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

2 August 2016

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

By email only

Dear Sirs

Bates & Others v Post Office Limited
Claim No. HQ16X01238

We write further to your letter of 29 July 2016 regarding the GLO application.

In our letter of 15 July 2016, we stated that our client's Letter of Response (which was due to be provided on 28 July 2016) would inform the terms of the draft GLO and as such we could see merit in dealing with the GLO after you had sight of that Letter of Response. Dispute this, we note that your GLO application was filed on 26 July 2016, two days prior to the Letter of Response.

Having reviewed the draft Order filed with the GLO application, we note that our amended version of the GLO we provided on 15 July 2016 has not been considered and neither (due to the timing of the application) has the revised version provided with the Letter of Response.

Moreover, there remain outstanding queries in respect of the applicable jurisdiction and governing law in relation to postmasters located in Scotland and Northern Ireland (as set out in the Letter of Response and our letter of 29 July 2016). In addition, we remain of the view that the GLO could be more expediently, and justly, conducted in the Commercial Court.

For these reasons, we envisage that a 3 hour hearing will not be sufficient time for the Court to make a decision on the terms of the GLO or, alternatively, there may be a need to list several hearings. We therefore require time to consider the above matters with our client and the consequential effects this may have on the listing of hearings.

We will therefore return the PRA form by no later than 4pm on Thursday 4 August 2016. We note that your deadline of 4pm today does not seem to be imposed by the Court.

We confirm that our client has no objection to your application for an extension of time. However, the Order needs to be more precisely drafted:

1. It should not refer to our client's position in the Order as our client's position is reserved on the question of jurisdiction.

2. It should make explicit reference in the recital to the GLO application that has been made.

3. It should make clear that our client is not required to file an Acknowledgement of Service until further Order is made. In the usual course of events, your client would have served Particulars

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of Claim before our client was required to acknowledge service and so this state of affairs should be preserved.

4. The parties should have liberty to apply to amend the Order.

You have only provided the draft Order in pdf format and so we have not been able to provide a marked up version for your review.

Yours faithfully

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12 August 2016

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For the Attention of James Hartley
Freeths LLP
Floor 3
100 Wellington Street
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LS1 4LT

By email only

Dear Sirs

Bates & Others v Post Office Limited
Claim No. HQ16X01238

We write further to our letter of 4 August 2016 regarding the listing of the GLO application and your letter of 5 August 2016 serving the Amended Claim Form.

In the interest of progressing this litigation in an efficient manner, we discuss below the following live issues remaining from previous correspondence and also raise a number of new issues that arise out of your clients' GLO application and the serving of the Claim Form:

1. Jurisdiction and governing law;
2. Transfer to the Commercial Court;
3. Amendment to the Claim Form;
4. Security for Costs;
5. GLO;
6. Letter of Response; and
7. Listing.

We anticipate of course that your clients may disagree with the position taken by our client on some of the substantive points below, but we hope that we may cooperate and agree between us an efficient approach to taking these points forward and resolving them as necessary.

1. Jurisdiction and governing law

1.1 As outlined in our previous correspondence, there remain outstanding queries in respect of the applicable jurisdiction and governing law in relation to postmasters located in Scotland and Northern Ireland. So as to avoid parallel proceedings in multiple jurisdictions, our client is willing to proceed on the basis that the applicable jurisdiction for all of the Claimants is England and Wales, subject to your clients agreeing to waive any rights that they might have to bring claims in Scotland and Northern Ireland.

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1.2 In respect of the applicable governing law, the position may be different. As requested in our Letter of Response, we would be grateful if you could confirm which governing law you consider applies between Post Office and the postmasters located in Scotland and Northern Ireland in respect of any contractual and non-contractual causes of action being advanced. Please explain in each case on what basis the proposed governing law is said to apply.

1.3 We would further appreciate your views on the effect that the GLO will have on any claims which are currently issued and proceeding, or are issued in the future, within the courts of Scotland and Northern Ireland. We note that clause 15 of the draft GLO filed with the GLO application requires any existing claims to which the GLO applies to be transferred to the Management Court. Further, the Defendant is required to notify the Lead Solicitors of a claim or counterclaim which is run other than by the Lead Solicitors. The GLO however will not bind the Scottish and Northern Irish courts.

1.4 Please could you confirm that the GLO is not intended to capture claims which are issued in Scotland or Northern Ireland and that it is not your expectation that these claims will need to discontinued and transferred to the Management Court in England and Wales. If that is your expectation, please explain. If it is not, please provide any proposals that you may have to address this risk.

2. Transfer to the Commercial Court

2.1 We note that we are yet to receive a response to our letter of 2 August 2016, in which we repeated our view that the GLO could be more expediently, and justly, conducted in the Commercial Court. We await your thoughts on this proposal.

2.2 In the meantime, we should be grateful if you would confirm that any application for the transfer of this matter should be made to the Commercial Court, rather than the Queen's Bench Division (as provided under for CPR 30.5 (3)). Confirmation of this point would avoid the need for a longer GLO hearing in order to accommodate any dispute on this issue.

3. Amendment to the Claim Form

3.1 We refer to the Amended Claim Form which was sealed on 3 August 2016 and served on 5 August 2016. We note that the amendments cover the inclusion of both (a) 107 new Claimants and (b) new causes of action asserted by the original Claimants and the new Claimants.

3.2 The consequence of amending the Claim Form to include the new claims of an additional 107 Claimants is that those claims will be treated as having commenced on the date of the original Claim Form (11 April 2016). This would effectively backdate their claims to this date. As you will have seen from our client's Letter of Response, our client intends to assert a limitation defence where applicable, and such backdating could deprive our client of the benefit of that defence.

3.3 Calculating the exact limitation date of the claims of the additional 107 Claimants is not possible at this stage due to the variety of factors involved, many of which are not particularised in the Letter of Claim and some of which will first require the Court to make certain determinations in order to identify their likely effect. For example:

3.3.1 Each limitation date will be specific to each individual Claimant and their particular circumstances.

3.3.2 For each Claimant, we assume that various allegations will be put forward and each of those factual allegations may be said either to give rise to a distinct cause of action or to form part of a course of conduct. The time at which a cause of action may be found to have accrued will depend on detail that has not yet been provided.

3.3.3 The factual allegations in the Letter of Claim are said to give rise to many different types of cause of action. These will have accrued at different points in time and so run from different limitation start dates and involve different limitation periods.

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3.3.4 As noted in the Letter of Response, we understand from the Letter of Claim that you will be seeking to extend limitation deadlines on the grounds of concealment. Without prejudice to the point that any such argument would be unavailing, this will complicate the application of the limitation periods to the fact of each claim.

3.4 The date on which Claims are issued will therefore be a critical factor in this matter. From a brief review the additional 107 Claimants, we note that several of these are plainly at risk of being time-barred due to the termination of their contracts being over six years ago, namely, Margaret Bateman, Wendy Cousins, Seifudin Nazarali Kutianawala, John Robert Moir, Gurmit Singh-Gill, Hughie Noel Thomas and Pauline Thomson.[1] While the alleged causes of action would in many instances have accrued before the termination of the Claimants' contract, we consider that claims where the termination date was more than 6 years before the date of the claim being advanced are particularly likely to be subject to a time bar.

3.5 Pursuant to CPR 17.4 and 19.5 one may not amend a Claim Form to add claims or parties where the applicable limitation period has expired. Due to the concerns set out above and so as to ensure certainty as to the date of issue of the claims, we therefore invite you to re-amend the Claim Form so as to remove the additional 107 Claimants and issue a new Claim Form on behalf of these Claimants. If you disagree and are able to identify Claimants amongst the 107 in respect of whom no reasonable limitation concerns arise, please do so.

3.6 In the event that you decide not to amend the Claim Form, our client shall, under CPR 17.2, apply to the Court for an Order that the amendments to add extra claims for the 107 new Claimants are disallowed. Since our client only has 14 days from the date of service to make this application, please provide your agreement that the Claim Form will be re-amended and a Consent Order signed to this effect by 4pm on 15 August 2016.

3.7 In respect of issuing a new Claim Form for the 107 additional Claimants, any delay in doing so is at your client's own risk. For example, if the amendments to the original Claim Form are disallowed by the Court, your clients will be at risk if any of their claims become time barred before a new Claim Form is issued.

3.8 Whilst on this subject, we should be grateful if you would explain two other points arising from the amendments to the Claim Form:

3.8.1 You have amended the body of the Claim Form to refer to some Claimants being companies, but no companies have been named in the Schedule of Claimants. Please can you explain the purpose behind adding the words "*(and / or companies)*".

3.8.2 You have also added the wording "*capital payment entitlements payable by the Defendant upon branch closures*". Please can you explain to what payments you intend to refer, as there is no mention of anything like this in the Letter of Claim.

3.9 Finally, we note that you have paid the wrong Issue Fee. As your clients are claiming for non-monetary remedies (e.g. declaratory relief and rescission), your clients' are also required to pay an extra fee of £528. We trust you will correct this oversight in due course.

4. **Security for Costs**

4.1 Your letter of 15 July 2016 confirmed that the Claimants have litigation funding with Therium Litigation Funding IC (**Therium**) and costs protection, which we presume is some form of ATE insurance.

4.2 Under CPR 25.14, security for costs can be sought from someone other than a claimant where the person has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings. We would be grateful

[1] Their last date of service being 8 August 2008, 5 December 2006, 29 January 2009, 13 September 2007, 15 May 2007, 13 October 2005, and 19 September 2008, respectively.

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if you could clarify whether Therium would fall within this category by nature of obtaining a share in any money which the Claimants may recover.

4.3 We also note that Therium is a foreign company (with its registered office being in Jersey) and it is our understanding that its accounts are not publicly accessible.

4.4 On the assumption that Therium would fall within CPR 25.14, or alternatively due to its foreign incorporation, our client is in a position to apply for security for costs. As such, please confirm that Therium will either make a payment into Court or into an agreed escrow account to act as security for costs in this matter.

4.5 Since the value of your clients' claims have not yet been articulated and no costs budgets have been filed, it is our proposal that the initial level of security provided by Therium be £1,000,000, with an option for this sum to be revised at a later date if shown to be necessary.

4.6 Alternatively, if you intend to say that your clients' ATE policy provides sufficient security, please could you provide us with a copy of the full ATE policy terms and any further documents necessary in order to understand the extent of that cover and any limitations.

4.7 We are mindful of the judgment in Michael Phillips Architects Ltd v Riklin and Another [2010] EWHC 834 (TCC) in which Akenhead J said: *"[I]t will be a rare case where the ATE insurance policy can provide as good security as a payment into court or a bank bond or guarantee. That will be, amongst other reasons, because insurance policies are voidable by the insurers and subject to cancellation for many reasons, none of which are within the control or responsibility of the defendant, and because the promise to pay under the policy will be to the claimant."* Akenhead J therefore held that *"...where reliance is placed by a claimant on an ATE insurance policy to resist or limit a security for costs application ... there must not be terms pursuant to which or circumstances in which the insurers can readily but legitimately and contractually avoid liability to pay out for the defendant's costs*".

5. GLO

5.1 As addressed in our letter of 2 August 2016, we note that our mark-up of the draft GLO along with our substantive comments which we provided on 15 July 2016 have not been considered and neither (due to the timing of the GLO application) has the revised version accompanying the Letter of Response.

5.2 In particular, the parties have not yet had an opportunity to discuss:

5.2.1 the proposed cost sharing regime and associated funding information (at paragraph 32 of the draft Order);

5.2.2 the contents of the Generic Particulars of Clam (at paragraph 30 of the draft Order); and

5.2.3 the form of the advertisement to be made, a draft of which has not yet been provided (at paragraph 33 and Schedule 4 of the draft Order).

5.3 Please could you confirm whether you envisage any further negotiations between the parties in respect of the GLO and whether you will be providing a response to our letter of 15 July 2016 and comments on the draft GLO provided with the Letter of Response. We would welcome such negotiations in the hope of narrowing the issues to be considered by the Court.

5.4 In respect of the GLO application hearing, we note that Practice Direction 23A.9.4 provides that where a respondent to an application wishes to rely on evidence he should serve it as soon as possible and in any event in accordance with any directions the court may have given. We do intend to serve responsive evidence. We wish to provide evidence because, amongst other things, your clients' curious decision to make the GLO application one day before our Letter of Response was provided has given rise to a situation in which the application does not take into account the matters set out in that letter and presents an inaccurate and incomplete picture. It is

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regrettable that our Letter of Response was not taken into account in, and provided with, the evidence on the application.

5.5 We propose, subject to any differing directions provided by the Court, that our witness statement in response to the GLO application be filed with the Court and served by no later than two weeks before the hearing. This would allow time for the parties before that evidence is prepared to narrow the issues in dispute and thereby minimise the costs of producing such evidence.

6. Letter of Response

6.1 Please could you confirm whether you will be responding to our Letter of Response and, if so, whether you will be in position to provide a response by 26 August 2016. Your response would be of assistance to the progression of this matter, in particular as it would feed into the discussion as to the appropriate content of the Generic Particulars of Claim.

7. Listing

7.1 As mentioned in our letter of 4 August 2016, we envisage that a 3 hour hearing will not be sufficient time for the Court to make a decision on the terms of the GLO or, alternatively, there may be a need to list several hearings.

7.2 As set out above, multiple application hearings may in principle be required for the following procedural steps:

7.2.1 an application for the transfer to the Commercial Court;

7.2.2 an application that the amendments to the Claim Form, namely the inclusion of the 107 additional Claimants, be disallowed;

7.2.3 an application for security for costs against Therium; and

7.2.4 the GLO application hearing.

7.3 So as to deal with these applications efficiently, we would propose that the application for the transfer to the Commercial Court is heard separately by the Commercial Court (for the reasons set out above), with the remaining applications (if needed) heard together at the hearing of the GLO application. If you would prefer to proceed differently, please let us know and explain why.

7.4 Hopefully some of these applications will not be needed, but until that is clear, we believe that it remains prudent to list the hearing of the GLO application for a full day in the expectation that some or all the above applications will need to be heard alongside it. In this regard, we should be grateful if you would confirm that you agree with the hearing and reading times we provided in the PRA Form sent to you on 4 August 2016.

Yours faithfully

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12 August 2016

Our Ref: IFR/1803/2113618/1/AC
Your Ref GRM1/PML/364065.1369

Dear Sirs

BATES & OTHERS V POST OFFICE LIMITED
CLAIM NO: HQ16X01238

We refer to your letter dated 28 July 2016 (the **"Letter of Response"**). We also refer to your letter of 4 August 2016 in relation to the listing of the GLO application.

In this letter we address a number of preliminary matters as follows: (1) listing of the GLO Application; (2) jurisdiction; (3) use of disclosed documents; and (4) communications with Second Sight.

We intend to respond substantively to your Letter of Response within 12 weeks of that letter i.e. by 20 October 2016.

(1) Listing of the GLO Application

We note your suggestion that the hearing of the GLO Application should be listed for a full day. We remain of the view that half a day should be sufficient having regard to the obligations on the parties to co-operate and seek to narrow the issues between them. However we do not oppose your proposal to seek a full day listing as a matter of prudence.

We have returned the completed PRA form to Court, and are currently liaising with the court to arrange the listing of the application; we shall revert if we require updated availability.

(2) Jurisdiction

At paragraphs 4.53 to 4.55 of the Letter of Response you raise enquiries in relation to governing law and jurisdiction of two claimants who worked in branches in Scotland, and two who worked in branches in Northern Ireland. We will respond to you in relation to governing law in our

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substantive reply to your Letter of Response. However the issue of jurisdiction is straightforward and is not dependent on governing law. Post Office is domiciled in England and it is abundantly clear that the English Courts have jurisdiction to hear claims against an English domiciled defendant. The fact that some of the claimants to the group action worked in branches in Scotland and Northern Ireland does not change this fundamental position. In the event Post Office intends to dispute jurisdiction in relation to these claims we invite you to set out a reasoned explanation why.

(3) Use of Disclosed Documents

At paragraph 12.5 of the Letter of Response you seek confirmation that the restrictions on use of documents under CPR 31.22 will apply to any documents that you disclose. CPR 31.22 provides as follows:

> 31.22
> (1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where –
> (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
> (b) the court gives permission; or
> (c) the party who disclosed the document and the person to whom the document belongs agree.

We confirm that we will comply with that rule of the CPR and will inform persons to whom disclosed documents are provided of the rule and its effect, namely to restrict the use of disclosed documents for a collateral purpose.

We do not agree the additional restriction which you seek to impose to the effect that only individuals named on the Claim Form are entitled to see any disclosed documents. That is not what CPR 31.22 provides, and would be unduly restrictive in our preparation of this case. It may for example be necessary to show a disclosed document to individuals who are considering becoming claimants and/or who are or may be witnesses in the case. In such circumstances the use of the disclosed document would be for the purposes of the proceedings in which it has been disclosed and not a collateral purpose, and would not be contrary to CPR 31.22.

We will write to you further as to additional documents which it would be reasonable for you to provide but which you have presently stated you will not; however for present purposes please now provide the documents which you have said in the Letter of Response you will provide on confirmation that CPR 31.22 will apply to them, that confirmation having now been provided.

(4) Second Sight

At paragraphs 12.6 to 12.8 of the Letter of Response you indicate that your client is not opposed in principle to releasing Second Sight from confidentiality obligations, but set out three "*reservations*" about their doing so, and seek further information from us in this regard.

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It is absolutely clear that Second Sight is likely to have relevant information and potential evidence to give in these proceedings beyond that which is simply contained in their published reports. In this respect we note the following aspects of your Letter of Response:

1. your client's selective reliance on aspects of Second Sight's published reports - express reliance on comments in the Interim Report at paragraph 3.10(c), and in the Part Two Briefing Report at paragraph 3.10.3(a), later followed by an almost complete disavowal of all conclusions reached in the Part Two Briefing Report, at paragraphs 5.2 to 5.7, purportedly on the basis that Second Sight had "*no expertise and/or suffer from a lack of supporting evidence / reasoned analysis*";
2. repeated reliance on Post Office's involvement with Second Sight in support of your client's position that it "*was not trying to conceal issues*" (e.g. paragraphs 1.1, 4.11 and 5.3 of Schedule 3);
3. the lengthy account given in Schedule 3 History of Events which repeatedly refers to Second Sight's work and involvement, including claims as to what you say Second Sight "*considered*" or "*believed*" at particular points in time (paragraphs 4.13 and 5.2), and how you claim the Scheme ended (paragraphs 5.14 to 5.24), notably portraying Post Office as entirely co-operative and supportive throughout (as similarly expressed at paragraphs 3.10.4 – 3.10.5 in the body of the Letter of Response); and
4. particular details as to what information Second Sight was and was not provided with, at paragraphs 6.1 to 6.73, including your assertion that "*Post Office has constantly engaged with Second Sight. If anything, Post Office was frustrated by Second Sight's unwillingness to engage with it directly to discuss matters*".

Accordingly, our answer to your first question (at paragraph 12.7.1 of the Letter of Response), is that our intention in speaking to Second Sight is to obtain information from them as to their involvement in matters which are relevant to these proceedings, including those points which we have highlighted as arising from your Letter of Response above.

As to your second question (paragraph 12.7.2), we do not have any settled intention as to whether we intend to call Second Sight as a witness in any capacity, but we do consider that they potentially have relevant evidence to give for the reasons outlined above.

Your third question is for us to provide proposals for "*managing the privilege risks outlined above*" (paragraph 12.7.3), which is a reference back to your statement that "*Second Sight has had access to Post Office's privileged material. Although Second Sight says that it has returned all such material to Post Office (and destroyed all other copies), they still hold some of this information in their heads. There is a risk of privilege being inadvertently waived should you consult them*" (paragraph 12.6.3).

We do not know what potentially privileged material you claim Second Sight had access to or whether there is any substance to this expressed reservation on the part of your client. We note that in relation to criminal prosecutions you expressly state that Post Office did not make any legally privileged material available to Second Sight (at paragraph 6.4 of Schedule 3). However if you identify the category of information or documents which you say was provided to Second Sight, and which is the substance of your client's apparent concern, we will inform Second Sight of your position in relation to such matters so as to mitigate any risk of inadvertent disclosure.

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Please now co-operate by providing a release to Second Sight from their confidentiality obligations so that we can take sensible steps to progress this claim, including discussing with Second Sight the matters you have set out in your Letter of Response which concern their involvement.

Conclusion

We look forward to hearing from you in relation to the matters set out in this letter as soon as possible.

Yours faithfully

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Freeths LLP
Please respond by e-mail where possible

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18 August 2016

Our ref:
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Dear Sirs

Bates & Others v Post Office Limited
Claim No. HQ16X01238

We write further to your letter of 12 August 2016. We note that this crossed with our letter of the same date and we look forward to your response on the points raised within our letter.

Letter of Response

We note that you intend to respond to our Letter of Response by 20 October 2016. Whilst we are of the opinion that three months to provide us with a response may be excessive, on the basis that your response will be substantive, genuinely address the points raised in our letter, and set out in detail each of the claims raised by each of the Claimants and the facts and matters they rely upon, we can see why so much time may be needed.

Your draft GLO provides for generic Particulars of Claim to be filed within 8 weeks of the GLO. A fulsome response will also assist with the preparation of this document and ensure that no extensions of time should be required.

Your response will however feed into matters to be discussed at the GLO hearing. So as to ensure that adequate time is allowed for the parties to prepare for that hearing and to seek to minimise issues in dispute, we would propose that your response is provided by no later than four weeks before the hearing. Hopefully, this will coincide with your projected date of 20 October but if the GLO hearing is held in October / early November, then we must insist that you provide your response earlier.

Please confirm your agreement to this proposal and that you will be providing the full response described above.

Use of Disclosed Documents

By way of clarification, we have no objection to the disclosed documents being provided to, for example, witnesses and experts who are connected to the Claimants named in the Claim Form.

CPR 31.22 provides that a document disclosed in the proceedings may only be used for the purpose of the proceedings in which it is disclosed. However, it may be your intention to provide document to your clients who are not yet a party to the proceedings and are not subject to the restrictions in CPR 31.22. In these circumstances, our client would not be protected by CPR 31.22.

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Our request was therefore only seeking to control the dissemination of information to those who are required to comply with these restrictions. Please could you confirm whether it is your intention to provide the disclosed documents to any of your clients or prospective claimants who are not yet named Claimants in these proceedings.

In respect of providing us with confirmation that each of the Claimants agrees to comply with the restrictions under CPR 31.22, we note that the confirmation which you have provided states *"[w]e confirm that we will comply with that rule of the CPR and will inform persons to whom disclosed documents are provided of the rule and its effect*". We would be grateful if you could provide us with confirmation from each of the Claimants (or from your firm expressly on behalf of all the Claimants) that the Claimants will comply with the restrictions under CPR 31.22.

Second Sight

We explained Second Sight's access to our client's privileged material in Schedule 3 of the Letter of Response. Your reference to paragraph 6.4 overlooks the remainder of this Schedule. To confirm, access was provided during Second Sight original Inquiry but was not provided during the Scheme. This included access to Post Office's internal legal files in relation to certain specific cases and prosecutions, and more general matters. Second Sight is now seized with that information. Care is therefore needed to make sure that privileged material is not accidentally disclosed by Second Sight.

Although our client has an absolute right to protect its privileged information, it does not want this point to unduly block necessary access to Second Sight. At present, we cannot see a way of doing this without risking privilege, nor can we see a necessity in speaking to Second Sight that outweighs the risk to privilege.

You have not explained why you need to speak to Second Sight other than what appears to be a general trawl for information. If you have particular points that you wish Second Sight to address, please could you provide these and then we can consider the risk those questions pose to our client's privileged information.

We also invite you again to put forward any proposals you have for how Second Sight may be approached in a way that protects privilege.

Issues to be addressed

For the sake of good order, we list below the issues (from this letter and our letter of 12 August 2016) that are outstanding and that we should be grateful if you would address.

