numbers on the USB device.

**Standard Conditions**

For 26 of the Claimants, the Contractual Documents being disclosed include a Preface, which incorporates documents by reference. One of these documents is a set of Standard Conditions.

The enclosed USB device includes the relevant version of the Standard Conditions applicable to each of these 26 Prefaces. On the basis that the same set of Standard Conditions applies to more than one of the Claimants, we have not included duplicate copies of the Standard Conditions. Instead, the entry in the index for each of these 26 Claimants is marked with the version of the Standard Conditions that applies. The corresponding Standard Conditions can then be found at the end of the index.

**Disclosure from the Claimants**

The exercise of locating these documents has been extensive and time consuming. It is thought that at least 100 man-hours have been incurred by Post Office staff, in addition to our time. Post Office has

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applied extensive resource to provide these documents. Post Office will continue to do so and will provide any further Contractual Documents as and when appropriate.

In reciprocity, we should be grateful if you would now undertake a similar exercise in locating the contractual documents held by each Claimant. Your clients' records may help fill some of the gaps in Post Office's records. It may also help determine whether or not your clients had sight of contractual documents before or during their tenure as postmaster.

Yours faithfully

*Bond Dickinson LLP*

**Bond Dickinson LLP**

**Enclosures**

1. Encrypted USB Device
2. Index of Contractual Documents