1. Governing law (para 1.2, letter of 12 August 2016)
2. Jurisdiction and its interrelationship with the GLO (para 1.4, letter of 12 August 2016)
3. Transfer to the Commercial Court (para 2, letter of 12 August 2016)
4. Security for costs (para 4, letter of 12 August 2016)
5. Other GLO points (para 5, letter of 12 August 2016)
6. Letter of Response (see above)
7. Disclosed documents (see above)
8. Second Sight (see above)

Yours faithfully

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Bond Dickinson LLP

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19 August 2016

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

By Email andrew.parsons@ GRO n

Dear Sirs

BATES & OTHERS V POST OFFICE LTD

We write in response to your letter dated 12 August 2016. A number of the issues you raised in that letter had already been addressed by us in our letter of 12 August which crossed with yours. We have also responded separately to you by our letter dated 17 August regarding the matters you raised relating to amendments to the Claim Form prior to service.

We adopt the headings in your letter of 12 August for convenience.

Jurisdiction and Governing Law

We addressed jurisdiction in our letter dated 12 August. We do not consider there to be any basis for your client to dispute jurisdiction. As to governing law, we can confirm that we intend to proceed on the basis that it is English law which governs all of the contracts. If your client intends to dispute jurisdiction or to contend that English law does not apply we will respond further, but otherwise we do not consider it to be proportionate to exchange any further correspondence on these issues.

We do not consider that the GLO would bind the Scottish or Northern Irish Courts. If you wish to suggest that it should we will consider your proposals.

Transfer to the Commercial Court

We have previously corresponded about this and we don't agree with your view that the case should be transferred to the Commercial Court. Your letter of 2 August 2016 did not add anything substantive on this issue and we did not consider that it required a separate response. We have

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previously set out our views and consider that a transfer to the Commercial Court is not necessary and would not be in accordance with the overriding objective.

The issues which this case gives rise to can perfectly well be determined by judges in the Queen's Bench Division. To the extent you rely on the contract as being one of "business agency" rather than akin to employment, we comment that of course judges in the Queen's Bench Division frequently have to assess the meaning and effect of contracts and are perfectly capable of doing so. There are no issues which require the particular experience of the Commercial Court, and in fact Queen's Bench masters and judges have the benefit of particular experience in dealing with GLOs. The overall convenience obviously favours maintaining the status quo.

Accordingly, if you make a transfer application we will oppose it. In response to your specific question, we agree if you make an application it can be made to the Commercial Court.

Amendment to the Claim Form

We have responded to you on this issue in our letter of 12 August 2016. An application under CPR 17.2 in respect of amendments made prior to service of the Claim Form would not be well founded.

Security for Costs

We note the issues you raise as to Security for Costs. We will consider these points further with our clients and with Therium and respond to you when we have instructions.

GLO

We confirm that of course we wish to narrow the issues relating to the GLO as much as possible. We will write to you separately in this regard.

We note you intend to provide evidence in advance of the GLO hearing. We may also need to serve updated evidence in advance of that hearing. We suggest that an appropriate timetable would be for you to provide any evidence 8 weeks before the hearing, and we provide any evidence 4 weeks before the hearing. This will ensure both parties have adequate time to prepare for the hearing and take into account any new matters which may be raised.

Letter of Response

As we informed you in our letter of 12 August 2016 we will provide a substantive response by 20 October 2016.

Listing

We have already informed you that we agree as a matter of prudence that the GLO application should be listed for one day. As to your other proposed applications:

1. We do not consider an application for transfer is appropriate, but we agree that if you proceed with that application it should be listed separately from the GLO application.

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2. Any CPR 17.2 application would not be well founded, but if you do make it we take the view it should be listed separately from the GLO application as it gives rise to very different issues and may require a substantial listing.

3. We will write to you separately in relation to security for costs, but if such an application is necessary (and we anticipate it will not be) we can discuss the appropriate listing of it at that stage.

In the course of preparing this letter we have received a further letter from you, dated today's date. We will respond to you in relation to those issues in the course of next week.

Yours faithfully

GRO

Freeths LLP
Please respond by e-mail where possible

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

31 August 2016

James Hartley
Freeths LLP
Floor 3
100 Wellington Street
Leeds
West Yorkshire
LS1 4LT

By email only

Email: james.hartley@ GRO

Dear Sirs

Bates & Others v Post Office Limited
Claim No. HQ16X01238

We write further to your two letters of 19 August 2016.

1. Governing law

1.1 In your letter you confirm that you intend to proceed on the basis that it is English law which governs all of the contracts. Please could you confirm (as we previously requested) which governing law you consider applies in respect of any non-contractual causes of action being advanced and the basis on which the proposed governing law is said to apply.

1.2 On the basis that the GLO is not binding in Scotland and Northern Ireland, we will work on the basis that Post Office is not required to notify you of claims brought in Scotland and Northern Ireland under Clause 15 of the draft GLO, unless you tell us otherwise.

2. Amendments to the Claim Form

2.1 In our letter of 22 August 2016 we addressed our client's application for an Order that some of the amendments to the Claim Form are disallowed. We have recently received your letter of 25 August 2015, which addresses this application, and shall respond to this letter separately.

2.2 In the meantime, please can you provide your dates of availability for the hearing of this application as soon as possible, otherwise this application may be listed without your input.

3. Security for Costs

3.1 As you will be aware, a security for costs application needs to be made at the earliest opportunity (White Book at 25.12.6). Further, it would be most efficient to have any hearing in relation to security for costs (if one is necessary) to be heard at the same time as either the above application (if it proceeds) or the GLO application.

3.2 As such, please could you provide your response to section 4 of our letter of 12 August 2016 by 31 August 2016 so that we may liaise with the Court before it makes any listing decisions. If it would facilitate a quicker response, please feel free to respond to this point separately before addressing the other issues in this letter.

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3.3 We also note that the value of your clients' claims have not yet been articulated, which will have an effect on the value of any security to be provided.

4. GLO

4.1 Please provide your further comments in respect of the GLO, our letter of 15 July 2016 and the draft GLO enclosed with the Letter of Response as soon as possible.

4.2 In respect of the service of evidence for the GLO application hearing, on the assumption that the GLO hearing is listed in January and subject to any differing directions by the Court, we would propose that our witness statement is filed with the Court no later than four weeks before the hearing. The proposed reduction to your timeframe, from eight to four weeks, will hopefully allow the parties additional time in which to seek to resolve some of the issues in dispute and avoid producing unnecessary evidence. The parties can consider whether it is necessary for your clients to provide responsive evidence nearer to the time of the application hearing, once the issues between the parties have hopefully been narrowed.

4.3 Please provide us with an update in respect of the listing of the GLO application hearing.

5. Disclosed Documents

5.1 Thank you for confirming that you will not provide any disclosed documents to non-Claimants. Please find enclosed the requested documents which are set out in Schedule 1 to this letter.

5.2 In respect of the remaining requested documents, we shall respond to your second letter of 25 August 2016 separately.

6. Second Sight

6.1 Your access to Second Sight must be balanced against your clients' needs to access our client's privileged information and the need to protect our client's privileged information. As such, we are hoping to take a pro-active (rather than re-active) approach to managing privilege issues since once privileged has been waived there are limited opportunities for this to be reinstated. It would be appreciated if you could provide us with some further assurances, as set out below, before we provide our agreement to you discussing this matter with Second Sight.

6.2 As requested in our letter of 18 August 2016, please provide us with a list of the particular points and queries that you wish Second Sight to address so as we can consider the risk these pose to our client's privileged information. We also invite you again to put forward any proposals you have for how Second Sight may be approached in a way that protects privilege (e.g. conditions of no waiver).

6.3 In respect of your request that we identify more specifically the privileged material which Second Sight had access to, due to the nature of this material we are unable to provide further clarification as this would risk waiving privilege in these materials.

Yours faithfully

GRO

Bond Dickinson LLP

Enclosures
1. As listed in Schedule 1

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SCHEDULE 1

As per Section 12 and Schedule 1 of the Letter of Response, the following documents are enclosed with this letter. For ease of reference we have adopted the numbering as used in Schedule 1 of the Letter of Response.

No.	Document
1	Copies of the contractual documents and variations, as per Schedule 5 of the Letter of Response.
2	A redacted version (removing commercially sensitive data) of the latest version of the core agreement between Post Office Limited and Fujitsu Services Limited and the relevant schedules, as per Schedule 6 of the Letter of Response.
11	Horizon training materials, and supporting materials, relating to cash balancing.
14	Current guidelines on "Performing a Branch Audit".
21	Correspondence with Second Sight and the Working Group in relation to the closure of the Working Group, as mentioned in Schedule 3 of the Letter of Response.
26	A copy of the witness statement of Martin Rolfe who worked at Fujitsu site at Bracknell (note – this statement remains in draft).
30	Email correspondence between Alan Lusher and Andrew Winn.
31	Correcting Accounts for "lost" Discrepancies and Receipts / Payments Mismatch issue note.

The following documents, which were referred to in our Letter of Response, are also enclosed:

No.	Reference	Document
33	Paragraph 5.4.1	Second Sight's Terms of Engagement
34	Paragraph 5.42	Post Office's comprehensive answers to Second Sight queries about the availability of information in relation to ATMs in the context of retract fraud and Girobank deposits
35	Paragraph 5.77	Report of Graham Brander dated 17 May 2006.
36	Schedule 3, section 5.4	Scheme Rules
37	Schedule 3, section 5.7	Working Group's Terms of Reference
38	Schedule 3, section 5.19	Working Group's minutes dated 17 October 2014
39	Schedule 3, section 6.7	Suspense Accounts
40	Schedule 4, section 5.3	Sample BTS

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FREETHS

For the attention of Andrew Parsons
Bond Dickinson LLP
DX: 38517 Southampton3

Direct dial: GRO
Direct fax:
Switchboard:
Email: james.hartley@f GRO

16 September 2016

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

Dear Sirs

BATES & OTHERS V POST OFFICE LIMITED - GROUP ACTION
CLAIM NUMBER: HQ16X01238

We write in relation to a number of matters which are currently outstanding in correspondence between us, as follows:

1. Security for Costs
2. Second Sight
3. Limitation / Claim Form / CPR 17.2
4. Governing Law
5. Disclosure
6. Amendments to Claim Form

Security for costs

We refer to your threatened application for security for costs against the Claimants' litigation funder, Therium. Your position is entirely unrealistic. In the event your client were ever to be awarded costs against Therium, it is fanciful to suggest that Therium would not pay or would not be able to pay. Therium is an established litigation funder operating on a global scale.

To put the matter entirely beyond doubt, please find attached a copy of the Claimants' ATE Legal Expenses Insurance Policy and a redacted copy of the Schedule, which has been redacted to protect privileged information which is also commercially sensitive. The Policy is underwritten by three reputable A-rated subscribing insurers. We confirm that although the figure itself is redacted, the limit of indemnity provides for well in excess of the £1 million security to which you refer in your

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letter of 12 August 2016. We do not waive privilege in any of the redacted parts of these documents, any other document, or in any other respect concerning any aspect of the funding arrangements between the Claimants and Therium or otherwise.

We invite you to reconsider your position, particularly in light of the decision of Mr Justice Stuart-Smith in *Geophysical Service Centre Co v Dowell Schlumberger (ME) Inc* [2013] EWHC 147 (TCC).

As we have repeatedly emphasised, we wish to get on with the merits and real issues in this case, but if you continually raise satellite issues it is impossible for us to do so. It is also a costs burden, as you will no doubt recognise.

Please confirm you will not pursue your threatened application for security for costs. If you are not willing to do so please clearly set out why not, and identify any authority on which you rely as to an application for security for costs against a third party funder, and on what basis it is claimed that the ATE policy is not sufficient.

Second Sight

In your letter of 28 July 2016 you said that your client was not opposed in principle to releasing Second Sight from its confidentiality obligations, however you relied on purported concerns about the risk of Second Sight unwittingly disclosing allegedly privileged documents which you say "*they still hold… in their heads*", as a reason to maintain that we should not do so. We have tried to be constructive with you, including by providing a comprehensive answer to your questions as to why we wish to speak to Second Sight in our letter of 12 August 2016, and making clear that if you identify the category of privileged information or documents which you say was provided to Second Sight and is the substance of your client's apparent concern, we will inform Second Sight of your position so as to mitigate any risk of inadvertent disclosure.

In your letter of 18 August 2016 you said you did not want to "*unduly block necessary access to Second Sight*", but in reality adopted a position which achieved exactly that, and repeated your request for proposals from us. Accordingly, we again responded constructively, in our second letter of 19 August 2016, making clear that we would inform Second Sight of your concerns and that they should not refer to any privileged material, but also emphasising that the situation was causing unnecessary delay and asking for your co-operation.

Your letter of 31 August, however, was not co-operative. You have again asked us to provide "*some further assurances*", with no constructive suggestions as to actually resolving this matter.

We have already put forward our proposals as to mitigating the theoretical risk of unwitting waiver of privilege. We have also told you what it is we want to discuss with Second Sight (in our letter of 12 August 2016). There is no reason to continue objecting to our access or refusing to release Second Sight from its confidentiality obligations.

The only further suggestion we can sensibly make is that we can ask Second Sight to sign an assurance that they will not disclose privileged material to us. Please confirm if that is something your client would accept.

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If not, then we will not continue to incur costs corresponding on this matter, and will raise these events directly with the Court, most likely at the GLO hearing.

Limitation / Claim Form / CPR 17.2

We write further to our letter dated 9 September 2016 in relation to your application under CPR 17.2. We refer you to McGee on *Limitation Periods* (McGee), 7th Ed. at 21.020-21.023 and the authorities referred to therein, in support of the proposition that parties are able to contract out of the provisions of the Limitation Act and/or rely on a clear and unequivocal representation by way of estoppel to the same effect. In these circumstances, there is no principled reason for your apparent concern that the Court may not enforce an agreement by the parties as to a commencement date for the purposes of limitation, given that they are already prepared to enforce agreements that entirely prohibit a defence based on the Limitation Act.

We again invite you to agree to the Consent Order in the terms we have provided. Of course, if you have any suggested amendments to the wording of the Consent Order so as to better achieve the parties' shared objective, then we would be happy to consider your wording.

Governing Law

In our letter dated 19 August, we confirmed our position that English Law applies to all contracts involved in these proceedings, and that it is a matter for Post Office if it wishes to argue to the contrary. In your letter dated 31 August you ask for confirmation of which law will apply to non-contractual causes of action. Our position is exactly the same, namely English Law, and if your client seeks to maintain otherwise then we will respond further.

Disclosure

Please provide the documents you have thus far refused to disclose and which we addressed in our second letter of 25 August 2016 and the Schedule of Outstanding Pre-Action Disclosure Request. We asked for these documents as promptly as possible but some 3 weeks have since passed and we have had none of these further documents and no substantive response.

Amendments to Claim Form

You have asked for the reason for our amendment to the Claim Form adding the words *"and/or companies"*. The reason for this amendment is that, on occasion, the principal contracting party with Post Office was a limited company owned and controlled by the individual Subpostmaster operating the branch, with Post Office (requiring that individual to enter into a personal guarantee in respect of performance by the company of its contractual obligations) and/or the limited company has suffered losses and has a cause of action.

You have asked to receive the reason for our amendment to the Claim Form adding the words *"capital payment entitlements payable by the Defendant upon branch closures"*. This relates to the Network Reimbursement Scheme whereby Post Office has historically made payments to outgoing Subpostmasters when it has decided to close branches. These payments have been routinely publicised, offered and made over the years.

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Finally, on your assertion that we have paid the wrong issue fee. We have verified this with the Court Office and are currently paying the £528 shortfall. This was an oversight and we thank you for drawing it to our attention.

We look forward to hearing from you on the above issues (where required) as soon as practicable.

Yours faithfully

GRO

Freeths LLP
Please respond by e-mail where possible

Encs

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FREETHS

Andrew Parsons
Bond Dickinson LLP
DX38517 Southampton 3

Direct dial: GRO
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11 October 2016

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

By DX and email

Dear Sirs

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

We write to you further to our letter dated 16 September 2016, to which we have had no response.

In this letter we again request co-operation from you in relation to (1) your CPR 17.2 Application, (2) Second Sight, as well as (3) seeking your proposals in relation to Schedules of Core Information.

Limitation / Claim Form / CPR 17.2

At paragraph 39 of your witness statement in support of your application, you explained that Post Office *"would be content with a solution that prevents any back-dating and fixes the Claim date for limitation for the 107 new Claimants as the date the amendments were made".* We proposed a consent order reflecting that and it is evident that you agree that such a consent order is the pragmatic course (your letter of 1 September 2016). We have since addressed your apparent concern that the Court might not have authority to proceed in this way (our letters of 9 and 16 September 2016).

We therefore presume you are willing to sign a consent order in the terms proposed. Please provide a signed copy of the consent order we sent to you on 9 September 2016 so that we can file it at Court. We understand that in fact the Court has not yet issued your application, hence dealing with this issue now will avoid wasting the Court's time in proceeding to make listing or other arrangements. Having had no response to our letters of 9 and 16 September 2016, we hope that this course will be uncontroversial.

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Second Sight

You have not provided any proposals or agreement in any form for us to speak with Second Sight concerning the matters which you chose to raise in your Letter of Response. You have not even responded to our letter dated 16 September 2016 in which we again attempted to engage with you in a constructive way on this issue. This is an entirely unsatisfactory state of affairs which we would hope not to have to raise with the Court. Please now engage with our proposals and agree to release Second Sight from its confidentiality obligations (with the obvious caveat of specifically privileged information, as previously made clear).

If you continue to refuse to do so, then please at this stage at the very least agree that you will not object to us speaking to Ian Henderson of Second Sight in relation to his knowledge of the Horizon system architecture and operation. These are technical and system operational issues which we need to understand in order to prepare draft Generic Particulars of Claim, and will not concern the disclosure of information relating to any individual claimant cases, therefore no issue of privilege will arise. We can also make clear to Mr Henderson that absent your consent, he should not disclose any information to us relating to any individual claimant cases or potentially privileged material. Please provide your consent in relation to technical and system operational issues within the next 7 days so that we can make arrangements with Mr Henderson to progress these matters without risk of subsequent complaint from you or your client.

Schedules of Core Information

The draft Order served with our Application dated 26 July 2016 identifies at Schedule 3 the information we consider it will be reasonable for each Claimant to provide by way of a Schedule of Core Information.

We intend to gather this information from our existing Claimant group in good time in advance of the GLO hearing and therefore it is important for you to let us know what if any additional information you suggest will be required. It would obviously be wasteful of costs if it were necessary for us to go back to contact this large Claimant group to gather further information which you may identify at a later stage.

We note that in Your Letter of Response you suggest that "*much more extensive*" information will be required than as currently set out in Schedule 3 of our draft Order (paragraph 10.14). Whilst we agree that any Claimants selected as Lead Claimants will need to provide extensive information in relation to their claims, we do not agree that extensive information should be provided by all Claimants who join the litigation - this is not envisaged by CPR 19 and to do so would be unnecessary and wasteful of costs.

Please provide your reasonable proposals in relation to this issue within the next 7 days.

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FREETHS

We look forward to hearing from you in relation the outstanding matters raised by our letter of 16 September 2016, and the matters we have identified above as soon as practicable.

Yours faithfully

GRO

Freeths LLP
Please respond by e-mail where possible

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13 October 2016

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

Second Letter
By email only

Email: james.hartley@ GRO

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

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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

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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. Its 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

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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 vet 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 contract 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.

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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

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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

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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

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Bond Dickinson LLP

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27 October 2016

Our ref: IFR/2113618/1
Your ref: AP6/364065.1369

Dear Sirs,

BATES & OTHERS -V- POST OFFICE LIMITED
CLAIM NUMBER: HQ16X01238

INTRODUCTION

1. We write further to our Letter of Claim dated 28 April 2016, and in reply to your Letter of Response dated 28 July 2016.

A. *Correspondence*

2. Since receiving your Letter of Response we have separately corresponded with you on a number of matters including access to Second Sight, disclosure of documents and the required information from each Claimant for the Schedules of Information.

3. You most recently wrote to us in relation to these issues on 13 October 2016, including a proposed protocol in relation to Second Sight. As per our letter dated 19 October 2016, we respond to matters raised in your 13 October 2016 letter in this letter. Given the timing of your proposal in relation to Second Sight, we write this letter without the benefit of discussing your Letter of Response with Second Sight.

B. *Listing of GLO Application*

4. The hearing of our GLO application has now been listed before Senior Master Fontaine on 26 January 2017.

5. In this letter we address a number of the outstanding issues between us with a view to trying to agree as much as possible in advance of the hearing and thereby sensibly narrowing the

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issues as the Court will expect in advance of that hearing. We provide an updated draft Order which we hope is now in a form that can agreed.

C. *Preliminary observations*

6. Your letter explains various things that you say Post Office cannot allow, including *"undermin[ing] the hard work of thousands of postmasters"*[1] and "*allow[ing] unfocused and unevidenced accusations to go unchallenged.*"[2]

7. Just to be clear:

   7.1. there is no basis upon which the outcome of these proceedings could conceivably undermine the hard work of thousands of postmasters – although it may call into question the conduct of Post Office; and

   7.2. neither the court nor indeed the Claimants would expect Post Office to be prevented from challenging any allegations, even where (following disclosure) they prove to be soundly based in evidence before the Court – it is for Post Office to defend these claims as they see fit.

8. You will however understand that the Claimants will respectfully invite the Court not to allow Post Office to use the asymmetry of information in these proceedings, at this early stage, to afford Post Office an opportunity to stifle, discredit or delay these claims.

D. *The Relationship*

9. This pre-action correspondence has been helpful in some respects, in that it has begun to clarify the parties' respective positions and identified issues which, it appears to be common ground, the parties regard as central to resolution of the dispute,[3] particularly the nature of the relationship between Post Office and the Claimants and the respective rights and obligations to which that gives rise.

10. By way of introductory overview, your Letter of Response: (1) emphasises Post Office's reliance on the express terms in standard documents drafted by it (not subject to negotiation and in some cases not seen by Subpostmasters when entering into the commercial relationship with Post Office); (2) warns that *"Post Office will seek appropriate costs orders should [our] clients waste time and costs seeking to advance any of the misconceived*

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1 Letter of Response, paragraph 1.5

2 Letter of Response, paragraph 1.6

3 Letter of Claim, paragraph 48 and footnote 13 thereto.

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arguments … at pghs 52 et seq"[4]; (3) then concedes the necessity to imply terms into the contract, albeit limited to the *Stirling v Maitland* Term and the Necessary Cooperation Term;[5] (4) fails to concede the term that the power of suspension would not be exercised capriciously, which Post Office conceded in *Lalji v Post Office*[6]; (5) fails to acknowledge or reflect the impact of the Unfair Contract Terms Act 1977 on the contractual relationship, particularly given the bleak picture of the Subpostmasters' rights and obligations which Post Office positively asserts;[7] and (6) avers a contractual burden of proof which appears (on Post Office's own case) to have been impossible to discharge, by any Subpostmaster ever.[8]

11. You state in the Letter of Response that, *"The claims proceed from a fundamentally flawed understanding of the relationship between postmaster and Post Office".*[9] If you are right about that, it would have a fundamental impact upon the case. However, if it is your approach to the relationship which is wrong, then it will evidently be necessary for you and Post Office to reassess the merits of these claims. Either way, it is in the interests of all parties that the relationship between the parties and their respective rights and obligations be determined clearly.

12. We therefore agree that the relationship between the parties and the determination of their respective rights and obligations will be central to the determination of the Claim.

13. Accordingly, we would regard determination of those rights and obligations at an early stage as both a sensible and appropriate course to adopt in this case. The initial management of these proceedings should seek to identify agreed issues for such preliminary determination – we would suggest, confined to the contractual obligations, agency[10] and related fiduciary duties. We invite your comments on this proposal for the efficient case management of proceedings, not least since you recognise these issues to be common issues. This would seem to us to be a sensible way forward.

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4 Letter of Response, paragraph 4.24.

5 Letter of Response, paragraph 4.35.

6 At paragraphs 69 to 71 and 77, below.

7 An impact of which Post Office must be keenly aware, given the observations of Sedley LJ in Lalji referred to below at paragraphs 69 to 71.

8 Assuming that neither Horizon nor Post Office is perfect, as the Letter of Response concedes.

9 Letter of Response, paragraph 2.1.5.

10 Your letter dated 1 July 2016 refers to business agency and states: "*this would include the status of postmasters as agents of Post Office which is, in our view, a key common issue that ties all of the claims together*."

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E. *Generic Particulars of Claim*

14. As we indicated in our evidence in support of our Application, we intend to provide draft Generic Particulars of Claim in advance of the GLO hearing. We will aim to provide these to you within the next 5 weeks, i.e. by 1 December 2016. It would be extremely helpful to have a sensible basis upon which to discuss with Second Sight the matters which you raised in your Letter of Response, which we very much hope can be agreed in good time, well in advance of this date.

15. We would also be greatly assisted by provision of further underlying documents, relevant to the assertions which you have made in your Letter of Response. For example, as we explain below, provision of (improved) training material from 2015 is not a helpful basis for assessing what was provided in, for example, 2003, 2006 or 2009.

16. Your client's co-operation in assisting us to draft the generic Particulars of Claim from an informed position (rather than impeding access to information which will become available to us, in any event, later in the proceedings) would be greatly appreciated. We regard such co-operation as required by the overriding objective and the obligations upon the parties and their legal representatives to assist the Court in furthering the overriding objective; but nonetheless, we ask for it.

17. We are proposing that the draft Generic Particulars of Claim will address issues (1) to (4) of the GLO issues as set out in our amended draft Order and identify the categories of conduct alleged which are capable to amounting to breaches of the obligations of Post Office for which the Claimants contend. This will allow subsequent individual Particulars of Claim to identify those categories and to particularise the individual facts falling thereunder.

18. In terms of efficient case management, we would propose that issues (1) to (4) are suitable for determination as preliminary issues. Early resolution of the preliminary issues will then provide a clear framework within which the parties are able to take stock of the case as a whole and contest and resolve the individual claims. We look forward to hearing from you in relation to this proposal, which we consider will substantially advance the overriding objective, by establishing the parties' respective rights and obligations at an early stage.

OVERVIEW OF KEY ISSUES

19. There are a number of aspects of your Letter of Response which we wish to address first, before turning to particular sections.

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20. **Errors and "*Systemic flaw*"**: You now embrace the assertion that Horizon is not a perfect system and there is the potential for errors,[11] however you suggest as an answer to the Claimants' claim that "*a systemic flaw …. has not been identified that has resulted in a postmaster wrongfully being held liable for a shortfall of cash or stock in a branch*"[12]. We wish to make clear that we have not asserted a systemic flaw, and we refer you to the brief details in the Claim Form as to the way in which the Claimants' case is put. It is not the Claimants' case that all transactions were affected or even that all Subpostmasters were affected. Rather it is the Claimants' case that: (1) Horizon is imperfect and there is the potential for errors - which you accept, as above; (2) Post Office is aware of this - as must follow from what you have accepted; and (3) certain Subpostmasters have been affected by such errors with the result that shortfalls have been alleged against them which did not (or there was a material risk that they did not) represent genuine loss to Post Office, and (4) Subpostmasters have been required by Post Office to make up such alleged shortfalls or been held responsible for them. You dispute this on the basis that no Subpostmaster has been able to prove a wrongly attributed alleged shortfall, and also that you claim there are robust procedures in place for Subpostmasters to detect and resolve errors in branch. We respond to these points at paragraphs 21 and 22, below as they are wholly flawed.

21. **Contractual burden of proof**: As above, your position is that it is the Subpostmaster who bears the burden of proof and must show that alleged shortfalls in their Branch were "*not the result of any failure for which they are responsible*".[13] However, the express words of Section 12, clause 12 of the Subpostmasters Contract 1994 are: *"The Subpostmaster is responsible for losses caused through his own negligence, carelessness or error, and also for all losses of all kinds caused by his Assistants. Deficiencies due to such losses must be made good without delay"*. These express words do not support your contention - even before normal contractual principles of interpretation are applied such as *contra proferentem*, and indeed, before fairness of the result falls to be considered for the purposes of UCTA. It is striking that despite conceding that neither Post Office nor Horizon is perfect, you chose to rely on an assertion that not a single Subpostmaster has ever been able to "*discharge [the] burden"* of proving that a breach of contract or other wrongdoing by the Post Office was the cause of a shortfall.[14] Given the millions of transactions, thousands of Subpostmasters, and admitted imperfections in the Horizon system, this provides powerful evidence of the unfairness of the contractual relationship for which you now contend and which Post Office has imposed upon affected Subpostmasters over many years. We note that Second Sight reached the positive

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11 Letter of Response, paragraph 1.3.

12 Letter of Response, paragraph 1.3

13 Letter of Response, paragraph 2.1.7.

14 Letter of Response paragraph 2.1.6.

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view that a particular error in 2011 (undiscovered by Post Office until 2013) would have led to branches being asked to make good shortfalls for which they were not responsible.[15]

22. "***Robust procedures*" for Subpostmasters to detect and resolve errors**: Throughout your letter you repeatedly rely on there being allegedly "*robust procedures in place to ensure that postmasters can detect and resolve errors in their branches*",[16] but this does not reflect the reality of the situation. In their Interim Report, Second Sight identified the complexity of Trading Period processes and the lack of a suspense account option to allow disputed transactions to be dealt with in a neutral manner, as an issue being reported by multiple Subpostmasters and of particular concern.[17] In their Briefing Report – Part Two, they also identified particular problems namely (1) data not being available for some transaction types at all, even on the day of transaction, (2) data not being available to respond to Transaction Corrections after the 42 / 60 day period, and (3) data not being available to Subpostmasters who had been suspended.[18] The reality is that Subpostmasters experienced very considerable difficulties in detecting and resolving errors, understanding and challenging Transaction Corrections, and obtaining information from Post Office to enable them to do so (including in relation to Transaction Corrections which were issued by Post Office outside of the period in which Subpostmasters had access to relevant data, and following which Post Office frequently did not respond constructively, or at all, in relation to Subpostmaster requests for assistance).

23. **Post Office Suspense Account**: You deny that Post Office instructed its investigators to ignore possible problems with Horizon,[19] on the basis that *"It would be to [Post Office's] own disadvantage to ignore such issues"*. However this is demonstrably wrong in circumstances where Post Office holds surpluses in suspense accounts, which after 3 years are credited to its profits, without tracing back the source of the surpluses to Subpostmasters who have contributed to those funds. The importance of this issue is compounded by the fact (as the Claimants contend) that there were Transaction Corrections by which Subpostmasters were wrongly required to make payments, thus giving rise to potential surpluses in Post Office's accounts. Post Office does therefore benefit from any errors wrongly attributed to Subpostmasters (for which they are held liable) and which generate or contribute to surpluses in its own suspense accounts. It is therefore quite wrong to say, as you do, that it would be to Post Office's own disadvantage to ignore such issues and that contention is also

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15 Second Sight Interim Report paragraphs 6.6 to 6.9.

16 For example, Letter of Response paragraph 1.3.

17 Second Sight Interim Report paragraph 7.2(d) and 8.2(f).

18 Second Sight Part Two Report paragraphs 13.1 to 13.6.

19 Letter of Response paragraph 5.54.

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extremely difficult (if not impossible) to reconcile with other conduct of Post Office, such as its attempts to prevent references being made to errors due to Horizon, to which we refer below at paragraph 26.

24. **Instructions to investigators to disregard possible problems with Horizon:** You further deny that Post Office instructed its investigators to disregard possible problems with Horizon, on the basis that the allegation is "*unsupported by any evidence*". However, in our Letter of Claim we referred to the Second Sight Part Two Report on this issue,[20] and our understanding is that this section was based on an account given by Professor Charles McLachlan to this effect. If it is necessary for us to do so we will call Professor McLachlan to give evidence on this issue and/or another witness to the conversation. In any event, it is plain from the way in which Post Office has conducted itself in relation to the investigation of individual Claimants that Post Office does not investigate errors, or the possibility of alleged shortfalls having been caused by errors in Horizon, in individual cases where shortfalls are alleged and/or recovered. We refer to Post Office's recent conduct in relation to Mrs Elizabeth Stockdale, who specifically asked about the investigation in her case, and the extent to which errors generated or potentially generated by the Horizon system had been or would be investigated in her case.[21] Despite her expressly raising these issues, we understand that no such investigation into these matters was ever carried out prior to her appointment being terminated by Post Office on 16 September 2016. If it is Post Office's position that in fact there was such an investigation, then please make this clear.

25. **Improper inference of dishonesty**: It is apparent from your Letter of Response that Post Office has proceeded upon the wholly flawed basis that it is *"a sound and logical inference that one would only submit false accounts to cover up their own theft",* and that you are seeking to maintain that as a proper inference in these proceedings.[22] Post Office's position amounts to an automatic inference of dishonesty against Subpostmasters, many of whom had unblemished careers for many years and were upstanding citizens in their communities. The inference is utterly flawed. Subpostmasters faced alleged shortfalls in circumstances they could not explain and which they could not effectively resolve. Post Office's position was to require them to repay the money as a condition of their continued appointment, and many individuals found themselves at a loss as to what to do and signed off branch accounts hoping that the position would resolve itself (as indeed some of them were advised or encouraged to do). They could not afford to pay, or keep paying, thousands of pounds to Post Office out of their modest incomes or from their savings and the alternative would be

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20 Letter of Claim paragraph 101.4.1, Second Sight Part Two Report paragraph 25.16.

21 Our letter dated 13 June 2016.

22 Letter of Response paragraph 5.79.2.

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termination of their position and consequent very significant losses. It is truly outrageous to infer theft in these circumstances. These facts also strongly indicate that, in such circumstances, Subpostmasters acted under economic duress and that the relationship was such that the Post Office was able to take advantage of the inherent inequality of bargaining power in a manner which constituted unconscionable dealing.

26. **No mention of Horizon errors as condition of plea**: In our Letter of Claim we said that on occasion Post Office required undertakings in criminal prosecutions that the accused would not mention any alleged errors in the Horizon system as a condition of the plea, and identified the case of Josephine Hamilton as such a case.[23] You have responded to the case of Josephine Hamilton over the course of three pages of your Letter of Response,[24] but have not denied that Post Office required this condition. We take this to be an implicit acceptance that Post Office did indeed impose this condition on Ms Hamilton. Mrs Alison Henderson is a further case in which Post Office charged a Subpostmaster with theft and false accounting, and agreed to drop the theft charges on condition that she pleaded guilty to false accounting and agreed not to mention Horizon to the Court. The only rational explanation for this conduct (particularly when viewed in context of Subpostmasters who were having problems with Horizon being told they were "*the only one*") is concealment by Post Office.

27. **Basis of Factual Allegations**: You assert that the vast majority of factual allegations in our Letter of Claim are based upon Second Sight's Part Two Report and that *"this report does not constitute evidence that would be admissible in Court".*[25] You go on to heavily criticise the Second Sight Part Two Report.[26] It is an interesting feature of your Letter of Response that you rely on material produced by Second Sight where you consider it helpful to Post Office's case,[27] but disavow it otherwise. To be clear, the Claimants regard Second Sight's Part Two Report as a proper foundation for the factual allegations made in the Letter of Claim. It is an independent report no doubt borne of careful consideration of the underlying factual material made available to Second Sight. We reasonably anticipate that the factual findings relating to Post Office's conduct will be borne out on the documentary and witness evidence which will be produced as part of the trial process (although the allegations made in this pre-action protocol correspondence are without prejudice to the position which may in fact be revealed on disclosure as ordered by the Court, which will include documents beyond those provided by Post Office to Second Sight, and our analysis of that evidence). We do not

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23 Letter of Claim paragraphs 105 to 108.

24 Letter of Response paragraphs 5.74 to 5.81.

25 Letter of Response paragraph 5.2.

26 Letter of Response paragraphs 5.3 to 5.7.

27 For example, Letter of Response paragraphs 3.10.1(c) and 3.10.3(a).

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accept that your wholesale dismissal of the points we have identified in the Second Sight Part Two Report is consistent with Post Office's professed quest for truth, or its reliance on the outcome of scrutiny by others to date as contrary to the claims being advanced by the Claimants.

28. **Criticism of Letter of Claim**: You make many criticisms of our Letter of Claim to the effect that the claim is "*unparticularised and unsubstantiated*".[28] We respond to the individual sections of your letter below, including your obvious misconception as to what it is reasonable for individual claimants to provide in proceedings managed pursuant to the CPR 19 Group Litigation provisions. We will respond proportionately to the criticisms you have made of the way in which our clients' claims have been formulated to date and will provide further information and clarification where it is appropriate to do so. We do not intend to respond to every criticism, or every factual assertion you have made with which we do not agree, as this would not be reasonable or proportionate and is not the purpose of the Pre Action Protocol process. Your client's position is in any event quite clear that it is committed to defending the claims without any acceptance of any possibility of fault or liability on its part.

RESPONSE BY SECTIONS OF LETTER OF RESPONSE

Section 1: Introduction

29. We reject the criticisms you have made of our clients and the Letter of Claim. Your characterisation of Post Office's conduct and the reality of this litigation is wholly unrealistic.

30. We have substantially responded to the points you have raised in section 1 of your Letter of Response in the preceding section of this letter, and refer to these points above.

31. We specifically disagree with your claim that investigations to date have "*consistently pointed towards human error or dishonest conduct*"[29] as the most likely cause of shortfalls. We have addressed the entirely flawed basis on which Post Office has sought to infer dishonesty against individual Subpostmasters,[30] and also its instructions to investigators to disregard Horizon as a possible source of alleged shortfalls.[31] It is also apparent that Post Office has not conducted formal investigations in many cases, relying on its erroneous approach to the

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28 For example, Letter of Response paragraph 1.7.

29 Letter of Response paragraph 1.4.

30 Paragraph 25 above.

31 Paragraph 24 above.

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contractual burden of proof.[32] On this issue, see for example the Second Sight Case Review Report relating to Mr James Withers, which records, *"it is likely that the matter was not formally investigated as, in accordance with his contract, [Mr Withers] was responsible for making the shortfall good, and because it would appear that no criminal offences were suspected of having been committed. However, it is not clear to us how that conclusion was arrived at in the absence of any investigation having taken place."*[33] Similarly in relation to Mrs Gillian Howard: *"…We consider it likely, therefore, that [Mrs Howard's] admission of false accounting, and her acknowledgement of her husband's contractual responsibility for making the branch's shortfall good, led to Post Office concluding that there was no need to continue to investigate the cause of the discrepancies or to identify the culprit(s) in regard to theft."*[34] Second Sight endorsed the view that the investigation was as such *"unjust"*.

32. To be clear, we entirely accept that on some occasions shortfalls or discrepancies will have been caused by human error, but this is not an answer to the claim in circumstances where Subpostmasters were not able to identify effectively that this had occurred, where Post Office failed to establish that to be the case, and where training and support were inadequate. We do accept that in a small number of cases shortfalls may have been caused by the dishonesty of a particular Subpostmaster, but this is very much likely to be the exception. For you to seek to characterise the Claimant group as dishonest and/or "*looking to excuse their actions by blaming others*"[35] is entirely misplaced and liable to cause further reputational damage to claimants in this litigation.

33. In relation to the point you make that the Claimants are "*largely former postmasters*"[36] this is hardly surprising. We anticipate that this reflects both Post Office's unlawful termination of Subpostmasters to whom Post Office wrongfully attributed losses, as well as the fact that currently serving Subpostmasters are concerned about the potential for their contracts to be terminated by Post Office or some other action to be taken to their detriment if they raise a complaint as a claimant in this action. We raised this point in our Letter of Claim[37] and have corresponded with you about it further but Post Office has refused to provide any of the assurances sought. Indeed, since issuing this claim three of the Claimants have been suspended and/or terminated from their posts by Post Office. A further Claimant has been the subject of an audit and had his branch shut by Post Office since issuing this claim.

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32 Paragraph 21 above.

33 Second Sight Case Review Report, James Withers paragraph 4.2.

34 Second Sight Case Review Report, Gillian Howard paragraph 4.2.

35 Letter of Response paragraph 1.5.

36 Letter of Response paragraph 1.5, and Schedule 3 paragraph 1.2.2.

37 Letter of Claim, section J.

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Section 2: Executive Summary

34. Our responses to the matters summarised in Section 2 of your letter are best addressed in response to the subsequent sections in which you set out Post Office's position in more detail.

35. In relation to the particular point that you highlight in section 2 and indeed elsewhere in the Letter of Response namely that the current number of Claimants to this claim represent a small minority of Subpostmasters, we refer you to paragraph 20 above and your erroneous approach based on "*systemic flaw*", and also highlight the following obvious points: (1) affected Subpostmasters may not realise that losses attributed to them were wrongly attributed or that they have a right to bring a claim; (2) of those that do, some may not wish to litigate, particularly against Post Office given its approach to being challenged on these issues, as illustrated in the Letter of Response; and (3) many currently serving Subpostmasters are particularly concerned about bringing claims against Post Office, as we have addressed above.[38]

36. The current Claimant group stands at 198 named Claimants on the Claim Form and it is reasonable to expect that this group will increase after the making of a GLO together with appropriate advertising. We also note that in our draft GLO we have requested that Post Office should provide a searchable electronic list of all Subpostmasters against whom Post Office has taken civil or criminal action in respect of alleged shortfalls after the introduction of Horizon, such that we can inform them of these proceedings. This is information which Post Office must hold and if not already in schedule form, it must be relatively easy to compile it as such.

Section 3: Post Office's Knowledge of the Dispute

A. *Extent and Relevance of Post Office's Knowledge & Your Request for Individual Particulars*

37. Undoubtedly Post Office is in a much more informed position about the factual matters which give rise to the Claimants' claims than had it not been involved in the Second Sight review and the Mediation Scheme, attended before Select Committees and published its response to matters raised in the Panorama programme.

38. This is highly relevant for the purposes of the Pre Action Protocol, because what is reasonable for a claimant to set out in a Letter of Claim concerning matters about which a

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[38] Paragraph 33 above.

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defendant has no previous knowledge, and what is reasonable for a claimant to set out in relation to matters about which a defendant has very substantial knowledge, are two very different propositions. That is why we included an overview of your client's knowledge in our Letter of Claim, as it set the context for the Letter of Claim.

39. In Section 3 of your letter you downplay the relevance of your client's previous knowledge and say that 21 of the 91 Claimants referred to in the Letter of Claim did not participate in the Scheme (paragraph 3.3.1) and, of the Claimants who participated in the Scheme, "*allegations were advanced two years ago, which gives rise to the possibility that some allegations may now have been dropped and new allegations may now be advanced*" (paragraph 3.3.2).

40. On any view your approach is wholly unrealistic. The point is not the 21/91 Claimants referred to in the Letter of Claim who did not participate in the Scheme, but rather the very substantial number of Claimants, i.e. 70/91, who did. As part of the Scheme, your client has seen the allegations which were made by those Claimants, considered documents relating to alleged shortfalls, and previously set out its own position. Your client is uniquely placed in being able to anticipate issues which these Claimants' claims will give rise to. Your client can also sensibly anticipate that the circumstances of the Claimants whose cases it has not individually considered as part of the Scheme are likely to be similar to the many Claimant cases it has, and indeed even in relation to the non-Scheme Claimants, your client must also have its own records in relation to alleged shortfalls attributed to these Claimants, whether their appointments were terminated, and if civil or criminal action was subsequently pursued. Whilst there is indeed the possibility that the allegations made by the Claimants in this litigation who participated in the Scheme will not be *exactly* the same as those raised by them as part of the Scheme, the facts as to which alleged shortfalls were attributed to them by Post Office, what action your client took, and the documents held by your client relating to such alleged shortfalls will not change. As above, in relation to the Scheme Claimants, your client not only has all this information, but it has previously collated and considered it. We confirm that the current position is that of the 198 Claimants who are now named, 90 Claimants participated in the Scheme.

41. We further note from your Letter of Response that in fact Post Office has had yet further opportunities to analyse and consider the issues which the Claimants' claims gives rise to, as you identify (1) a counterclaim raised by a Mr Castleton on the basis of alleged defects in Horizon in contested proceedings concerning alleged shortfalls pursued by your client against him, and (2) pre-action correspondence with Shoosmiths in 2011 in relation to shortfalls, defects in Horizon, and the operation of the Helpline.

42. Indeed, in your Letter of Response, your client actively prays in aid of its involvement in the Scheme and previous claims as addressing the issues raised by the Letter of Claim, for

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example at 1.6 you say "*To date, Post Office has been prepared to give your clients and others like them the benefit of the doubt. It has been determined to understand the claims against it, and launched exhaustive efforts to do so. It has investigated their concerns in good faith*" (emphasis added), and you later specifically rely on the judgment in Castleton, at paragraphs 3.10.1(b) and 4.46.

43. On any view it is obvious that your client has previous and (in respect of the Scheme Claimants) extensive knowledge of the factual matters underpinning the Claimants' claims against it, and your protestations otherwise are suggestive of a strategy to delay or supress the pursuit of these claims by a managed and cost effective GLO process.

44. At paragraphs 3.5 to 3.6 of your Letter of Response you request individual particulars of each Claimant's claim to be provided to you at the pre-action stage. This is a theme which you repeat at a number of points in your latest letter to us dated 13 October 2016, and indeed you go so far as to say that *"Only once [particularisation of each of the Claimant's claims] 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 … would be suitable*".[39]

45. This is a completely unreasonable position which does not comply with the objectives in the Practice Direction on Pre-Action Conduct, and would subvert much of the purpose of the anticipated GLO, for reasons we have previously set out in correspondence with you. The criticisms you make of the alleged lack of particularisation in the Letter of Claim on this basis are entirely misplaced.

46. We draw your attention to paragraph 6 of the Practice Direction on Pre-Action Conduct (emphasis added):

> *"the parties should exchange correspondence and information to comply with the objectives in paragraph 3, bearing in mind that compliance should be proportionate":.*

47. The objectives in paragraph 3 are to:

> *"[exchange] sufficient information to-*
>
> *(a) understand each other's position;*
> *(b) make decisions about how to proceed;*
> *(c) try to settle the issues without proceedings;*

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[39] Paragraph 2.5 of your 13 October 2016 letter, see also 2.4.2, 2.4.3, 2.4.5.

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(d) consider a form of Alternative Dispute Resolution (ADR) to assist with settlement;
(e) support the efficient management of those proceedings; and
(f) reduce the costs of resolving the dispute".

48. In our Letter of Claim (and as further explained in this letter) we have provided you with sufficient information in order to meet the objectives in paragraph 3. As must be abundantly clear, the provision of further information in relation to each of the Claimants (i.e. now a group of 198) is best managed as part of the GLO.

49. These issues raise similar points to those we corresponded with you about in relation to your suggestion that we engage in a process of individual Claimant "*mapping*" against GLO issues, and we refer you to pages 3 to 5 of our letter dated 7 June 2016 for further detail in relation to these issues. Our position remains as set out therein, and we wholly disagree with your position that in these circumstances, where there are very many Claimants and a GLO is anticipated, each individual is nevertheless required to provide particulars of their individual claim at the pre-action stage.

50. We have previously expressed concern about your enthusiasm for this approach, and the likely waste of costs, and we draw your attention to paragraph 4 of the Practice Direction on Pre-Action Conduct which states that "*A pre-action protocol or this Practice Direction must not be used by a party as a tactical device to secure an unfair advantage over another party. Only reasonable and proportionate steps should be taken by the parties to identify, narrow and resolve the legal, factual or expert issues*."

51. It would be wholly unreasonable for you to refuse to agree the scope of the GLO on the basis that we have not provided individual particularisation of each of the Claimants' claims (i.e. your position as expressed in your 13 October 2016 letter).

B. *History of Events*

52. We have read your version of Post Office's involvement in the Scheme and other matters in response to the background matters raised in our Letter of Claim. We accept that you and your client have a greater understanding than us of your client's involvement in the Scheme, how the Scheme terminated, and other investigations into the matters about which we complain. Whilst we can identify a number of significant issues with your version of events (which we address below), a particular problem we have in responding to any matters relating to Second Sight, is that until your proposals contained in your letter of 13 October 2016, you refused to release Second Sight from their confidentiality agreement. Because of the position you adopted in your Letter of Response and in subsequent correspondence prior to 13 October 2016, we have not been able to ask Second Sight about the version of events set out in your Letter of Response.

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53. This problem is compounded by the restrictive approach you have taken to pre-action disclosure. For example, in relation to training materials, which we requested in our Letter of Claim, your Letter of Response identified that you would only provide us with current Horizon training materials and processes. However, these documents post-date 2015 and therefore give no indication as to the level of training received by Subpostmasters in the period following the introduction of Horizon and underpinning many of the Claimants' claims, as you are aware. We made a further suggestion to you designed to address the objections raised by you in your Letter of Response, (we proposed that you provide materials for a single snapshot year, 2006),[40] and you have only just responded to this, now opposing our request for different reasons.[41] The consequence is that you have not disclosed any historic training materials at all. You have also failed to provide us with documents which you previously made available to Second Sight and which will plainly be relevant to the issues in this case, purportedly on the basis that "*the documents are stored on an encrypted hard drive to which [Post Office] does not have the password*".[42] If you are genuinely unable to decrypt the hard drive, then we would expect you to take steps to obtain and provide these documents from other sources.

54. We do not agree the history of events you set out in Schedule 3 of your Letter of Response presents an accurate or complete picture, and there is obvious selectivity and spin in the presentation of material. For the proportionate purposes of this letter, we confine our response to the five "*key corrections*" you suggest to our Letter of Claim, as set out at paragraph 3.10 of your Letter of Response:

    54.1. Errors in Horizon: You say Post Office has not claimed Horizon is error free and that "*Post Office has always been live to the possibility of errors in Horizon*". This is certainly not consistent with the impression given to Subpostmasters experiencing alleged shortfalls and being required by Post Office to repay those alleged shortfalls in order to continue trading, nor is it consistent with Post Office's approach to investigations. We have addressed these points and the significance of errors in Horizon generally in the Overview section above.

    54.2. Number of Claims: We already have responded to the points you have made about numbers of Claimants at paragraph 35 above, and very similar points arise in relation to the Second Sight review and Scheme.

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40 Our second letter dated 25 August 2016.

41 Your letter dated 13 October 2016.

42 Letter of Response, Schedule 1 point 25.

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54.3. Transparency: We do not accept that Post Office has "*sought transparently to investigate the concerns of postmasters*"[43]. Your highly selective quote from the Second Sight Part Two Report entirely omits the preceding paragraphs which are critical of Post Office's lack of transparency, as indicated by the introductory words to the paragraph, which you have omitted from the paragraph you do quote. We also refer you to the paper produced by Post Office included at Appendix 1 to the Second Sight Part Two Report as illustrative of Post Office's lack of transparency in its dealings with Second Sight. For example, in relation to suspense accounts, Second Sight asked a straightforward question as to whether any Subpostmasters could have been charged by Post Office for amounts that became incorporated into suspense account balances, that were subsequently taken into profit by Post Office. Rather than give a straightforward answer to this question (which must be, yes), Post Office produced a lengthy narrative account of processes and obligations on Subpostmasters, which was designed to obscure the real issue.[44] As above, Post Office has also acted so as to prevent us from speaking to Second Sight in relation to the content of your Letter of Response, and has not provided documents to us which we have reasonably requested.[45] These actions are the very opposite of what we would expect from a genuinely transparent organisation.

54.4. Support for the Scheme to Full Conclusion: On 10 March 2015, Post Office unilaterally announced the closure of the Working Group and gave notice to Second Sight of the termination of its engagement. We reject your suggestion that because Post Office made provision for payment to Second Sight to complete reports that Post Office's conduct can be characterised as support for the Scheme through to its full conclusion. Post Office's actions were not supportive of the Scheme, not least in: (1) refusing to provide information to Second Sight (as above); (2) closure of the Scheme by its own unilateral act (which is a straightforward fact); and (3) fettering of the scope of the Scheme (as below).

54.5. Fettering Scope of Second Sight's work: On this issue, we refer to paragraphs 2.7, 2.8, 3.1 and 3.2 of the Second Sight Part Two Report, which make very clear that Post Office did fetter the scope of Second Sight's work. Contrary to Post Office's position in relation to cases which had resulted in a conviction (recorded at paragraph 3.2 of the Second Sight Part Two Report, and reflected in Post Office's letters of 10 March 2015),

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43 Letter of Response, paragraph 3.10.3

44 Initial Complaint Review and Mediation Scheme – Suspense Account, 29 July 2014 and 30 January 2015

45 Paragraphs 52 and 53 above.

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there can be no question that the Scheme was intended to encompass such claims, and we refer to the Overview of the Initial Complaint Review and Mediation Scheme which was prepared by the Working Group and agreed by Post Office. This made it expressly clear that all complaints would be considered, including from individuals who had been subject to civil or criminal proceedings. The FAQs included the following "***What if my case has already been considered by the civil courts and they have given judgment against me?*** *You may put your case through the Scheme even if the Courts have already given judgment against you.* ***What if my case involves a completed criminal prosecution or conviction?*** *You may put your case through the Scheme even if you have already received a Police caution or have been subject to a criminal prosecution or conviction… If at any stage during the Scheme new information comes to light that might reasonably be considered capable of undermining the case for a prosecution or of assisting the case for the defence, Post Office has a duty to notify you and your defence lawyers. You may then choose whether to use that new information to appeal your conviction or sentence.".*

55. For the avoidance of doubt in relation to previous proceedings, we do not agree with the suggestions made at various points in your Letter of Response that Post Office v Castleton [2007] EWHC 5 (QB) provides the correct answer to any of the factual or legal issues raised in the present claim.[46] It is indeed apparent to us from reading the judgment in that case that Mr Castleton represented himself at trial and in many respects he did not present his case on the law or evidence well, such that it is perhaps unsurprising the judgment went against him. Further, there was no expert evidence put before the Court. The decision of HHJ Richard Havery QC in that case will not bind the Court hearing the present claim. However, since you have raised it and rely upon it, please disclose to us a full set of correspondence, pleadings and witness evidence relating to the claim.

56. We also do not agree that the fact that any pre-action correspondence sent by Shoosmiths did not ultimately result in service of a claim form is in any way indicative of the strength or otherwise of the present claim. However, again in fairness to our clients, since you have raised it as an issue, please disclose to us a copy of the claim form and a full set of your correspondence with Shoosmiths.

Section 4: Relationship between Post Office and Claimants

57. As already noted above, this pre-action correspondence has been helpful in some respects, in that it has begun to clarify the parties respective positions (e.g. as to express and implied

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46 Letter of Response paragraphs 3.10.1(b), 4.46, and Schedule 3.

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terms) and identified issues which, it appears to be common ground, the parties regard as central to resolution of the dispute, such as the respective rights and obligations of the parties.

58. It would be extremely helpful if further progress could be made in this regard, both immediately following this letter (prior to provision of the draft Generic Particulars of Claim) and thereafter, prior to the GLO hearing. The relationship is plainly central to the issues, the need to imply at least some terms appears to be common ground and the consequences of implication of the terms conceded by Post Office is an obvious matter for clarification (as we request below at paragraphs 83 to 87).

A. *Factual Background*

59. There are notable errors and omissions in the factual background you have set out at section 4A and Schedule 4 of your Letter of Response. We have substantially addressed many of these points in our Overview section above,[47] and respond further only to particular issues below where it is constructive and proportionate to do so.

60. Your description of the relationship between individual Subpostmasters and Post Office as "*fundamentally a business-to-business arrangement*"[48] obscures the reality and the inequality of bargaining position between the parties. Even if Subpostmasters are not technically employees (as you are at pains to emphasise),[49] many aspects of the relationship between Subpostmasters and Post Office are similar to aspects of the relationship between employee and employer. The common law has long recognised reasoning by close analogy and we feel sure that you would not dispute that. In support of your business-to-business analysis of the relationship, you repeatedly rely on what you say is an appropriate analogy with the operation of a franchise.[50] We note your client's case on this point and refer to it further below in the context of the implied duty of good faith.

61. Contrary to your stated position,[51] Subpostmasters are very much required to make long term and expensive commitments when taking up appointment. Subpostmasters have to buy the goodwill of the business from the previous Subpostmaster as well as enter into a contract to purchase or lease premises – including in many cases a linked residential home. Subpostmasters employ assistants, invest in training those assistants, and become tied to

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47 Esp. points arising from the Letter of Response paragraphs 4.10 to 4.12, and 4.17 to 4.18.

48 Letter of Response paragraph 4.5.

49 Letter of Response paragraphs 3.2, 4.4, 4.20, and 4.29.1

50 Letter of Response paragraph 4.4, 4.24.3 and 4.29.3.

51 Letter of Response paragraph 4.6.

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employment contacts with those assistants, with consequences including a potential liability to make redundancy payments. We also understand that for a period of time, Post Office subjected new Subpostmasters (such as Mr Bates) to a 25% deduction from their first year's remuneration (although the basis and rationale for this is not clear). These are all costs and commitments, in addition to fit-out costs (which is the extent of your acknowledgement of costs in the Letter of Response).

62. As to your statement that "*Beyond the terms of the Postmaster Contract and the operational instructions provided by Post Office (and compliance with applicable legislation), a postmaster is free to operate in accordance with their own judgement and business interests*",[52] this is, in some strictly literal sense, true. However the reach of the contract and operational instructions were very broad indeed (as exemplified by the contractual terms set out at paragraph 53 of our Letter of Claim) such that any residual freedom was limited, being heavily circumscribed by Post Office's contractual powers and the obligations placed upon Subpostmasters. This far reaching control of course included the most basic aspects of operating what you describe as the Subpostmasters' own businesses, namely the requirement that Subpostmasters utilise the Horizon system to carry out all of their business for Post Office, regardless of any difficulties that they may encounter with it.

63. In relation to assistants,[53] it is wrong to say that training was under the full control of the Subpostmaster, not least since this overlooks Post Office's contractual obligations to provide Subpostmasters with relevant training materials and processes to carry out training of assistants, as well as the contractual architecture by which (on Post Office's case) the Subpostmasters effectively warranted the performance by their assistants in perfect compliance with all Post Office procedures and the flawless reconciliation by Horizon of transactions effected by them.[54] Furthermore, we also understand that Post Office provided some training directly to assistants. Yet further, the assistants had access to precisely the same Helpline (with the same issues) as Subpostmasters. We respectfully regard your case in this respect, as well as in others, as somewhat unrealistic.

64. You describe Post Office as having "*no presence in a branch during normal operations and cannot have first-hand knowledge of the transactions effected in the branch*".[55] However, it is entirely within Post Office's control to carry out audits and other investigations (into what you describe as completely independent businesses), and of course, your carefully worded

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52 Letter of Response paragraph 4.7.

53 Letter of Response paragraph 4.8.

54 Subpostmasters Contract, Section 15 (as amended July 2006), clauses 7.1.1 to 7.1.3, and prior to this date such terms would clearly be implied.

55 Letter of Response, paragraph 4.9.

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statement distracts, in effect if not by design, from the plain and fundamental fact that Post Office at all times has complete access to branch records electronically, via the Horizon system which it requires Subpostmasters to use for all transactions and accounts. As you are well aware, and as we specified above, Subpostmasters have limited access to such data.

65. We specifically note your twin contentions that: (i) "*a shortfall in a branch's accounts reflects a real loss to Post Office*";[56] and (ii) Post Office is entitled to recoup a shortfall in a branch's accounts from a Subpostmaster even when the root cause has not been identified. Neither is correct. Your approach conflates an alleged shortfall showing in branch accounts on Horizon with an actual loss to Post Office, which is demonstrably wrong. We refer to the Suspense Account Bug you have yourselves described in Schedule 6 to the Letter of Response[57]. It is perfectly clear from what you have described that alleged shortfalls showing in branch accounts in 2011 and 2012 did not represent a real loss to Post Office, because these were entries which had been erroneously generated by Horizon – precisely the Claimants' case. Nevertheless Post Office (wrongly) sought recovery of those alleged shortfalls from Subpostmasters.[58]

66. We note that in your Letter of Response you say that an investigation began in 2013 and "*Post Office suspended any attempts to recover known losses from affected postmasters whilst the issue was resolved*"[59]. You do not say that Subpostmasters who paid the alleged shortfalls in 2011 and 2012 were repaid these sums. Please confirm the position, including details of when any repayments were made and on what basis. We specifically request disclosure from you of any and all correspondence sent to affected Subpostmasters in relation to the 2011 and 2012 alleged shortfalls, or relating to: (i) recovery action taken (or threatened or sought to be taken) by Post Office in relation to those alleged shortfalls; (ii) any audit carried out in affected branches between 2011 and 2013; and (iii) save as otherwise provided above, documents evidencing how the issue was resolved in relation to each affected branch.

67. It is perfectly clear from this example that not only was Horizon not perfect, but that errors of precisely the type alleged by the Claimants could and did happen.

68. The example in this case further demonstrates your approach to the liability of Subpostmasters to pay alleged shortfalls irrespective of whether there is in fact any loss to

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56 Letter of Response, paragraph 4.14, also at 4.16.

57 Letter of Response, Schedule 6, paragraphs 4.1 to 4.5.

58 Letter of Response, Schedule 6, paragraph 4.4.

59 Letter of Response, Schedule 6, paragraph 4.5.

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Post Office (because you wrongly conflate allege shortfall and loss) as well as its unfairness. It is contrary to the express terms of the contract and wholly unreasonable. You may contend that whether or not the express terms are unfair and unreasonable as we contend is irrelevant. However, we regard them as clearly relevant, not least in relation to construing the terms *contra proferentem*, identifying whether such terms were sufficiently clearly drawn to the attention of Subpostmasters, considering the scope and purpose of particular contractual powers claimed by Post Office and applying the provisions of the Unfair Contract Terms Act.

69. Research has revealed that the fairness of Post Office's conduct and contractual terms has been considered by the courts before, on an appeal against a strike out and summary judgment. We refer to the decision of the Court of Appeal in 2003 in *Lalji v Post Office* A2/2003/0623 (19th December 2003), *per* the Vice-President, Brooke LJ:

> *"On the appeal Mr Davies called in aid section 3(2)(b) of [UCTA]. He said that this was a contract on the Post Office's written standard terms of business by which the Post Office was claiming to be entitled to render no performance at all in relation to its obligation to remunerate Mr Lalji during each month of his suspension. In these circumstances it would be for the Post Office to show at trial that the contractual term on which it relied passed the "reasonableness" test in section 11 of the Act, and this would be essentially a matter for the trial judge to determine. I agree."*

70. Sedley LJ agreed, at paragraphs 26 and 27:

> *"As to the first of these, I see nothing at present in the evidence which justifies the Post Office's resort to the drastic remedy of summary termination. As to the second, it seems to me cogently arguable that clause 19.6 of the contract, which purports to give an unfettered power to forfeit remuneration withheld during a period of suspension, falls foul of s.3(2)(b) of the Unfair Contract Terms Act 1977."*
>
> *"The Post Office's concession that the power must not be exercised capriciously (I assume in its favour that it will at least be able to pass this test) will not be enough to meet the requirements of the 1977 Act if s.3 applies. How the section operates - whether by avoidance of the offending provision or by reading down - does not have be determined at this stage. It may well have to be decided, however, at trial."*

71. It seems to us important to have regard to the rights and obligations which result from the enforceable express terms (properly construed) and such implied terms as may be

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established. We note that, as is clear from paragraph 27 above in Lalji, Post Office conceded that the power summarily to dismiss could not be exercised capriciously. Please clarify whether that concession is made in these proceedings too, at the same time identifying any other concessions which Post Office would make but which are not made in your Letter of Response. The unfairness of Post Office's approach in insisting that alleged shortfalls all represent actual losses highlights the likely relevance of UCTA.

72. Returning to the issue itself, of whether shortfalls actually represent real losses to Post Office, despite Post Office's failure to give any clear answer to Second Sight on this issue,[60] it seems clear to us that money which Post Office recovers from Subpostmasters in relation to alleged shortfalls which do not represent real loss to Post Office (such as in the 2011 and 2012 example above), would be held in Post Office's suspense accounts and would, after a 3 year period, ultimately be credited to Post Office's profits. If it is Post Office's positive position that this would not and could not happen, it is important that you now make that clear.

B. *Express Terms*

73. As already noted above, this pre-action correspondence has been helpful in some respects, in that it has begun to clarify the parties' respective positions and identified issues which, it appears to be common ground, the parties regard as central to resolution of the dispute.

74. We have responded to your position on the nature of the relationship between Post Office and Subpostmasters above, and note the express terms you rely upon in support of your position that Subpostmasters are not employees of Post Office.[61] We do not consider the express terms to be conclusive on this issue; and furthermore, there are certainly express terms which indicate the contrary position.[62] The true agreement[63], not the written contract (sometimes unseen by Subpostmasters), is the source of the parties' rights and obligations.

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60 As above, Initial Complaint Review and Mediation Scheme – Suspense Account, 29 July 2014 and 30 January 2015.

61 Letter of Response, paragraph 4.20.

62 For example, Section 4, clause 8 which provides that "*The Subpostmaster must do his best to find his own substitute and make all necessary arrangements for his absence… Responsibility for concluding arrangements … remains with the Subpostmaster concerned*", cf. James v Redcats [2007] IRLR 296 "*You need to ensure that a suitable alternative courier is available to carry out the terms of this agreement when you are unable*", which amounted to personal service. We have also seen Conditions of Appointment dated around March 1998 which included a heading "*Personal Service*", and the following statement: "*It is expected that you will render personal service at the Post Office in order to ensure a high professional and accurate standard of POCL work and to focus on initiatives to grow volume.*"

63 Esp. paragraph 81.1 below.

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(In Autoclenz, the written contracts expressly disavowed any employment relationship in the clearest possible terms and the valeters were entitled to work for competitors.) However, we do not pursue that further as a separate issue here.

75. As to the contractual terms relating to assistants, we have identified Post Office's own obligations in relation to training, above.[64]

76. As to liability of Subpostmasters for losses caused by assistants, the express terms which are relevant are Section 12, clause 12, and then Section 15, clause 2 (which can only sensibly be read in light of the prior Section 12, clause 12).[65] On a true construction of those terms (1) liability of a Subpostmaster is only for actual "losses" (and not e.g. for an alleged shortfall in branch accounts shown by Horizon which does not represent a real loss to Post Office, as above); and (2) such losses must be "caused by" the negligence carelessness or error of an assistant. We respectfully reject any construction to the contrary.

77. In relation to termination, we agree that Section 1, clause 10 provides an express term by which Post Office can terminate at any time for breach of condition or non-performance of obligation or non-provision of Post Office services, and a right otherwise to terminate on 3 months' notice. However, this express term must be construed in light of the factual matrix and other express terms of the contract, including those at Section 18, Non-Observance of Rules: Appeals Procedure, and Section 19, Offences: Suspension, and the terms we set out at paragraph 53 of the Letter of Claim illustrating Post Office's powers and the extent of its discretion. The operation of Section 1, clause 10 is also subject to implied terms, as we set out below. It would be helpful to know if Post Office would, upon reflection, make any further concessions as to implied terms, as for example conceded in *Lalji* above.

78. You have referred to Section 1, clause 9 which provides that when a Subpostmaster resigns and disposes of his private business and/or premises in which the sub-office is situated, the person acquiring the private business and/or the premises or exchanging contracts in relation to the same will not be entitled to preferential consideration for appointment as Subpostmaster. We understand that Post Office adopted the same approach where Post Office had terminated the appointment of a Subpostmaster, as we referred to in our Letter of Claim.[66] This is a further example of the imbalance of power between Post Office and Subpostmaster and informs the interpretation of Contract on the issue of termination.

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64 Paragraph 63 above.

65 Amended in July 2006.

66 Letter of Claim paragraph 101.5.

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79. It has come to attention that a number of Subpostmasters were not in fact provided with the Subpostmasters Contract (in full, or in some cases, at all) when they were appointed by Post Office. The same issue arises in relation to *"other contractual documents"*, such as operational manuals which you allege form part of the agreement.[67] Therefore, in each case it will be for Post Office to prove that the express terms relied upon in any individual case were in fact incorporated into the agreement, particularly in relation to onerous standard terms which Post Office would need to prove were drawn to their attention.

80. We do not agree that the relationship between the parties can be constrained to the express terms identified in your Letter of Response as you suggest[68] (even with the benefit of the implied terms which you then go on to concede – which we address below). Your threat of adverse costs, if we pursue these arguments, is an attempt to stifle our clients' reliance on proper principles of contractual construction and interpretation and are wholly inappropriate. We are seeking, through this correspondence, to narrow the issues between the parties and move towards an agreed view of the parties' respective rights and obligations. We look forward to your further co-operation in that respect.

81. As to the points we have raised, and which you assert to be "*misconceived*",[69] we respond as follows:

81.1. **True Agreement:** *Autoclenz v Belcher*[70] is a Supreme Court authority on the interpretation of contracts and discerning the true agreement between the parties, which may be different from the express terms. The dicta of Lord Clark SCJ[71] are particularly relevant in light of your attempt to rely on the written agreement only

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67 Letter of Response, Schedule 5, paragraph 1.2.

68 Letter of Response paragraph 4.24.

69 Letter of Response paragraph 4.24.

70 [2011] UKSC 41, [2011] ICR 1157, [2011] 4 All ER 745, [2011] IRLR 820

71 Lord Clark prefaced these with a reference to the distinction between the cases before the court and ordinary commercial disputes, by reference to the reasoning of Aikens LJ in the Court of Appeal at [92], in the following terms:

> *"I respectfully agree with the view, emphasised by both Smith and Sedley LJJ, that the circumstances in which contracts relating to work or services are concluded are often very different from those in which commercial contracts between parties of equal bargaining power are agreed. I accept that, frequently, organisations which are offering work or requiring services to be provided by individuals are in a position to dictate the written terms which the other party has to accept. In practice, in this area of the law, it may be more common for a court or tribunal to have to investigate allegations that the written contract does not represent the actual terms agreed and the court or tribunal must be realistic and worldly wise when it does so. ..."*

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(emphasis added): *"So the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part. This may be described as a purposive approach to the problem. If so, I am content with that description."*[72] You seem to be under the misapprehension that we have relied on Autoclenz on the issue of whether Subpostmasters are in fact employees, however the reason we referred to it is in the context of determining the true terms of the contractual agreement. This is obviously a proper issue in these proceedings.

81.2. **Onerous Terms:** Business-to-business contractual arrangements[73] are not exempt from the general rule on onerous and unusual terms, and for example *AEG (UK) Ltd v Logic Resource Ltd* [1996] C.L.C. 265 demonstrates the application of this principle in a business-to-business context. You are therefore mistaken in your understanding of breadth of application of the Interfoto principle. It is now clear from your Letter of Response that Post Office seeks to rely on express terms which it interprets in a particularly onerous way, for example: Section 12, Clause 12 (so as to hold Subpostmasters liable even when there is no real loss); Section 1, Clause 10 (so as to entitle Post Office to terminate the appointment of an Subpostmaster for any breach without notice, and without cause on 3 months' notice – as Post Office now argues, operating effectively as a limitation of liability clause); and Section 1, Clause 8 (so as to restrict any claim for loss of office to a 3 month period).[74] All of these terms are onerous terms if construed in the way Post Office contends, particularly in light of the long-term expensive commitments and substantial investment made by Subpostmasters as we have addressed at paragraph 61 above. These terms (and particularly Post Office's interpretation of them) were not fairly and reasonably brought to the attention of Subpostmasters on taking up appointment. If you contend otherwise, please let us know which specific steps you say were taken to do so and on which Post Office relies.

81.3. **Implied Duty of Good Faith**: The Letter of Response denies the applicability of Yam Seng and an implied duty of good faith. It does so expressly by reference to your position that the relationship between Subpostmasters and Post Office is analogous to that of a franchise agreement. Yet franchise agreements are expressly considered in

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72 Autoclenz v Belcher *supra* at paragraph 20.

73 We have addressed your reliance on this categorisation at paragraph 60 above

74 For the avoidance of doubt, the limitation of liability relied upon is not one which would comply with the Unfair Contract Terms Act 1977 and the Claimants will so contend.

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Yam Seng and we draw your attention to paragraph 143 of the judgement of Leggatt J, in which he expressly referred to franchise agreements as the very type of case in which a relational contract might arise. We clearly consider the present cases to be cases in which the relationship is properly characterised as a relational contract, for reasons set out in our Letter of Claim (and indeed in many respects, such characterisation is consistent with obligations Post Office seeks to impose on Subpostmasters, and Post Office's own characterisation of the relationship).[75] For you to threaten costs orders if this argument is advanced is a patent attempt to shut down a legitimate and meritorious contention which Post Office finds unwelcome. It is also a point upon which your denial is not readily reconcilable with either the terms of the judgment itself or the analogy with franchise agreements upon which you rely.

C. *Implied Terms*

82. We have responded to your position in relation to Yam Seng and the implied duty of good faith above. Determination of this issue naturally falls within the scope of the preliminary issue which we have proposed above, together with other express and implied terms, their scope and effect.

83. It is significant that you acknowledge a necessity to imply terms into the Subpostmaster Contract. The issues between us are therefore limited to the identification and interpretation of implied terms, and not whether any terms should be implied at all.

84. In relation to the implied terms which you propose,[76] do you agree that these terms would give rise to some or all of the matters we have set out in our Letter of Claim at paragraph 57.1 to 57.9 and 62.1 to 62.3, and 65.1 to 65.3? It is important that you make your position clear in relation to each of these paragraphs so that we can understand your client's position on these important issues.

85. It is not helpful or in compliance with the Pre Action Protocol for you to confine your response, in relation to these important issues, to *"representative examples"* only. We disagree with the position you have set out in relation to those examples, for reasons we

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75 For example, compare the Letter of Claim at paragraph 55 ("[The contractual relationship] *required a high degree of communication, co-operation and predictable performance, based on mutual trust and confidence*") with paragraph 4.40 of the Letter of Response ("*The postmaster...should owe the characteristic fiduciary duty of loyalty and the express duty to account. There is no equivalent relationship in the other direction*") – despite then expressly conceding a necessarily implied Necessary Cooperation Term in contract.

76 Letter of Response paragraph 4.35.

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have already set out in our Letter of Claim and above, including your erroneous conflation of alleged shortfalls and actual losses.[77]

86. Specifically as to Post Office's obligations to account for transactions and shortfalls, the Claimant will contend that Post Office undertook to supply the Horizon system (as a service to Subpostmasters essential to their business) and to effect, record and account for transactions executed by Subpostmasters.[78] The Claimants will further contend that Post Office was obliged to provide such services *"with reasonable care and skill"* in accordance with the provisions of section 13 of the Supply of Goods and Services Act 1982. We would therefore invite you to re-consider Post Office's contention at paragraph 4.33.1 of the Letter of Response – not in regard to information held only by Subpostmasters, but rather, in regard to information held by Post Office or Fujitsu on its behalf. In the context of considering the fiduciary duty arising from these obligations, we consider them further below at paragraphs 88 to 93.

87. We will further consider the proper incidents of the implied terms which we have identified in our Letter of Claim prior to service of our draft generic Particulars of Claim.

D. *Fiduciary Duties*

88. We note your denial that Post Office was subject to any fiduciary duties.[79] For reasons set out in our Letter of Claim, we maintain that Post Office was subject to a narrow and specific fiduciary duty, arising from having undertaken obligations to effect, record and account for transactions executed by Subpostmasters. An incident of these obligations and the fiduciary duty arising therefrom as the duty including promptly, accurately and candidly to make transactional records available to Subpostmasters where an alleged discrepancy or shortfall is identified.

89. We understand that Post Office takes three points in relation to the fiduciary duty contended for by the Claimants:

    (1) whilst Subpostmasters are fiduciaries of the Post Office (by virtue of the Subpostmasters being entrusted with control of Post Office property without Post Office having immediate oversight), Post Office contends that *"there is no equivalent relationship in the other direction"*;[80]

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77 See paragraph 65 above, *et seq*.

78 Letter of Response, paragraph 4.11.

79 Letter of Response paragraph 4.39.

80 Letter of Response, paragraph 4.40.

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(2) "*designation of a person as a fiduciary follows from his undertaking the characteristic obligations of a fiduciary*" and "*Post Office undertook no such obligations*";[81]

(3) "*terms of the Postmaster Contract … would in any case negate the imposition of such duties*".[82]

90. We do not agree that *"there is no equivalent relationship in the other direction"* or that *"Post Office undertook no such obligations"*. Post Office's analysis of the relationship between it and Subpostmasters is one of a business to business relationship. In that relationship, it is clear that Post Office undertook to supply the Horizon system (as a service to Subpostmasters essential to their business) and to effect, record and account for transactions executed by Subpostmasters.[83] The Claimants will contend that Post Office was obliged to provide such services *"with reasonable care and skill"* in accordance with the provisions of section 13 of the Supply of Goods and Services Act 1982. Post Office accepts that it is also obliged to provide information and training[84] and technical advice and support.[85] The Claimants will contend that such duties also arose in tort (below).

91. If it is Post Office's case that it owed no relevant duties whatsoever in effecting, recording and accounting for transactions executed (or apparently executed) by Subpostmasters or doing so with reasonable care and skill, please confirm this.

92. Your Letter of Response contends that express terms would negate such a duty. Please state which terms you are referring to so that we can understand your position.

93. Although you dispute that such a duty in fact arises, we note you have not disputed the factual matters which we have relied upon at paragraphs 70.1 to 70.5 of the Letter of Claim. We regard such matters as uncontroversial, but would welcome your confirmation of that. Please confirm our understanding that you do not dispute these paragraphs of our Letter of Claim.

E. *Duty in Tort*

94. Contrary to the suggestion in your Letter of Response,[86] we have not claimed a *"general duty of care in tort"*. We have identified that in addition to its contractual obligations to the

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81 Letter of Response, paragraph 4.41.
82 Letter of Response, paragraph 4.41.
83 Letter of Response, paragraph 4.11.
84 Letter of Response, paragraph 4.36.1.
85 Letter of Response, paragraph 4.36.2.
86 Letter of Response paragraph 4.42

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Subpostmasters, Post Office owed Subpostmasters a concurrent duty in tort.

95. Post Office clearly assumed responsibility to Subpostmasters in such a way that a concurrent duty arose in accordance with *Henderson v Merrett Syndicates Ltd* [1995] 2 A.C. 145 principles. The contract gave rise to mutual undertakings and the need for cooperation between the parties, not least in relation to the accounting functions carried out and hosted by Post Office, and training and support provided by Post Office, including via the Helpline. Subpostmasters obviously relied on Post Office in these and other respects in which Post Office held itself out as having special knowledge and skills.

96. We disagree that this concurrent duty would run counter to the terms of the Subpostmasters Contract, for the very reasons we have previously identified as to the proper construction of that Contract.

F. *Burden of Proof*

97. We agree that as a basic principle, it is the Claimants who will bear the burden of proof, to the normal civil standard, that Post Office breached one or more of its contractual or other duties to them.

98. The scope of the contractual duties include the implied terms, which we have identified in the Letter of Claim. These include the implied term that a power conferred by a contract on one party must be exercised honestly and in good faith for the purpose for which it was conferred, and must not be exercised arbitrarily, capriciously or unreasonably.[87] They also include the incidents of the implied duty of good faith, including to co-operate with claimants in seeking to identify the possible or likely causes of alleged shortfalls.[88]

99. Your Letter of Response assumes that in order for a Subpostmaster to establish breach of duty by Post Office, it will be necessary for a Subpostmaster to prove "*that a shortfall did not in fact exist or existed only as a result of breach of duty on the part of Post Office.*"[89] This is obviously wrong. A Subpostmaster would only have to establish the attribution to him or her of an alleged shortfall, in circumstances where Post Office cannot discharge the contractual burden of proof necessary to support its claim that the Subpostmaster is liable for that alleged shortfall.

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87 Letter of Claim paragraph 60.

88 It seems to us that you do not object to this obligation on Post Office, in light of your position at paragraph 4.35.2 and in paragraph 4.47 your acceptance that *"Post Office may in some circumstances have an obligation to support a postmaster's investigation in accordance with the implied duties set out above."*

89 Letter of Response, paragraph 4.48.

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100. Alternatively, a Subpostmaster who establishes breach of duty by Post Office would be entitled to damages on an application of the relevant principles of causation and remoteness. If, for example, a Subpostmaster establishes that Post Office in breach of duty failed to co-operate in assisting him or her to identify the cause of an alleged shortfall, and Post Office wrongfully terminated the Subpostmaster's appointment as a result, it is wrong for Post Office to contend that the contractual burden of proof would be reversed as a pre-condition to the Subpostmaster recovering damages.

101. Further, it is Post Office's position that alleged shortfalls amounted to actual losses to Post Office.[90] That is also an important issue upon which Post Office will bear the burden of proof. If it is to be Post Office's case that it was lawfully entitled to recover alleged shortfalls from Subpostmasters under Section 12, clause 12 of the Subpostmasters Contract, it will be for Post Office to establish that the alleged shortfalls in a particular case in fact amounted to real "*losses*" and then that those losses were contractually the responsibility of the Subpostmaster.

102. You have relied on the case of Post Office v Castleton [2007] EWHC 5 (QB) in support of your position that at trial it is the Subpostmaster who bears the burden of proof and is bound by accounts he renders unless he can show the account was made unintentionally and by mistake. However, as above,[91] Castleton is a first instance decision and is not a binding authority; Mr Castleton was a litigant in person and it is apparent he did not pursue his claim in the same way as the Claimants do in this case; and it appears that there was no independent expert evidence before the Court. We do not consider that a Court hearing full legal argument and being presented with evidence which is properly tested would reach the same conclusions as to legal rights and obligations as were reached by the HHJ Richard Havery QC in that case. The accounting relationship between Subpostmasters and Post Office is far more nuanced than the judgment in Castleton would suggest, and whilst Subpostmasters are an accounting party in relation to the cash they hold, the accounting system in place was set up by Post Office, and it is Post Office, as opposed to the Subpostmaster, that has control of electronic records of transactions, access to all underlying data and the ability to remotely access and alter transactions. We also note that the implied terms and duties for which we contend, as well as economic duress and unconscionable dealing, appear not to have been argued at all in Castleton.

103. You have also referred to Section 12, clauses 4 and/or 5, and Section 22, clause 3, of the Subpostmasters Contract as purported bases on which you say Post Office is entitled to

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90 Letter of Response, paragraph 4.14 and 4.16.

91 Paragraph 55 above.

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claim, as "*compensation*", any amount declared by a Subpostmaster in an account which is in fact in excess of the cash on hand. We disagree that those clauses give rise to any such claim, and Post Office would be required to prove both breach and loss. It would in any event be a bar to these claims if the breach of the Subpostmaster was brought about by Post Office's own breach of duty. It is also clear that Subpostmasters were often under economic duress in taking the decisions that they did. Furthermore, the Claimants will rely upon unconscionable dealing by Post Office constituted by the conduct which they allege.

104. If it is your case that Post Office relied on Section 12, clauses 4 and/or 5, and/or Section 22, clause 3 in contemporaneous correspondence with Subpostmasters in relation to accounts rendered by them, please make that clear and provide us with the relevant correspondence. It is our understanding that Post Office sought recovery of alleged losses from Subpostmasters on the basis of Section 12, clause 12 of the Subpostmasters Contract, which we have already addressed above. In order to be entitled to rely on that provision, Post Office must establish (1) an actual loss; (2) caused by a Subpostmaster's negligence, carelessness or error (or that of an assistant). Your contention that in some way there should be a presumption that a Subpostmaster is responsible for any alleged shortfall[92] would place a burden on a Subpostmaster to prove a negative (i.e. that the alleged loss was not in fact a loss to Post Office, or if it was, it was not caused by his or her negligence, carelessness or error) is absurd, in circumstances where Subpostmasters do not have access to all of the information which would be required in order to do so and/or are unable effectively to interrogate the information that is available. Your construction is contrary to the express words of Section 12, clause 12, and obviously runs counter to the principle of *contra proferentem*.

G. *Governing Law and Jurisdiction*

105. We have corresponded with you separately in relation to these issues. There is no issue in relation to jurisdiction – the parties have agreed to proceed on the basis that the applicable jurisdiction for all of these claims is England and Wales. In relation to governing law, we have made our position clear that we consider English law applies to contractual and non-contractual causes of action. If you intend to contend otherwise, please now make your position clear.

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92 Letter of Response paragraph 4.50.3

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Section 5: Factual Allegations

106. We have responded above to your complaints of allegedly inadequate particularisation,[93] we quite properly rely on Second Sight's reports as a proper basis for our allegations, and the way in which you have sought to disavow all parts of Second Sight's reports which are critical of Post Office.[94] Your approach to causation of loss[95] is also wrong for reasons we have addressed above.[96]

107. For the avoidance of any doubt, we do not see any reason why Second Sight's reports should not be admissible in these proceedings as you seem to suggest, although you have identified no basis for your position.[97]

108. We are not in a position to respond fully to the points you have raised in relation to Second Sight's expertise, because you have, to date, prevented us from speaking to them in relation to these issues raised in your Letter of Response.[98] However, it is clear to us that your attempt to avoid the substantial criticisms made by Second Sight of Post Office's investigations (or lack thereof) and approach to prosecutions (see paragraph 25.1 to 25.24 of the Second Sight Part Two Report) as "*inexpert speculation*" is an inappropriate attempt to undermine Second Sight, and ignores the evidence which was obviously available to Second Sight in relation to these issues.

109. As to your criticisms that Second Sight's Part Two Report lacked supporting evidence or reasoned analysis,[99] we disagree that this is in any way a reasonable summary of the position. It is also clear that Second Sight's attempts to obtain relevant evidence were in a number of respects, impeded by Post Office's own conduct, and ultimately, Post Office's unilateral decision to terminate the Scheme.

A. *Defects in Horizon*

110. Your Letter of Response proceeds on a false footing. To be clear, our Letter of Claim is not predicated on the particular Second Sight quote as to their concerns about a systemic flaw,

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93 See paragraphs 28 and 44 to 51 above
94 See paragraphs 27 and 54.3 above
95 For example Letter of Response paragraph 5.1.2
96 See paragraph 94 above
97 Letter of Response paragraph 5.2
98 See paragraph 3 above
99 Letter of Response paragraph 5.5

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which you set out in your Letter of Response and then critique.[100] (We have responded above as to why your characterisation of our case as alleging a "*systemic flaw*" in Horizon software is wrong.[101])

111. Our Letter of Claim sets out our case that there were a significant number of software defects and problems which required rectification and rebuilding of transaction data in branch,[102] and that Subpostmasters did not know how discrepancies and alleged shortfalls had come about - rather Fujitsu IT specialists were engaged by Post Office to search through hundreds of thousands of lines of coding in order to resolve issues which had been identified. It will plainly be necessary for factual and expert evidence to be obtained in relation to the operation of Horizon, defects, problems and bugs, and their potential to generate alleged shortfalls.

112. We have addressed above the significance of the Suspense Account defect as to Post Office's position that an alleged shortfall in a branch account is equivalent to an actual loss to Post Office – as your own account of this issue demonstrates, this is plainly not the case.[103]

113. In our Letter of Claim we asked you for internal notes, memoranda, correspondence, emails and briefing documents regarding errors, bugs or problems in the Horizon system.[104] You have declined to provide these, on the basis that it would require a full disclosure exercise, which you say is not reasonable or proportionate at this stage.[105] It is obviously not possible for us to provide further particularisation prior to receiving these documents from you, and our position is therefore fully reserved pending disclosure and expert evidence in relation to the same.

114. In Schedule 6 to your Letter of Response, you provide an account of three particular defects which you say have affected Horizon, and which you describe as Calendar Square / Falkirk, Payments Mismatch, and Suspense Account Bug. It appears to be Post Office's case that it can identify precisely which Subpostmasters were affected by each of these defects. At paragraph 5.12 of your Letter of Response you say that "*No evidence has been presented to suggest that these issues had any effect on the Claimants*". It is plainly reasonable for Post Office to identify which branches were affected by the defects referred to in the Letter of Response and also whether any Claimants were so affected. Please therefore co-operate

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100 Letter of Response, paragraphs 5.10 to 5.11.

101 See paragraph 20 above.

102 Letter of Claim paragraphs 119 to 123.

103 See paragraphs 65 to 68 above.

104 Letter of Claim paragraph 169, point 7.

105 Your letter dated 13 October 2016, paragraphs 8.4 to 8.7.

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and provide this information to us. Please also provide a copy of any communication(s) sent to Subpostmasters in relation to these defects.

115. We note that you provide information in relation to these three defects on the express basis that *"Post Office does not claim that these have been the only defects in Horizon"*.[106] In the context of Post Office's lack of transparency in relation to Subpostmaster complaints, and the vigour with which it has expressed it will defend these claims, we anticipate that this is a significant point. Certainly the matters set out in our Letter of Claim indicate that there were further and numerous problems. If you are not willing to provide information in relation to these problems, we will pursue it as part of the disclosure process.

B. *Data integrity and remote access*

116. We set out in our Letter of Claim the statements made by Richard Roll, a Fujitsu technician between 2001-2004, which clearly indicate that changes to data were being made "*through the backdoor*" and without Subpostmasters' knowledge.[107] We also identify that there was a frequent need to "*rebuild*" branch transaction data (giving rise to the obvious possibility for error to be introduced in this way), and there were a large number of coding errors which required fixes to be developed and implemented.[108]

117. The response in your Letter of Response is in general terms, and to the effect that there are controls and processes in place to protect the integrity of data, and that there are four defined ways in which Post Office or Fujitsu on Post Office's instruction, can "*influence*" those accounts.[109] It is notable that you have chosen not to engage with the points we have made about rebuilding transaction data or the large number of coding errors.

118. One of the ways you admit that accounts can be "*influenced*" is by what you describe as "*balancing transactions*". You say that Fujitsu "*has the capability to inject a new "transaction" into a branch's accounts*" and that "*[balancing transactions] have only been in use since around 2010*", and have only been used once since then.[110]

119. You also say that "*Database and server access and edit permission is provided, within strict controls (including logging user access), to a small, controlled number of specialist Fujitsu (not Post Office) administrators. As far as we are currently aware, privileged administrator*

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106 Letter of Response, Schedule 6, paragraph 1.8
107 Letter of Claim paragraph 44.4
108 Letter of Claim paragraph 119
109 Letter of Response paragraphs 5.15 to 5.16
110 Letter of Response paragraph 5.16.3

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access has not been used to alter branch transaction data. We are seeking further assurances from Fujitsu on this point."[111] It is evident from this statement that Fujitsu has the ability to alter branch transaction data in this way (and we understand from your Letter of Response that this has always been the case).

120. In light of these two admitted ways in which branch accounts could be altered by Fujitsu (acting on behalf of Post Office), we do not understand on what basis Post Office made the statement that "*to be clear, Horizon does not have functionality that allows Post Office or Fujitsu to edit or delete the transactions as recorded by branches*"[112] and similarly in response to the BBC Panorama programme that *"Transactions as they are recorded by branches cannot be edited and the Panorama programme did not show anything that contradicts this."*[113] In light of the matters now admitted in your Letter of Response, these statements were untruthful. We invite Post Office to provide a candid explanation.

121. Despite the evident importance of this issue, you have not provided us with any further information as to the Fujitsu "*assurances*" that you said that you were seeking. Please disclose a complete copy of the communications you have had in relation to this matter with Fujitsu. Further, it is difficult to understand Post Office's position that this access was strictly controlled, if Post Office does not know how it was used, and therefore please provide us with a copy of all Fujitsu logs and records in relation to administrator access to branch accounts or which may have affected branch accounts.

122. Against that background, the requirements you seek to impose on a Subpostmaster to "*point to a particular transaction that they believed had been created, edited or deleted by Post Office without their knowledge*", and to identify such matters by their own monitoring,[114] are completely unreasonable, and all the more so when Post Office has publically concealed the true position as to the capability for transactions to be edited without Subpostmasters' knowledge.

C. *Training*

123. We agree that whether training provided by Post Office to a particular Subpostmaster was in breach of Post Office's express and implied duties is an issue which is fact sensitive to each Subpostmaster; however, it is clear that many Subpostmasters have raised similar issues in relation to the inadequacy of training they received, as we indicated in our Letter of Claim.

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111 Letter of Response paragraph 5.16.4

112 Paragraph 2.8 of Reply of Post Office to Second Sight Part Two Report published in April 2015.

113 BBC Panorama – Our response [http://corporate.postoffice.co.uk/bbc-panorama-our-response]

114 Letter of Response paragraphs 5.17 and 5.18.

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Your position that Post Office did not breach its duties to any of the Claimants[115] is surprising in the circumstances.

124. We are in any event unable to respond to your case that training provided was adequate and in compliance with Post Office's duties (or any of the matters you set out in relation to how training has changed over time) when you have refused to provide us with any documents relating to training other than those which are currently in use.[116] We do not accept this position is reasonable, for reasons we have previously expressed.

125. As a minimum, please now provide us with training records for the named Claimants. If it is your position that this would be too onerous at this pre-action stage, please provide us with records in relation to the first 25 named Claimants on the Claim Form, by way of a sample.

126. Our position in relation to training is otherwise as expressed in our Letter of Claim.[117]

D. *Access to Information*

127. We have set out the Claimants' position as to the ability of Subpostmasters to access information and interrogate it effectively in our Letter of Claim and also addressed this issue further above.[118] The account you give in your Letter of Response is inconsistent with the experience of many Claimants who found themselves faced with unexplained shortfalls and discrepancies, which they were unable to resolve and Post Office did not provide them with effective assistance in this regard. Transaction data outside the 42/60 day period was not routinely made available to Subpostmasters even when they specifically requested it, and the experience of many Subpostmasters who called the Helpline in relation to alleged shortfalls was that they were simply asked how they wished to "*make good the loss*".

128. In our Letter of Claim we set out our understanding that Post Office is able to retrieve a certain amount of Horizon transaction data under the terms of its contract with Fujitsu, but there is a limit to the data that can be retrieved without triggering further payments. Post Office therefore has a financial incentive to refrain from providing Subpostmasters with Horizon transaction data.[119] You responded on this point in Schedule 6 to your letter, by referring us to clause 25.10 of the Fujitsu Contract (which you have disclosed to us in heavily redacted form, obscuring all charges), which you say "*entitles, but does not compel, Fujitsu*

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115 Letter of Response paragraph 5.19.

116 Paragraph 53 above.

117 Letter of Claim, in particular paragraphs 85 to 87

118 Paragraphs 22 and 104 above

119 Letter of Claim paragraph 118

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to charge for the "reasonable and demonstrable costs" incurred by Fujitsu in supplying documents, subject to certain further restrictions. Whilst there can be a cost associated with recovering historic transaction data, these files are obtained by our client where appropriate to do so".[120] Your response indicates that Post Office does indeed have the financial incentive we identified in our Letter of Claim, and also that it exercised a discretion whether to request documents from Fujitsu to provide to Subpostmasters at their request or otherwise.

129. So that we understand the position, please provide answers to the following questions:

129.1. What are the circumstances in which Post Office determines it is "*appropriate*" or not appropriate to recover historic data?

129.2. Does Post Office agree that it refused Subpostmasters access to archived data on the basis of cost?

129.3. What would be the typical cost of obtaining archived data for a Subpostmaster seeking to challenge an alleged shortfall?

129.4. Please disclose to us any document which identifies how Post Office determines the appropriateness of obtaining archived data in an individual case, and any record of any instructions to Post Office employees, as to when such data should be provided or refused or other guidance in this respect.

E. *Support*

130. We have fairly identified the Claimants' case as to the lack of effective support made available to them via the Helpline and in relation to the conduct of investigations.[121] It is clear that whether Post Office's conduct was in breach of duty will be an issue in individual claims and will be dependent both on generic evidence (for example as to Post Office's instructions to Helpline staff and investigators), and evidence specific to individual cases. We note that you maintain there was no breach of contract in any case on any basis, even where you evidently agree there is scope for criticism of Post Office.[122]

131. The overall account you have given in your Letter of Response as to the way in which support was provided paints a rosy picture but does not fit the reality of what was

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120 Letter of Response, Schedule 6, paragraph 5.3

121 Letter of Claim paragraphs 90 to 91 and paragraphs 22, 24 and 31 above.

122 Letter of Response paragraph 5.47.1

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experienced by individual Subpostmasters. Your claim that Post Office "*thoroughly analysed call logs in all of the investigated cases [and] … the absence of evidence of repeat escalations and/or repeat calls on the same issues indicated that, generally speaking, callers to the NBSC were content with the advice given*"[123] is not well founded, as of course a lack of repeat escalations and repeat calls is entirely consistent with Subpostmasters receiving advice which did not help them to resolve their problems, and difficulties getting through to the Helpline at all – points we made in our Letter of Claim.[124] In any event, please disclose the call logs and Post Office's analysis which you rely upon in relation to this issue.

132. We note in particular that you deny Claimants were told they were "*the only one*" experiencing problems, on the basis that "*Post Office has seen no documentary evidence to substantiate this claim*"[125]. This is an unusual response, as it is hardly surprising that there might be a lack of documentary evidence in the Claimants' possession on this issue. However, as you can reasonably anticipate, the Claimants will address the issue in their witness evidence.

133. As set out in our Letter of Claim, we consider it inherently unlikely that such a statement would have been disseminated with the frequency it was without a level of coordination between the Post Office and Helpline operators. However, your characterisation of our case as "*preposterous*" is noted, as is your very specific denial that "*For the avoidance of doubt, Post Office has never given an instruction to any of its staff to tell a postmaster that they were the "only one" experiencing a problem with Horizon known to be also affecting other postmasters.*"[126]

134. In relation to investigative support, for reasons we have already addressed, we fundamentally disagree with your interpretation of Section 12, clause 12 of the Subpostmaster Contract,[127] and we do not accept what you say on the issue of instructions given to investigators to disregard errors in Horizon.[128]

135. We do note with interest your description of the role of the FSC *to "work alongside branches to help identify the cause of a discrepancy*", and the suggestion that if the FSC and NBSC are unable to resolve the issue "*field support teams may get involved*" and "*Post Office may*

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123 Letter of Response paragraph 5.47.6
124 Letter of Claim paragraphs 90-91
125 Letter of Response paragraph 5.47.8
126 Letter of Response paragraph 5.47.10
127 See paragraph 21 above
128 See paragraph 24 above

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send out specialist teams to offer on-site support".[129] Please disclose instructions, policies and guidance relating to the work of these FSC, field support teams and specialised teams, as what you have described is very different from the experience of the Claimants.

F. *Criminal investigations and prosecutions*

136. We note the matters you set out in relation to criminal investigations and prosecutions, and respond to you further in relation to this topic in Section 6, under heading E, below in relation to malicious prosecution.

Section 6: Heads of Claim

137. In your Letter of Reply, you assert that all causes of action pursued by the Claimants, with the exception of breach of contract (and related breach of fiduciary duty and tortious duty of care), are spurious and will only result in an increase in costs.[130] While, undoubtedly, those other causes of action necessarily require pleadings, evidence and hearings of greater scope, they are far from spurious.

138. As demonstrated by the Letter of Claim, and the paragraphs below, there are solid, reasonable factual and legal bases for bringing claims pursuant to these causes of action and we reject your contentions that allegations such as deceit are improper. These causes of action have differing (if at times overlapping) requirements and have prospects of success that are independent of one another, with differing principles as to remedies. It is perfectly proper for the Claimants to advance these causes of action in the alternative, as much as it is Post Office's prerogative to *"adopt a vigorous defensive posture"*[131] in respect of the same.

139. Further, the 'additional' causes of action are necessary as they ensure that the entire cohort affected by Post Office's conduct in relation to Horizon is encompassed. One of the objectives of Group Litigation is to litigate *"the action as a whole in an effective manner"*.[132] In resolving this action against Post Office "*as a whole*", it is appropriate to include all issues arising, particularly those that are closely related to or corollaries of the overarching themes of the dispute, namely: (i) the introduction of Horizon; (ii) the reliability of the same; (iii) the alleged shortfalls identified by the system; and (iv) Post Office's conduct specifically as it

129 Letter of Response paragraph 5.52 to 5.53

130 Letter of Response, paragraphs 6.3 to 6.4.

131 Letter of Response, paragraph 6.4.

132 White Book Commentary at 19.10.0.

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relates to Horizon and those shortfalls. This naturally leads into issues such as those captured by causes of action like harassment and malicious prosecution.

140. It follows that these proceedings, particularly given the context of Group Litigation, are far more nuanced and intricate than simple breach of contract claims. Accordingly, the Claimants, quite reasonably, will not limit their claims in the manner you have suggested.

141. Nevertheless, without prejudice to the above and the merits of these causes of action (as set out in the Claim Form and Letter of Claim), we wish to engage constructively with you so as to narrow the issues between the parties at this stage of the proceedings. We recognise that the value of this pre-action correspondence has already been demonstrated by your agreement as to the necessary implication of the Stirling v Maitland and Necessary Cooperation Terms. We will continue to seek to engage constructively with you to narrow the scope of dispute particularly as to the relationship between the parties.

142. As to that, we agree with your view that the first issue between the parties encompasses the "*duties, meaning and effect of the Postmaster Contract (including any implied terms or related agency or fiduciary duties or related duties of care in tort) in relation to the provision of Horizon, the procedures for operating Horizon, training in relation to Horizon, support in relation to Horizon and liability for shortfalls identified by Horizon of cash or stock in a branch.*"[133] This issue is the central feature in this case and, indeed, is the prism through which all of the other causes of action fall to be viewed. Other causes of action are likely to be alternatives (even if not mutually exclusive alternatives) to the foregoing.

143. Against this background, we would propose that a sensible way forward in managing this litigation would be to address and determine those matters above at an early stage, staying all other causes of action pending such determination.[134] We return to this later in this letter in relation to the GLO.

A. *Breach of Contract*

144. Establishing relevant breaches of duty will necessarily depend on resolution of the logically anterior questions as to the existence, scope and extent of the relevant duties – hence our proposal at paragraph 18 above that those matters be determined as preliminary issues.

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133 Letter of Response, paragraph 10.8.1.

134 See paragraph 18 above and 206(21) below.

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145. It must be clear to you from our Letter of Claim that duties contended for are those which the Claimants allege were breached. The factual basis upon which the Claimants complain that Post Office failed in its duties to them is also clear from the Letter of Claim.

146. The point which you raise as to precisely how the matters alleged breach the duties owed by Post Office to Subpostmasters underscores the advantages of early determination of the preliminary issues which we have identified as to those duties.

147. As we have noted in paragraph 17 above, we propose to address this by category of conduct capable of breaching each relevant duty in the Generic Particulars of Claim.

148. By way of example, at the most basic level, if Post Office's construction of the contract as to the burden of proof is wrong and the burden of proof was upon Post Office, the Claimants will contend that Post Office was not entitled to operate the contract (and require repayment of unsubstantiated alleged shortfalls) on the basis which it claims to have done. In those circumstances, it follows, as night follows day, that the Claimants will claim losses in the amounts wrongfully demanded by and paid to Post Office as a result.

149. Another obvious example would be a failure to provide adequate training as addressed at paragraph 86 of our Letter of Claim, would obviously amount to a breach of a duty to provide adequate training, or other relevant overarching duties including the implied terms which you admit. A further such example would be a failure to investigate the existence or causes of alleged shortfalls properly or at all, as addressed at paragraphs 92 to 100 of our Letter of Claim, which would clearly be a breach of a duty properly and fair-mindedly to investigate such alleged shortfalls.

150. As to the bringing of criminal prosecutions, whilst it may be held that an actual prosecution itself fell outside the scope of any contractual duties owed by Post Office, a decision to treat a Subpostmaster as dishonest may amount to a breach of the implied term of trust and confidence, or terms as to good faith and necessary co-operation. This, in turn, is likely to cause or contribute to a failure to investigate properly or fair-mindedly. Each and all of the above (and/or a failure to disclose or have regard to the possibility of errors in or generated by Horizon) would foreseeably result in prosecutions being brought, when they would otherwise be unlikely.

B. *Harassment*

151. We consider the facts of *Nadeem v Shell UK* [2014] EWHC 4664 (QB)[135] to be readily

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[135] Letter of Response, paragraph 6.14.

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distinguishable from those of the Claimants' cases, however the extract from the judgment on which you rely underlines the importance of determining the parties' contractual rights before determination of the harassment claims (which again reinforces the good sense of determining the preliminary issues which we have proposed at an early stage).

152. We make clear our position that requests for payment which are contractually due can indeed constitute harassment, and *Nadeem v Shell UK* is not authority for the broad proposition to the contrary for which you contend in arrangements between so called commercial parties, and would certainly not exclude an Subpostmaster from establishing harassment by Post Office on this basis.

153. For the avoidance of any doubt, such demands are not the only matters relied upon by Claimants as establishing a course of conduct amounting to harassment, and other relevant conduct would include, for example, threats to terminate a Subpostmaster's appointment and/or advice or encouragement to resign and threats and/or pursuit of civil and/or criminal proceedings.

C. *Deceit*

154. You say you have "*no idea what representations Post Office is alleged to have made*".[136] Please refer to paragraphs 138 to 140 of our Letter of Claim where you will find this information, namely (1) the express representations made to Claimants that they were the "*only one*" experiencing difficulties with Horizon, and (2) implied representations that Post Office investigators had not excluded the possibility of errors in the Horizon system.

155. The basis on which we have alleged these representations to be false must also be perfectly plain to you: (1) there were in fact many Claimants experiencing difficulties with Horizon and dealing with alleged shortfalls which they were unable to resolve (other than by simply accepting the amount and paying it to Post Office) – as set out in detail in the Letter of Claim; and (2) Post Office investigators had in fact been instructed to exclude the possibility of error in the Horizon system.[137]

156. As to Post Office's knowledge or recklessness, we made perfectly clear in our Letter of Claim that we made allegations of deceit on the basis of the second limb in *Derry v Peek*.[138] Reliance is a case sensitive issue, but obviously would include Subpostmasters who paid alleged shortfalls to Post Office in reliance on representations that they were the only ones

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136 Letter of Response, paragraph 6.21

137 Letter of Claim, paragraphs 36 and 153, and paragraph 24 above.

138 Letter of Claim, paragraph 9

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experiencing problems – again, this was identified in the Letter of Claim.[139] Loss is also a case sensitive issue, but as a matter of approach would encompass all losses flowing from Post Office's breach.

157. Your threat to report this firm to the SRA is entirely unwarranted. We have received instructions and reviewed material which we reasonably believe gives rise to an actionable claim in deceit against Post Office. We are not instructed to discontinue the deceit claim and do not agree to do so. We do propose that the deceit claim is however stayed pending determination of the preliminary issue we have identified.

158. We agree it will be necessary for individual Claimants to identify whether they claim to have relied on representations giving rise to a claim for deceit, and we consider this is something which can properly be managed as part of the GLO and potentially the provisions to be made in respect of Schedules of Core Information (SOCIs).

D. *Misfeasance in Public Office*

159. We have considered the objections you raise to this claim, and confirm that the Claimants do not intend to pursue it.

E. *Malicious Prosecution*

160. We do maintain that a claim for malicious prosecution can properly be brought by Claimants who were the subject of civil actions by Post Office. We do not agree your interpretation of the judgment in *Crawford Adjusters (Cayman) Ltd v Sagicor General Insurance (Cayman) Ltd* which you say means that "*there can be no liability unless a claimant has brought civil proceedings for a predominant purpose other than that for which they were designed*",[140] because the section of the judgment which concerns the test of predominant purpose on which you rely is in relation to the tort of abuse of process, not malicious prosecution.

161. In relation to prosecution of criminal actions, we agree that a claim cannot lie in malicious prosecution against Post Office where a Subpostmaster has been convicted and the conviction still stands. However there are a number of Claimants who were prosecuted but not convicted, as you recognise, and also as you know, there are 30 cases amongst the 198 Claimants which are being reviewed by the Criminal Cases Review Commission.

162. In terms of case management, we deal with this below from paragraph 196.

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139 Letter of Claim, paragraph 5.8 footnote 3

140 Letter of Response paragraph 6.34.

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F. *Unlawful Means Conspiracy*

163. We fairly set out the basis on which the Claimants allege unlawful means conspiracy in our Letter of Claim,[141] making clear that those allegations are subject to disclosure. We do not agree these claims can be simply dismissed as without merit or superfluous to the other claims. We agree that these claims may sensibly be stayed pending determination of the preliminary issue we have proposed.

Section 7: Loss and Damage

164. We agree that Claimants who are successful on liability will then need to establish causation and recoverable loss – as required by the relevant cause of action.[142] That is uncontroversial. The broad categories of loss which we identified in our Letter of Claim were intended to indicate the nature of the losses claimed, rather than the circumstances of individual Claimants. For example, the full or precise extent by which a given Claimant's reputation is tarnished by an accusation of dishonesty in the local community in which they have been working (usually for many years) is not likely materially to improve Post Office's understanding of the complexion of that head of loss in this litigation. We respond to the particular points which you have raised below.

165. We agree and accept that causation will be an important issue in this case. However, for the reasons set out below, we do not agree that this is *"likely to result in [Claimants] having very little recoverable loss"*[143] where those Claimants successfully establish wrongful conduct by Post Office. The very nature of the matters said to constitute such unlawful conduct (e.g. requiring payment or making good of alleged shortfalls, misleading Subpostmasters as to the basis upon which such shortfalls were being investigated and wrongful termination of engagement) all involve the likely infliction of substantial loss and damage to the Subpostmaster.

166. As to termination at will, we disagree with your contention at paragraph 7.4 (in the context of Mr Bates, but relied upon by Post Office generally) that:

> *"Post Office was entitled to give notice of termination at will, whether its reasons were good or bad. There can be no claim that the termination was*

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141 Letter of Claim paragraphs 153 to 154.

142 Contrast for example, recovering damages for breach of contract with damages at large for deceit or unlawful means conspiracy.

143 Letter of Response, paragraph 7.3.

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unlawful and no claim on the footing that his contract would have continued any longer than Post Office wanted it to." [emphasis added]

167. This amounts to a contention that: (a) Post Office was entitled to use this power capriciously, arbitrarily or even to discourage Subpostmasters from challenging the accuracy of Horizon; and (b) if Post Office acted unlawfully, it has the power to limit its liability[144] to a 3 month notice period.

168. As above, Post Office also relies upon Section 1, Clause 8 to the effect that Post Office is free to terminate (even wrongfully) without any obligation to pay compensation for loss of office.[145]

169. Taking these two clauses together makes good the summary (at 167 above) of Post Office's case as to the exclusion or limitation of its liabilities to Subpostmasters. These terms will fall foul of UCTA, just as Sedley LJ held would the *"unfettered power to forfeit remuneration withheld during a period of suspension"* in Lalji.

170. Furthermore, these terms appear to compound yet further the extraordinary imbalance of relational power between Post Office and the Subpostmasters – indeed, that is effectively Post Office's positive case, namely that it has all the power and even if it acted unlawfully, the Subpostmasters would have limited, if any, redress available to them under Post Office's standard contract terms.

171. There are three immediate answers to this contention that Post Office has effectively excluded liability for any such damages beyond the 3 month period of contractual notice:-

(1) The power to give contractual notice was not exercisable otherwise than for the purpose for which that power was conferred – certainly not for the purpose of precluding those harmed by unlawful conduct of Post Office from recovering damages.

(2) Exercise of that power was subject to implied terms – such as those conceded in this case and in Lalji (above) and/or those advanced by the Claimants – such that it would not be available to Post Office for the purpose now contended.

(3) The specific effect of the 3 month termination clause for which Post Office contends, would not pass the reasonableness test in UCTA, particularly section 3,[146] in

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144 It is implicit here that the losses to which both Post Office and Subpostmasters refer are those ongoing losses (i.e. not prior alleged shortfalls wrongfully attributed to Subpostmasters) to which the 3 month notice period is relevant.

145 Letter of Response, paragraph 4.20 (at 4.20.3) and then paragraphs 7.9.2 and 7.9.3. See paragraph 81.2 above.

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circumstances in which Post Office seeks to use the 3 month termination clause to exclude liability for breach of contract, permit a performance of Post Office obligations substantially different from what is expected and/or allow no performance at all of the whole or any party of a contractual obligation. This rule applies where one of the contracting parties is a business (as Post Office contends) contracting on the other's written standard terms (as Post Office contends). The wide interpretation[147] of the phrase "*written standard terms*" is more than wide enough to capture the terms in the present case. Furthermore, the specific effect of the 3 month termination clause for which Post Office contends was not drawn to the attention of Subpostmasters as required by the Interfoto principle.

172. Alternatively, the formal provision for 3 months' notice did not reflect the true agreement under which Subpostmasters were engaged, on the basis that the true agreement was that the 3 months' notice provision would not normally be used by Post Office, in that it would not be used to defeat Subpostmasters' reasonable expectations arising from their investment in the business and service to Post Office.

173. For the avoidance of doubt, the Claimants do challenge (and will challenge at trial) the reasonableness of the terms relied upon by Post Office as having the effects for which Post Office contends in answer to these claims.

A. *Financial Loss*

174. As a matter of principle, it is wrong for you to proceed on the basis that a Subpostmaster who paid an alleged shortfall that was wrongfully attributed to him or her by Post Office would have a claim for loss only in the sum of the actual amount repaid.[148] Losses sustained by Subpostmasters in availing themselves of the necessary sums in order to effect such payments will also be recoverable (for example, losses suffered by way of early redemption penalties in interest-bearing accounts and insurance policies). Damages at large may also include all damages that the court thinks it just that Post Office should pay.

175. We disagree that Post Office can never be liable for post-termination losses where a Subpostmaster has resigned – if the resignation was caused or induced by Post Office's breach(es) of duty or vitiated by economic duress or unconscionable dealing, then losses will include post termination losses. For example, this may arise where Post Office has

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146 Further or alternatively, section 13 of UCTA.

147 See: *St Albans City and District Council v International Computers Ltd* [1996] 4 All ER 481.

148 Letter of Response, paragraph 7.8.

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suspended a Subpostmaster pursuant to onerous and unfair terms, breached its implied duty to co-operate by failing to provide adequate information and/or failing to carry out an adequate investigation, and a Subpostmaster has resigned as a result. Given the points which we have made about economic duress above, it will immediately be clear to you that the actions of Subpostmasters in such circumstances require careful appraisal and, in any event, the mere fact that a Subpostmaster has resigned will be no answer to a claim for damages for anterior breach of duty causing such resignation.

176. As to your position that any claim for ongoing loss of remuneration (or related business loss) in any case will be limited to the minimum contractual notice period of 3 months,[149] again, we disagree for the reasons set out above.

177. As to devaluation in the sale price of a business as a consequence of unlawful acts by Post Office, we also disagree with your contentions.[150] There is no reason in principle why a Subpostmaster should not recover losses in that respect. The practical points which you make are true of many properties and businesses and the courts are used to making sensible value assessments, usually with the benefit of evidence of suitable comparators. As to the points of principle (and the limitation of any liability) we do not accept your analysis on this issue for reasons we have already outlined, and if it is Post Office's case that it also had a wholly unfettered power to refuse to appoint a person acquiring the retail business, the Claimants will identify that as a further onerous and unusual term which ought not to be upheld and/or which contributed to the acute relational imbalance to which we have referred above. Please clarify (1) whether Post Office claims to be able to refuse to appoint a purchaser as a new Subpostmaster, without objectively reasonable grounds for so doing; (2) whether Post Office accepts any implied terms affecting or circumscribing that discretion; and (3) whether Post Office concedes, in particular, that the exercise of any power in this respect is subject to the implied terms conceded in the Letter of Response and/or the obligation not to act capriciously (see Lalji, above).

B. *Stigma and/or Reputational Damage*

178. In relation to the principle of recoverability of damages for stigma and reputational damage in contract, we refer you to Malik v Bank of Credit and Commerce International SA [1998] A.C. 20, which provides a proper basis for a recovery under this head arising from Post Office's conduct in characterising Subpostmasters as dishonest, causing foreseeable financial loss to them in the form of loss of trade and/or prejudice of future employment prospects.

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149 Letter of Response, paragraphs 7.9.2 and 7.9.3.

150 Letter of Response, paragraph 7.9.4

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179. Whereas we agree that the Court of Appeal in *Lonrho Plc and others v Fayed and others (No. 5)* [1993] 1 WLR 1489 held that damages for reputational harm are not available in unlawful means conspiracy, we do not agree there is any general restriction in English tort law restricting recovery of these types of damages to defamation only – the decision in *Malik* leaves open the possibility for stigma claims to succeed in tort. Is it Post Office's case that it owed Subpostmasters no relevant duty in tort, with regard to statements made by Post Office, by words or conduct?

180. Your characterisation of the circumstances in which Subpostmasters have been suspended and terminated and thereafter prosecuted on the basis of alleged dishonesty as "*private commercial matters*" is surprising and appears totally unrealistic. The very act of suspension or termination creates an immediate and inevitable need to explain matters to the local community. Doubtless you would expect Subpostmasters to give a truthful account of Post Office's actions when asked – certainly, a locum or replacement Subpostmaster would also face such questions and be expected to tell the truth.

181. You are entitled to raise failure to mitigate should you seek to do so in any individual case. However, we do not accept that an accused Subpostmaster, giving a truthful answer when asked, would be acting unreasonably – as Post Office would have to establish.

182. Accordingly, we do not agree to restrict this head of damage to malicious prosecution claims only.

C. *Distress and Related Ill Health*

183. We do not dispute your summary of the position in tort, namely that damages for distress are recoverable in claims for deceit, malicious prosecution and harassment.

184. The position as to the recoverability of distress for breach of contract is not as straightforward as you suggest on the basis of *Addis v Gramophone* [1909] AC 488 which has been the subject of considerable judicial criticism, and it is plainly arguable that the particular contractual relationship between Post Office and Subpostmasters would give rise to an entitlement to claim damages for general distress arising from breach. The breach of the implied terms of trust and confidence and similar terms (on the Claimants' case) or Necessary Cooperation (on Post Office's case) invite a careful assessment of the content of those duties. It is the content of those duties which will determine whether or not, on the facts, there is liability for causing significant distress or ill-health.

185. As to personal injury claims, we agree it would be helpful for Claimants to identify whether they pursue such claims at an early stage, and propose to include provision for this in the SOCI.

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D. *Bankruptcy*

186. We did not intend to suggest that the status of being bankrupt was itself a recoverable head of loss. However, as you recognise, bankruptcy may cause particular financial loss (such as disadvantageous realisations of assets and trustee's costs), distress and reputation damage, which is why we considered it helpful to identify it in our Letter of Claim.

E. *Prosecutions*

187. Our position is as for bankruptcy, above. In short, there are obvious financial and other losses which are likely (if not certain) to flow from a prosecution (for example, withdrawal of credit, and loss of employment prospects and earning capacity) – they are on any view foreseeable. It is was therefore sensible to identify these, as we did for bankruptcy.

F. *Community or Custodial Sentences*

188. We set out below at paragraph 199 our proposals for dealing with claims brought by Claimants who have been successfully prosecuted by Post Office, namely that these claims should presently be stayed pending the decision of the CCRC. We understand that there are now 30 such claims before the CCRC. As you implicitly accept, if the convictions of Claimants are overturned, these are perfectly proper losses to be pursued.

Section 8: "Barred Claims"

A. *Limitation*

189. If Post Office raises limitation as a defence to the claims of individual Claimants then you are correct to identify that we will seek to rely on section 32 of the Limitation Act 1980. The basis on which we have alleged concealment in the Letter of Claim is clearly set out, and we do not agree with Post Office's professed transparency on these issues for reasons addressed earlier in this letter.

190. Furthermore, the following contention at paragraph 8.5.1 is deeply flawed and wrong:

> *"You say that Post Office's investigators disregarded problems with Horizon – a point we have addressed above. We cannot see how ignoring an issue amounts to a deliberate act of concealing information from your clients. By ignoring an issue as you suggest, Post Office would not have had the information in the first place in order to subsequently conceal it."*

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191. Post Office was clearly aware of the matters upon which the Claimants rely including that (for example) potential errors in or generated by Horizon were being overlooked, ignored and/or concealed.

192. As you will be aware, there are three limbs to section 32(1) of the Limitation Act, which provides as follows:

> *"(1) Subject to subsections (3) and (4A) below, where in the case of any action for which a period of limitation is prescribed by this Act, either—*
>
> *(a) the action is based upon the fraud of the defendant; or*
>
> *(b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or*
>
> *(c) the action is for relief from the consequences of a mistake;*

193. The allegations of deceit (in this case, *Derry v Peek*, second limb deceit) and unlawful means conspiracy fall within section 32(1)(a). Deliberate concealment for the purposes of section 32(1)(b) is defined as including *"deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time [as amounting] to deliberate concealment of the facts involved in that breach of duty"*. The restitution claimed in the Claim Form is relief sought from the consequences of a mistake, in the payment of alleged shortfalls. For these reasons, we will contend that section 32 is obviously applicable to all these claims, not just the 50 which you identify in the Letter of Response.

194. Furthermore, the fact that the (changing) position as to the remote alteration[151] of transaction records by Fujitsu (for and on behalf of Post Office) was concealed and remained unknown is of absolutely central significance to allegations that alleged shortfalls did not represent shortfalls which were contractually attributable to the Subpostmasters. Indeed, we are unaware of any criminal court being made aware of this possibility during the course of prosecuting Subpostmasters – a matter which might obviously inform any fair appraisal of the existence of a reasonable doubt. Please confirm that we are correct and that no criminal court was ever informed of this possibility. Please also confirm whether or not any civil court has been so informed – we presently believe not.

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[151] Letter of Response, paragraph 8.5.4(d), and see paragraphs 118 to 121 above

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195. As to paragraph 8.6, we do propose to ascertain precisely what was said to Professor McLachlan and to obtain such contemporaneous documents as we can. Please confirm whether or not Post Office is aware that Professor McLachlan raised concerns as to the manner in which Post Office had investigated Seema Misra's case and provide any documents which you hold relating to Professor McLachlan's involvement in that (or any other) case.

B. *Criminal Cases*

196. We expect that there is scope for agreement as to how to deal with cases in which there have been criminal convictions.

197. We agree that, as a starting point, it is correct that where an issue has been decided in earlier proceedings, it is binding on the parties in future litigation.[152] However, issue estoppel is properly confined to estoppel to issues which are *res judicata* in civil actions between the same parties,[153] which we address below.

198. The point which we think you are seeking to advance in relation to criminal cases is abuse of process on the basis of a collateral attack on the conviction, as you suggest in paragraph 8.11. The principle is always subject to exception where fresh evidence would probably have an important influence on the result of the case (though it need not be decisive) or entirely changes the aspect of the case determined in the criminal proceedings. The abuse of process principle in this context means *"the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made."*[154] You will appreciate from the nature of the allegations made by the Claimants that it is a central part of their case that important facts concerning the alleged shortfalls and the basis upon which Post Office had investigated them were concealed from them. We regard this as highly material to your contention that bringing these cases would amount to such an abuse of process, particularly in the light of the new evidence from Second Sight, Post Office's admission that transactional records could be altered by Fujitsu (cf. Post Office's previous statements to the contrary)[155] and the pattern of evidence emerging from the cases as a whole, that would not have been available in individual cases.

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152 Letter of Response, paragraph 8.10.

153 Hunter v Chief Constable of the West Midlands Police [1982] AC 529, at 540H–541A

154 Hunter at 541B *per* Lord Diplock

155 paragraphs 118 to 121 above

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199. Rather than pursue these issues at this stage and given that a number of the cases which you have identified are presently before the CCRC, we would suggest that the parties agree that all claims in which a Claimant has been convicted of a criminal offence relating to an alleged shortfall be presently stayed, pending the outcome of the reviews being undertaken by the CCRC. The parties will then revisit this issue at that point.

200. If Post Office agrees with this approach, it will be necessary to make consequential amendments to the draft GLO accordingly and we will seek to co-operate with you in order to agree those.

C. *Settled Cases*

201. We are considering the issues you raise in relation to the 6 Claimants you identify, who settled their claims with Post Office as part of the Scheme. The legal bases upon which the settlements may be set aside are the deceit which we have alleged (amounting to fraud, for these purposes) persisting in the course of settlement negotiations[156] and/or mistake, unconscionable dealing or duress.

202. On any view, this is an issue which affects a small number of Claimants and it would presently not be reasonable or proportionate for Post Office to seek strike out of these claims at this stage.

D. *Previous Civil Proceedings*

203. If Post Office raises *res judicata* or issue estoppel in response to any individual case on the basis of previous civil proceedings we will consider it. Please provide us with a copy of the pleadings and judgment in relation to each of the Claimants you identify as having been the subject of previous civil proceedings.

Section 9: Counterclaims

204. We note Post Office's position in relation to the pursuit of counterclaims in relation to allegedly outstanding shortfalls which it has apparently been content thus far not to pursue. It is difficult to see what the rational basis is for any decision to pursue such amounts as counterclaims now, especially as this is a matter which is likely to cause financial uncertainty to individual Subpostmasters and potentially deter them from joining or continuing in the

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156 The test is whether misstatements were in some way material to entering into the settlement, such that knowledge of *some* problems with Horizon is no answer for Post Office: *Haywood v Zurich Insurance Co Ltd* [2016] UKSC 48

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group – perhaps that is the intention. We invite Post Office to reconsider its position (in the light of the concerns regarding victimisation below), such that Post Office would only rely upon its counterclaims in the event that the Claimants' claims were successful.

205. In any event (1) in many cases such counterclaims would clearly be time barred and (2) we have previously set out why the contractual interpretation for which Post Office contends it has a right to recover alleged shortfalls is wholly flawed. We would welcome a considered response in relation to these issues.

Section 10: GLO and Case Management Issues

206. The procedural history is:

206.1. we sent you a draft GLO on 17 June 2016;

206.2. you responded with a draft on 15 July 2016 raising certain objections;

206.3. also on 15 July 2016 we sent you our proposed paragraphs in relation to costs to be inserted into the draft GLO;

206.4. we made an Application for a GLO and enclosed a revised draft GLO (taking account of points you had raised in your 15 July 2016 letter) on 26 July 2016;

206.5. in your Letter of Response you have made some further proposals in relation to (1) defining the common or related issues[157] and (2) scope of the GLO,[158] and you also said that you would provide a draft Schedule of Information if we wished, albeit you said it would make more sense for you to first see our response to your letter;

206.6. we specifically asked for your proposals in relation to Schedules of Information in our letter dated 11 October 2016, but in your letter of 13 October 2016 you declined to provide them at this stage, albeit you said you would "*give the topic further thought pending* [our] *response*".

207. Please find enclosed an updated draft GLO (and a track changed version showing changes between this draft and the draft we filed with our Application Notice). We explain below our position in relation to each paragraph of this draft, including addressing where there may be any remaining dispute between us:

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157 Letter of Response paragraph 10.1

158 Letter of Response paragraphs 10.10 to 10.16

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(1) Paragraph 1 identifies the scope of the GLO. Your proposed amendments as set out in the draft you provided on 15 July 2016 are not agreed. They are not clear or easy to understand (your paragraph (a) does not make sense), and the way in which they link to the GLO issues (your paragraph (b)) creates unnecessary confusion and complexity, not least because we all anticipate that the GLO issues may need to be refined - on your draft this would change the scope of the GLO). It is important that the scope of the GLO is clear and easy to understand and easy to be applied e.g. by a district judge in a County Court who may not have detailed knowledge of these proceedings. We amended the draft we filed with our Application Notice from that we previously provided to you, to make absolutely clear that it is only individuals making claims in relation to alleged shortfalls who fall within scope. The objection you make in your Letter of Response that our drafting would "*bring into scope every dispute our client may have with any of its 10,000+ postmasters*" is therefore evidently not the case.[159] Please consider the draft we have proposed carefully. We invite you to agree it.

(2) Paragraph 2 refers to the GLO Issues. The draft you provided on 15 July 2016 proposed deleting this paragraph because you referred to the GLO Issues as part of the scope of the GLO at paragraph 1. As above, we do not agree with your approach to paragraph 1, hence our paragraph 2 should also stand. We have added "*for the purposes of CPR 19.11(2)(b)*" which you suggested in relation to paragraph 7.

(3) Paragraphs 3, 4, 5 and 6: we are agreed in relation to these paragraphs.

(4) Paragraph 7 identifies the GLO issues. As above, we added the wording you proposed "*for the purposes of CPR 19.11(2)(b)*" in our paragraph 2. We do not consider that the parties could amend the GLO issues as specified in the order without the permission of the Court, accordingly we have not accepted your proposed wording here, but rather have proposed adding "*by order of the Court*".

(5) Paragraph 8 defines what is meant by lead case. This paragraph was included in the draft Order we sent to you on 17 June 2016. The draft you provided in response with your letter of 15 July 2016 deleted this paragraph, but provided no explanation for doing so. Our letter of 15 July 2016 also proposed cost sharing provisions which referred to lead cases. We included paragraph 8 and our cost sharing provisions in our draft Order which we filed with our Application Notice seeking a GLO. In the evidence in support we referred to the possibility of determining the litigation on a lead claimant / test case basis (paragraph 66), and proposed the selection of lead cases as a proportionate, expeditious and fair resolution of the issues (paragraph 70). We simply don't understand your objection to paragraph 8 of our draft Order. This wording is

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[159] Letter of Response paragraph 10.11.

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entirely standard and is also necessary for the purposes of the cost sharing provisions. Please agree it. (For completeness, we referred to claimants possibly being selected as lead claimants in our letter of 11 October 2016. Your letter of 13 October 2016 stated "*the possibility of identifying lead claimants and presumably therefore running a number a number of test cases, has never been raised previously by you, nor is part of the GLO you are seeking, nor is it mentioned in the supporting evidence to the application*". As is apparent from the matters we have set out above, you are entirely wrong about this.)

(6) Paragraphs 9 to 11 identify the Management Court, Managing Judge and Managing Master. Your objections raised in your 15 July 2016 letter were on the basis that you were then seeking transfer of the proceedings to the Commercial Court. We understand from the fact you have not raised this in any correspondence after 11 August 2016 that you are no longer pursuing transfer, and therefore we anticipate these paragraphs are now agreed.

(7) Paragraph 13 refers to future claims. We did not include the sentence which you objected to on 15 July 2016 in the draft order which accompanied our Application Notice. We therefore anticipate this paragraph is now agreed.

(8) Paragraph 14. You identified a typo in our draft which referred to "Managing" instead of "Management" which we have now corrected.

(9) Paragraph 16. Your objection is to the words "*or similar*" after Letter of Claim. There will no doubt be cases where an individual intimates an intention to make a claim but does not comply with the Pre Action Protocol such that the letter is technically a "*Letter of Claim*". Please be reasonable and agree our wording.

(10) Paragraph 17. We are agreed as to the substance of this paragraph. We propose 23 February 2017 (i.e. 4 weeks from the date of the GLO hearing).

(11) Paragraph 18. We are agreed.

(12) Paragraph 19. Previously in correspondence we had proposed reviewing and updating the register every 3 months, whereas you proposed every 1 month. The draft Order we filed with our Application Notice proposed 2 months as a sensible compromise on this. Please confirm you agree. An update every month as you propose will only introduce complexity and costs. Also 14 days service thereafter is also more than adequate (7 days is unnecessarily short), please confirm you now agree.

(13) Paragraph 20. We have updated the draft to reflect your proposal in relation to the date by which the Defendant may give written notice of objection, and therefore understand we are now agreed.

(14) Paragraphs 21 and 22. We are agreed.

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(15) Paragraph 23. We propose 2 months, reflecting paragraph 19 above. Please confirm you agree.

(16) Paragraphs 24 and 25 are agreed.

(17) Paragraph 26. We agreed your proposed addition of reference to form N251 (as per the draft order we filed with our Application Notice.). Otherwise our disagreement as to the terms of this paragraph reflects our disagreement as to the drafting of paragraph 1. It is important that the standard minimum requirements are clearly understood by all parties. For the reasons we set out in relation to paragraph 1, we maintain that our approach is far preferable in this respect, and invite you to agree.

(18) Paragraph 27. We took into account your proposed reference to a signed statement of truth in the draft order we filed with our Application Notice. Please confirm we are now agreed.

(19) Paragraph 28. Provision for the parties to agree an extension of time by consent, and for consent not to be unreasonably withheld, is entirely standard in this type of order. Please agree it.

(20) Paragraph 29. We are agreed.

(21) Paragraphs 30 and 31. We included paragraphs relating to generic statements of case in the draft Order we filed with our Application Notice. We have proposed an amended version of these paragraphs to reflect our proposal that the parties' contractual obligations, agency and related fiduciary duties be sensibly addressed as preliminary issues. Please consider our proposals and let us know if they are agreed.

(22) Paragraph 32. You have not sent us any comments on our cost sharing provisions (sent to you on 15 July 2016, and also as included in our draft order filed with our Application Notice). We therefore understand you have no objection to them, but please confirm.

(23) Paragraph 33. The normal order in relation to publicity is that costs follow the event, but if you maintain that they should be reserved then we are willing to agree this in order to achieve progress on the drafting of the order.

(24) Paragraph 34. We consider it reasonable for Post Office to compile this information, which you say is not in one database, but we anticipate must be held in a reasonably accessible and manageable format. If it is on more than one database, we are happy to receive copies of the relevant parts of those databases. If that is not possible, then please provide us with the relevant information in paper format, or separate lists for civil and criminal claims (or any other sensible division). Please provide us with more information about what you can sensibly provide to us in order to reach agreement in relation to this paragraph.

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(25) Paragraph 35. We are agreed as to the substance of this paragraph. As per the draft filed with our Application Notice we propose a cut-off date 6 months after the date of the Order, and a final date for entry of claims on the register as 6 weeks thereafter, i.e. 26 July 2017 and 6 September 2017 respectively.

(26) Paragraph 36. An order for extensions of time in the form we have proposed is a standard form order and will avoid the need for unnecessary applications in relation to short extensions where there is no dispute between the parties. Please agree it.

(27) Paragraph 37. We are agreed.

(28) Paragraphs 38 and 39. As above, we understand you are no longer pursuing transfer to the Commercial Court, therefore the substance of these paragraphs are agreed. The date of these CMC should sensibly relate to other agreed steps in these proceedings, therefore we wait to hear from you in relation to our other proposed dates before proposing dates for these CMCs.

(29) Schedule 1 GLO Issues. We have taken into account the proposals in your 15 July 2016 letter, your Letter of Response, and also the matters which we have raised in this letter. We proposed a revised draft which we hope can be agreed.

(30) Schedule 3 Schedules of Information. You have not engaged with us in relation to our proposals. It is important that you provide us with any proposed amendments, for the reasons we set out in our letter dated 11 October 2016, and we now ask for your reasonable proposals as a matter of urgency. As indicated above, we propose adding to the list details of any personal injury claim which the claimant pursues.

(31) Schedule 4. We are considering appropriate wording in relation to publicity, and will send our proposals to you in the next 14 days.

208. We note your invitation to meet to discuss the GLO and any points of disagreement, but it seems to us that it should be possible for you to agree to the draft we have proposed, and we ask that you do so. Specifically in relation to defining the GLO issues, we caution that it is inevitably difficult to identify GLO issues with complete precision prior to case statements being served, the GLO issues can be reconsidered as is expressly contemplated by the drafting of Schedule 1, and therefore it is unlikely to be profitable to engage in a prolonged debate on precise wording of the issues at this point.

209. In your letter of 13 October 2016, you specifically ask us to explain the grounds on which non-Subpostmasters (i.e. Crown Office employees and assistants) are bringing their

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claims.[160] Crown Office employees bring claims in contract (under a true construction of their agreement with Post Office), and also the non-contractual duties which we have identified, and assistants will also bring these non-contractual claims. There may be unusual cases where individuals were not appointed as Subpostmasters but contractual duties arose by implication. These individuals should properly fall within the scope of the GLO, because the issues which arise in their cases are common or related issues with those that arise in the claims being brought by Subpostmasters.

210. In your 13 October 2016 letter, you also take issue with claimants who have traded through companies,[161] and suggest that the claim should be brought by the company rather that the Subpostmaster in his or her individual capacity, and on that basis suggest we 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*". As must be obvious to you, these individuals, even if they contracted as a company, also have claims in their individual capacities. However, we agree, it may also be necessary to join associated companies as additional claimants, which we will consider.

Section 11: Non-Victimisation

211. You state that Post Office "*is happy to make it clear that it has no intention of victimising any postmaster because they have brought proceedings such as this against it*".[162] We find this difficult to understand in the circumstances we have outlined above i.e. Post Office is proposing to pursue hitherto forgotten counterclaims against Claimants in relation to alleged shortfalls which it had previously been content not to pursue – the only change is that the Subpostmaster has become a party to these proceedings.

212. We infer from your carefully worded statement (confined to Subpostmasters who have brought proceedings) that Post Office is not willing to give any assurances as to how any employees or contractors of Post Office or Fujitsu, who may give assistance to the Claimants in these proceedings, will be treated. Please confirm whether this correct.

213. We do not repeat the points we have made in previous correspondence on the issue of assurances, but it is clear that the current position is both unclear and unsatisfactory.

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160 Letter dated 13 October 2016 at paragraph 2.4.4

161 Letter dated 13 October 2016 at paragraphs 6.1 to 6.5.

162 Letter of Response, paragraph 11.1.2

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Section 12: Disclosure and Information Requests

214. We have previously responded to you separately on these issues and also addressed them above.[163] Your position in refusing to provide disclosure at this stage in relation to obviously important issues is obviously likely to result in the need to amend statements of case following disclosure when it is provided, and consequently increased costs.

215. Please can you confirm that Post Office has informed Royal Mail and Fujitsu of the need to preserve documents in relation to this litigation.

Section 13: ADR

216. We note your client's position and it is clear from the way it is expressed that Post Office has a closed mind to mediation as a means of resolving the present claims. The authorities show that Post Office's position will expose it to additional costs risks. There has been no mediation of any legal case such as the present proceedings. The Mediation Scheme which Post Office set up and disbanded was of a different type entirely. For the avoidance of any doubt, we believe that considerable progress towards resolution of this dispute could be made by use of ADR and, in particular, mediation. This would, at a minimum, be likely to assist the efficient resolution of the proceedings by focusing and narrowing the issues between the parties, even if no overall settlement were to be achieved. However, we would expect there to be real chances of reaching a settlement by the use of mediation and would invite Post Office to re-consider its stance on this issue.

217. It would be helpful to know what Post Office's position is on this point as soon as possible and it will certainly be necessary to have a clear idea of it by next month so that sensible consideration can be given to its inclusion or exclusion from directions to be given at the GLO hearing in January.

NEXT STEPS

A. *Second Sight Protocol*

218. The protocol you proposed in relation to Second Sight in your letter dated 13 October 2016 is entirely unreasonable and unworkable. By way of obvious example:

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163 Paragraph 53 above.

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218.1. **Parties and binding contract**: What is required is a release from Post Office to Second Sight from any duties of confidentiality to which Second Sight may be subject. Your suggestion we as a firm enter into a binding contact with Post Office[164] is highly unusual, wholly unreasonable, and we do not agree it.

218.2. **No application to modify protocol**: We cannot possibly agree to your proposal at paragraph 2.3. Whatever arrangement we may reach in relation to Second Sight, it must be open to the parties to seek to modify that arrangement if appropriate at a future date.

218.3. **No provision of documents by Second Sight**: Your proposal at paragraph 3.1.2 (and your definition of documents in paragraph 1.2) means that Second Sight would not be able to give us any document of any description for any propose. This is entirely unreasonable.

218.4. **Single point of contact**: There is no good reason for you to require us to have a single point of contact at Second Sight. We wish to be able to speak with Ian Henderson and Ron Warmington, and there is no reason why we should not speak to each of them individually.

218.5. **Excluded categories of information**: Your proposed exclusions at 3.1.4 (a) to (d) are far too broad, which is particularly concerning given your attempt to prevent us from ever applying to modify the provisions of the protocol, above. Information concerning actual or contemplated civil or criminal prosecutions should only be excluded to the extent it is privileged, as Post Office's conduct in relation to this issue clearly falls within the scope of the contemplated proceedings. There is also no reason why information relating to Subpostmasters who are not Claimants should be excluded, and it may well be the case that non Claimants are illustrative of a point which Second Sight are aware of in relation to a particular issue. The only proper exclusion is information which is privileged. We set out our proposals in relation to this below.

218.6. **Use of information**: We agree to treat information provided to us by Second Sight in accordance with our normal professional obligations. That is all that is sensibly required.

218.7. **Privileged materials**: We agree that if Second Sight discloses documents or information to us which we reasonably believe to be privileged we would not

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[164] Protocol parties, and paragraph 2.2.

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suggest that privilege had been waived by Post Office in the same, we would return any such documents to Second Sight, and we would not seek to rely on the documents or information in these proceedings. There is no need for us to enter into a contract in respect of our normal professional duties.

218.8. **Costs**: There is no need for an indemnity by us to Post Office in relation to any costs relating to Second Sight. Obviously we were not proposing that Second Sight's time speaking with us would fall within the scope of any contract for work previously agreed between Post Office and Second Sight.

218.9. **Data protection**: We are well aware of our statutory obligations in relation to data protection, and your proposals are unreasonable and unnecessary.

219. We propose a straightforward release by Post Office to Second Sight of any confidentiality obligations other than in respect of privileged material. We are willing to make arrangements for Second Sight to have independent legal advice in relation to the identification of privileged material. Please confirm that you will co-operate with us reasonably in this respect, so that we can speak with Second Sight about the matters raised in your Letter of Response, and avoid the need to raise these issues with the Court.

B. *CPR 17.2 Application*

220. We have considered the proposal in section 5 of your letter dated 13 October 2016, together with the draft Consent Order. The substance of your proposed Consent Order aligns with the draft proposed by us on 9 September 2016 in relation to a notional claim date of 2 August 2016, save that you wish to add provision "*In the event that a court finds the Order made … unenforceable*" for Post Office to be at liberty to apply to restore its application to strike out, and (presumably for that purpose) you wish for your strike out application to be stayed rather than dismissed.

221. We cannot agree to your proposed draft, as it would be unduly onerous and uncertain for the Claimants concerned. We consider your refusal to agree to our draft, and to co-operate with us in proposing a consent order in those terms to the Court in an agreed and straightforward way, to be unreasonable. Unless you actively oppose the proposed Consent Order, we see no basis for separate written submissions to the Court.

222. The reality is that if the Court does not consider itself able to make the Consent Order in the terms we have proposed, it won't do so, therefore your application won't be dismissed. If the Court does make the Order, the Claimants must have the certainty of knowing that Post Office wont at a later date seek to revive its application (we would consider it to be estopped from doing so in any event).

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223. We have provided an explanation as to why the Court can make such an Order, and further "*clarification*" from us as you continue to seek is not necessary. If you wish to identify an authority to say that the Court cannot make such an order then you should do so. However we consider the position to be clear, the Court can make such an order, and since we are agreed as to the pragmatism of such an order, we should apply for such an order to be made by consent.

224. In these circumstances, we propose providing an agreed covering letter to be submitted to Senior Master Fontaine, requesting approval of the Order in the terms as we sent to you on 9 September 2016. Please confirm that you are now agreeable to this course of action.

C. *Requests for Clarification and Information*

225. Please respond to the requests we have made for clarification and information in this letter at paragraphs 13, 18, 24, 55, 56, 66, 71, 72, 77, 81.2, 84, 91, 92, 93, 104, 105, 114, 120, 121, 125, 129, 131, 135, 177, 179, 194, 195, 200, 203, 204, 205, 207, 212, 215, 219 and, 224 above within 14 days.

D. *Revised draft GLO and Draft Generic Particulars of Claim*

226. Please respond to our revised draft GLO, enclosed.

227. As above, we anticipate being able to provide you with draft Generic Particulars of Claim by 1 December 2016.

Yours faithfully

GRO

Freeths LLP

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Claim No. HQ16XO1238

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

BETWEEN:

ALAN BATES & OTHERS

Claimants

- and –

POST OFFICE LIMITED

Defendant

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draft GROUP LITIGATION ORDER

UPON the Application of the Claimants dated 26 July 2016.

AND UPON HEARING [ ] for the Claimants and [ ] for the Defendant

AND on reading the written evidence filed by [the Claimants / the parties]

AND the PRESIDENT OF THE QUEENS BENCH DIVISION having consented to an Order being made in the following terms.

IT IS ORDERED THAT:-

Scope of the Group Litigation Order

1. This Group Litigation Order ("*GLO*") applies to all claims (hereinafter "*the Claims*") made against Post Office Limited by Claimants who claim to have suffered losses as a result of Post Office Limited having:

   a. attributed and/or recovered alleged shortfalls in branch accounts from them;

   b. investigated and/or suspended them, terminated or induced their resignation from their appointments or engagements, for a reason related to alleged shortfalls;

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c. pursued civil or bankruptcy proceedings, criminal prosecutions and/or restraint applications against them for a reason related to alleged shortfalls; and/or

d. sought to do any of the foregoing for a reason related to alleged shortfalls.

These Claims shall constitute and shall be known as *"The Post Office Group Litigation"* and are to be conducted in accordance with the terms of this GLO and any subsequent orders. The parties to these claims are bound by the orders of the court made in relation to The Post Office Group Litigation.

2. The GLO Issues for the purposes of CPR 19.11(2)(b) are set out in Schedule 1 hereto.

3. A Group Register, on which details of the claims that are subject to this and subsequent orders in this litigation are to be entered, shall be set up and managed in accordance with this GLO.

Definitions

4. "The Claimants" are those individuals whose details are included on the Group Register in the manner and under the terms set out in paragraph 17 below. Pending the establishment of the Group Register, the Claimants are those listed at Schedule 2 hereto.

5. "The Lead Solicitors" are Freeths LLP, who are responsible for the management and co-ordination of the Claimants' claims and the Group Register, and shall have conduct of all investigations, applications and proceedings in respect of the GLO issues and preparation for trial of any Lead Cases relating to any of the GLO issues subsequently ordered by the court.

6. "The Defendant" is Post Office Limited.

7. "The GLO Issues" are the common or related issues of fact or law which are identified in Schedule 1 hereto, as may be amended from time to time by order of the Court.

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8. "Lead Case" means a case which, following its selection as a Lead Case, is fully pleaded and which alone or together with other such cases is intended to dispose, so far as possible, of issues (primarily but not limited to the GLO issues) between the parties to this litigation.

9. "The Management Court" is the Queen's Bench Division of the High Court of Justice, Royal Courts of Justice, Strand, London WC2A 2LL.

10. "The Managing Judge" is the Judge nominated from time to time by the President of the Queen's Bench Division to hear, if possible, all pre-trial applications in this litigation and to conduct the trial.

11. "The Managing Master" is the Master of the Queen's Bench Division nominated from time to time by the Senior Master to hear those pre-trial applications in this litigation that are not suitable to be dealt with by the Managing Judge and are released thereto by the Managing Judge.

12. Definitions relating to costs are set out below at paragraph 32.

Future Claims

13. All future claims to which this Order applies by virtue of paragraph 1 must be issued out of the Management Court and entered on the Group Register, provided that the Standard Minimum Requirements (as set out at paragraph 26 below) are met.

Documentation

14. All documents (including claim forms, case statements, applications and witness statements) filed with the Management Court in respect of a claim which is the subject of this Order shall be marked with the short title of the claim and shall be marked in the top left hand corner "The Post Office Group Litigation".

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Transfer of Existing Proceedings

15. Any existing claim to which this Order applies by virtue of paragraph 1 above, and which is proceeding other than in the Management Court, is to be:

    a. transferred forthwith to the Management Court. Solicitors for the parties are to co-operate in identifying such claims, including in accordance with paragraph 16 below. On identification of such claims the Lead Solicitors are to send a copy of this Order to each transferring county court. In these premises, Notices of Transfer in accordance with paragraph 4.1 of Practice Direction 30 are hereby dispensed with; and

    b. entered forthwith on to the Group Register in accordance with the terms of this Order and CPR 19.11(3)(a)(i) and (iii), provided that each such claim or part of a claim meets the Standard Minimum Requirements as set out in paragraph 26 below.

16. If the Defendant is served with or is notified of a claim or counterclaim (whether by service of a Claim Form or a Letter of Claim or similar) falling within paragraph 1 of this Order other than by the Lead Solicitors, then the Defendant shall ensure that the Lead Solicitors are informed of the name of the Claimant, the Claimant's solicitors (if any) and all available contact details of the Claimant and/or the Claimant's solicitors (if any), within 14 days of such service or notification.

The Group Register

17. A Group Register shall be established by the Lead Solicitors no later than by 4pm on [23 February 2017]. It is a condition of being entered on the Group Register that each Claimant has complied with the Standard Minimum Requirements set out at paragraph 26 below. The following details shall be recorded in respect of each Claimant who is added to the Group Register:

    a. the Claimant's full name and address;

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b. the name and address of the branch(es) in which the Claimant operated;

c. the name and contact details of the Claimant's solicitor;

d. the date of service of the Claim Form or counterclaim;

e. the claim number; and

f. the date of entry onto the Group Register.

18. The Lead Solicitors shall serve an electronic copy of the Group Register in Word or Excel or other agreed format on the Defendant within 7 days of its establishment in accordance with paragraph 17 above.

19. The Lead Solicitors shall review and update the Group Register every 2 months and serve an electronic copy of the updated Group Register on the Defendant within 14 days of such update.

20. The Defendant may give written Notice of Objection to the Lead Solicitors in respect of any individual whose claim has been entered on the Group Register, or as to the accuracy of any other information entered thereon, within 28 days of the service of that individual's Schedule of Information, stating the nature of the objection and the ground(s) for it. In the absence of written confirmation within 21 days that the objection has been accepted by the Lead Solicitors, the Defendant shall apply forthwith to the Management Court for determination of the issue.

21. Such a Notice of Objection shall not affect the individual Claimant's entitlement to remain on the Group Register unless and until the Court directs otherwise.

22. The parties shall be permitted to apply to the Management Court to remove a claim from the Group Register where there are appropriate grounds for doing so.

23. A Claimant's claim shall remain on the Group Register until such time as he or she serves notice of discontinuance or withdrawal or, if required, obtains permission to discontinue, or if the claim is otherwise disposed of

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prior to trial. In any such event, the Claimant's claim shall be removed from the Group Register on the expiration of the last day of the period of account during which notice of discontinuance or withdrawal or permission to discontinue is given or the effective date of disposal occurred. For these purposes, the period of account shall be each period of 2 months commencing with the date on which the Group Register is established.

24. For the purposes of CPR 38.2(2)(c), consent to discontinuance by any Claimant on behalf of the other Claimants may be given by the Lead Solicitors.

25. The Lead Solicitors shall, as part of the Group Register, maintain a list called the "Discontinued Claims Register" detailing:

    a. the name of any party discontinuing or withdrawing; and

    b. the date of the filing of the notice of discontinuance, withdrawal, or other form of disposal.

Standard Minimum Requirements

26. The Standard Minimum Requirements for entry of a claim onto the Group Register in accordance with paragraph 17 above are as follows:

    a. a Claim Form (in respect of which the issue fee has been paid) has been issued, on which the individual Claimant is named;

    b. the Claim Form must be or have already been served with (if appropriate) a Notice of Funding, Form N251. The requirement to serve Particulars of Claim in any separate document is hereby dispensed with, subject to further order;

    c. the Claimant must claim to be, or to have been, engaged or appointed by the Defendant as a Subpostmaster (or, in some cases, Crown Office employee) and/or to work in or operate Post Office branches, or acting in such or similar capacity; and

    d. the Claimant must claim to have suffered losses as a result of the Defendant having:

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(1) attributed and/or recovered alleged shortfalls in branch accounts from him or her; and/or

(2) investigated, suspended and/or terminated his or her appointment or engagement (or induced a resignation) for a reason related to alleged shortfalls; and/or

(3) pursued civil or bankruptcy proceedings, criminal prosecutions and/or restraint applications against him or her for a reason related to alleged shortfalls; and/or

(4) sought to do any of the foregoing for a reason related to alleged shortfalls.

Schedules of Information

27. All of the Claimants who, as of the date of this Order, have issued proceedings to which this GLO applies by virtue of paragraph 1 above, shall serve on the Defendant as soon as reasonably possible and in any event by no later than 4pm on [20 March 2017], a completed Schedule of Information in the form set out in Schedule 3 hereto, such information to be provided to the best of each Claimant's knowledge and belief.

28. Any Claimant who subsequently issues a claim to which this GLO applies by virtue of paragraph 1 above shall serve on the Defendant as soon as reasonably possible thereafter and in any event no later than 28 days after service of the claim form a completed Schedule of Information (as under paragraph 27), without prejudice to the Claimant seeking, and the Defendant agreeing (such consent not to be unreasonably refused) any extension of time pursuant to paragraph 36 below.

29. Upon service of the documents set out in paragraphs 27 or 28 above, each claim to which this GLO applies shall be stayed until further order.

Statements of Case

30. The Claimants shall file and serve Generic Particulars of Claim in relation to GLO issues (1) to (4) by 4pm on [23 March 2017].

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31. The Defendant shall file and serve a Generic Defence in relation to GLO issues (1) to (4) by 4pm on [18 May 2017].

Costs Sharing

32. Save as otherwise ordered, the liabilities for costs for the claims are to be determined in the following manner:

    a. **"Costs"** has the meaning given in CPR 44.1, save that where a party has entered in to a *"pre-commencement funding arrangement"* within the meaning of CPR 48.2, **"Costs"** will also include any additional liability within the meaning of CPR 43.2 as it stood on 31 March 2013 which have been incurred in consequence of that pre-commencement funding arrangement.

    b. **"Individual Costs"** mean those costs incurred for and/or in respect of any individual Claimant in relation to matters which are particular and personal to each Claimant, including costs incurred for and in respect of any Lead Cases as from the date upon which each of them was nominated as a Lead Case.

    c. **"Common Costs"** are all costs and disbursements other than Individual Costs (and include, for the avoidance of doubt, all those categories of costs stated by CPR 46.6(2)), and shall (unless ordered otherwise) include costs incurred for and in respect of the Lead Cases from the date of their respective nomination(s) as a Lead Case.

    d. The liability of each Claimant for costs, and each party's entitlement to recover costs, shall be several and not joint.

    e. Each Claimant is solely responsible for the Individual Costs relating to that Claimant.

    f. Each Claimant is severally liable for a share of the Common Costs to be determined as provided for below:

        (1) There shall be quarterly accounting periods for the purposes of calculating Common Costs.

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(2) The first accounting period shall be deemed to run from and including 1 October 2015 to and including 31 December 2016. Thereafter, quarterly accounting periods shall run from and including the following dates in each year: 1 January, 1 April, 1 July, and 1 October.

(3) Each of the Claimants on the Group Register, or whose claim is subsequently entered on the Group Register, shall, for the purposes of calculating the amount of Common Costs to be shared between Claimants, be treated as if he/she had been a Claimant from the beginning of the first accounting period, namely 1 January 2017.

(4) The Common Costs incurred in any quarterly accounting period by the Claimants are to be divided by the number of Claimants deemed by sub-paragraph (3) above to have been pursuing their claims on the first day of the quarterly accounting period.

(5) The Common Costs incurred in any quarterly accounting period by the Defendant are to be divided by the number of Claimants deemed by sub-paragraph (3) above to have been pursuing their claims against the Defendant (whether alone or with other Claimants) on the first day of the quarterly accounting period.

(6) If in any quarterly accounting period a Claimant compromises his/her claim with the Defendant on terms which provide for the Defendant to pay that Claimant his/her costs, then that Claimant shall be entitled to recover his/her Individual Costs, together with his/her share of the Common Costs, to be determined in accordance with sub-paragraph (4).

(7) If in any quarter a Claimant discontinues his/her claim against the Defendant, or compromises his/her claim with the Defendant on terms which provide for the Claimant to

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pay the Defendant its costs, or it is dismissed by an order of the Court whereby the Claimant is ordered to pay the Defendant's costs, then he/she will be liable for the Individual Costs of the Defendant in respect of that claim up to the last day of that quarterly accounting period; with liability of the Claimant for the Common Costs of the Defendant to be determined following the trial of the Lead Cases (with permission to apply if such a trial does not take place).

(8) The Common Costs ordered or agreed to be paid if not agreed shall be subject of detailed assessment which shall not take place prior to the conclusion of the trial of the Common Issues or Lead Cases, with permission to apply if such a trial does not take place.

(9) Any Common Costs or share of the Common Costs ordered to be paid by the Defendant to any Claimant shall be paid to the Lead Solicitors.

g. Seven days before the CMC referred to in paragraph 38 below, 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.

h. No further work in relation to the Common Issues shall be undertaken by any legal representative other than the Lead Solicitors, their servants or agents unless authorised by the Lead Solicitors; and no liability for Common Costs in relation to such work in the absence of such authorisation shall arise between the Claimants or between the parties.

Publicity

33. The making of this GLO, and an invitation to prospective Claimants to consider joining the Post Office Group Litigation, shall be advertised by the Lead Solicitors in the form set out at Schedule 4 to this Order. The Lead Solicitors shall place appropriate notices on their own website or

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micro site, in the Law Society Gazette, on social media to include but not limited to Twitter, LinkedIn and Facebook, and national and regional newspapers as agreed between the parties or otherwise determined by the Court, the costs of which shall be reserved.

34. The Defendants' solicitors shall by 4pm on [23 January 2017] provide the Lead Solicitor with a searchable electronic list (or other list(s) or database(s)) of all Subpostmasters or Crown Office employees (or others holding similar positions) against whom it has taken civil or criminal action in respect of alleged shortfalls after the introduction of Horizon, such information to include each individual's name, branch, last known address and contact details.

Cut-off Date

35. In order to be entitled to enter on to the Group Register, a Claimant whose claim falls within the scope of this GLO must have issued and served a Claim Form by 4pm on [26 July 2017]. The final date on which such claims must be entered on to the Group Register will be 4pm on [6 September 2017], although the cut-off date shall be subject to review at the first Case Management Conference (see paragraph 38 below).

Extensions of Time

36. The parties may, by prior agreement in writing, extend the time for directions, in any Order relating to The Post Office Group Litigation, by up to 28 days and without the need to apply to Court. Beyond that 28 day period, any agreed extension of time must be submitted to the Court by email including a brief explanation of the reasons, confirmation that it will not prejudice any hearing date and with a draft Consent Order in word format. The Court will then consider whether a formal Application and Hearing is necessary.

Further Case Management

37. A copy of this order shall be lodged with:

    a. the Senior Master of the Queen's Bench Division in Room E115 at the Royal Courts of Justice, Strand, London, WC2A 2LL; and

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b. the Law Society at 113 Chancery Lane, London, WC2A 1PL.

38. There be an initial Case Management Conference before the Managing [Judge/Master] on the first open date after [ ], with a time estimate of 3 hours, for which purpose the parties are to apply jointly to Queen's Bench Listing.

39. There be a further Case Management Conference before the Managing [Judge/Master] on the first open date after [ ], with a time estimate [, for which purpose the parties are to apply jointly to Queen's Bench Listing.

Costs of this Application

40. Costs of this application be [ ].

Permission to Restore

41. The parties have permission to restore.

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IN THE HIGH COURT OF JUSTICE **Claim No. HQ16XO1238**

QUEEN'S BENCH DIVISION

BETWEEN:

ALAN BATES & OTHERS

Claimants

- and –

POST OFFICE LIMITED

Defendant

SCHEDULE 1

LIST OF GLO ISSUES – CPR 19.11(2)(b)

Introduction

1. The GLO identifies claims which fall within the scope of the GLO by paragraph 1.

2. The matters set out below are intended to identify the high level GLO issues to assist in the management of the GLO, and not as a substitute for particularised pleadings.

3. These GLO issues will be likely to require revision and review as the matter progresses, including when pleadings are finalised.

4. No party makes or is deemed to make any admission by reason of the matters set out below.

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GLO Issues

In this schedule:

"Horizon" means the IT system known as Horizon operated by the Defendant and made available in Post Office's branches for the purpose of conducting Post Office's business.

"Postmaster Contract" means the Subpostmasters Contract 1994 edition (as amended) between Post Office and a Subpostmaster.[1]

(1) On a proper construction of the Postmaster Contract (including both express and implied terms, and excluding any unenforceable terms), what was the true agreement between Claimants and the Defendant in relation to:

(a) the provision of Horizon;

(b) the operation of Horizon;

(c) the provision of training in relation to Horizon;

(d) the provision of support in relation to Horizon;

(e) the effecting, recording and accounting for transactions;

(f) liability for Subpostmasters to pay alleged shortfalls of cash or stock;

(g) identifying and investigating alleged shortfalls of cash or stock;

(h) seeking recovery of alleged shortfalls of cash or stock;

(i) termination of contract;

(j) limitation of liability for termination of contact; and

(k) the overarching obligations of the parties?

(2) Did the Defendant owe a fiduciary duty to Claimants in relation to 1(e) above, and if so what was its scope?

(3) Did the Defendant owe duties in tort to Claimants in relation to 1(a) – (i)

[1] Or, for Franchisees or Crown employees, their relevant standard contracts.

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above, and if so what was their scope?

(4) Was the relationship between Claimants and Defendants such that there was an inequality of bargaining power or were there objectively unreasonable terms capable, as a matter of law, of giving rise to an inference of economic duress or unconscionable dealing by the Defendant?

(5) Was there a material risk that Horizon did not provide an accurate account of transactions processed by Claimants, taking into account:

(a) defects, flaws or bugs which had the potential to affect branch accounts and thereby generate alleged shortfalls; and

(b) the ability of Post Office (itself or through an IT provider as its agent) to alter or influence transactions and thereby generate alleged shortfalls?

(6) Did the Defendant conceal or misrepresent the true position in relation to paragraph (4)(a) and/or (b) above and/or the extent to which Claimants experienced problems with Horizon?

(7) Did the Defendant conspire with its directors, employees or Fujitsu to injure Claimants by unlawful means?

(8) What training was it the Defendant's policy to provide in relation to Horizon?

(9) In relation to support and/or advice to Claimants in relation to Horizon:

(a) what was it Post Office's policy or standard practice to provide?

(b) what instructions were given to relevant staff providing such support or advice in relation to problems with or potential errors in, or generated by, Horizon?

(10) In relation to the investigation of alleged shortfalls of cash or stock in branch accounts:

(a) what was the Defendant's policy or standard practice in relation to their investigation?

(b) what instructions were given to investigators in relation to potential errors in or generated by Horizon?

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(11) Can demands for payment, threats to terminate, advice to resign and/or the threat or pursuit of civil or criminal proceedings by the Defendant as a matter of law amount to harassment?

(12) As a matter of law, can the Defendant be liable for damages for stigma, loss of reputation and distress as a result of breaching its contractual duties identified at paragraph (1)?

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IN THE HIGH COURT OF JUSTICE **Claim No. HQ16XO1238**

QUEEN'S BENCH DIVISION

BETWEEN:

ALAN BATES & OTHERS

Claimants

- and –

POST OFFICE LIMITED

Defendant

SCHEDULE 2

CLAIMANTS' DETAILS

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IN THE HIGH COURT OF JUSTICE **Claim No. HQ16XO1238**

QUEEN'S BENCH DIVISION

BETWEEN:

ALAN BATES & OTHERS

Claimants

- and –

POST OFFICE LIMITED

Defendant

SCHEDULE 3
SCHEDULE OF INFORMATION

Name	
Home address	
Branch address	
Position held	
Period(s) of appointment / engagement	
Amount(s) of alleged shortfall(s) attributed by the Defendant to the Claimant.	
Date of attribution of alleged shortfall(s)	
Date of any audit(s) and/or investigation(s)	
Date of any suspension(s)	
Means by which appointment / engagement ended (e.g. termination, or resignation)	
Details of any civil recovery proceedings (including bankruptcy and/or County Court proceedings)	
Details of any prosecution (including charge, and outcome)	
Losses claimed	
Personal Injury claimed	

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IN THE HIGH COURT OF JUSTICE **Claim No. HQ16XO1238**

QUEEN'S BENCH DIVISION

BETWEEN:

ALAN BATES & OTHERS

Claimants

- and –

POST OFFICE LIMITED

Defendant

SCHEDULE 4

PUBLICITY

Under paragraph 33 of this Order, the Lead solicitors shall advertise the making of this GLO, and an invitation to prospective Claimants to consider joining the Post Office Group Litigation, substantially in the following form:-

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IN THE HIGH COURT OF JUSTICE **Claim No. HQ16XO1238**

QUEEN'S BENCH DIVISION

BETWEEN:

ALAN BATES & OTHERS

Claimants

– and –

POST OFFICE LIMITED

Defendant

---

draft GROUP LITIGATION ORDER

Freeths LLP

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100 Wellington Street
Leeds
LS1 4LT

DX 310016 Leeds Park Square

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FREETHS

Andrew Parsons
Bond Dickinson LLP
DX38517 Southampton 3

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

11 November 2016

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

Dear Sirs

BATES & OTHERS -V- POST OFFICE LIMITED
CLAIM NUMBER: HQ16X01238

We write further to our letter dated 27 October 2016 (**"Letter of Reply"**) and in preparation for the GLO hearing listed on 26 January 2017. This letter addresses three issues:

(1) Evidence for GLO hearing.

(2) Draft advertisement for GLO.

(3) Second Sight.

Evidence for GLO hearing

In your letter dated 31 August 2016, you propose at paragraph 4.2 for Post Office to file evidence no later than four weeks before the hearing (which would be 29 December 2016) and for then *"the parties to consider whether it is necessary for [the Claimants] to provide responsive evidence nearer to the time of the application hearing, once the issues between the parties have hopefully been narrowed"*.

While, of course, it is hoped that the need for responsive evidence will be limited, not least because the parties agree, in principle, that a GLO is appropriate for these proceedings, we propose that you provide your evidence by 22 December 2016 (i.e. only one week earlier than your proposal) with the Claimants filing evidence on 12 January 2017.

We trust that you will be agreeable to this proposal.

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FREETHS

Draft advertisement for GLO

In our Letter of Reply at paragraph 207(31), we informed you that we were considering appropriate wording in relation to publicity (Schedule 4 of the draft GLO). Enclosed with this letter is a draft advertisement for your review and comment.

Second Sight

In our Letter of Reply, we responded to the protocol that you proposed in relation to Second Sight and let it be known that it was entirely unreasonable and unworkable (for the reasons stated at paragraph 218).

We then proposed a straightforward release by Post Office to Second Sight of any confidentiality obligations other than in respect of privileged material. We confirmed that we are willing to make arrangements for Second Sight to have independent legal advice in relation to the identification of privileged material. This is an entirely reasonable and proportionate safeguard and we see no reason why you should continue to object to us speaking with Second Sight. Please confirm that you will co-operate with us in this respect so that we may speak with Second Sight.

It is important for use to speak with Second Sight so as to address the matters raised in your Letter of Response, but also for the purposes of assisting in the drafting of Generic Particulars of Claim, which you have specifically requested and we have confirmed we will provide to you by 1 December 2016. It is, therefore, imperative that you respond to us on this issue urgently, and your agreement to our proposal will avoid the need to raise these issues before the Court.

We look forward to hearing from you on the above matters as soon as possible.

Yours faithfully

GRO

Freeths LLP
Please respond by e-mail where possible

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INVITATION / PUBLICATION NOTICE TO JOIN GLO

The Post Office Group Action

The High Court made a Group Litigation Order on **[XXX]** in relation to a Group Action against Post Office Limited, being pursued by individuals who:

a. Work or previously worked in Post Office branches as: (i) Subpostmasters; or (ii) assistants to Subpostmasters; or (iii) Crown Office employees; and

b. Such work took place during a time when their branch was using the 'Horizon' system (the IT system operated by Post Office); and

c. Suffered loss (financial and non-financial) as a result of Post Office Ltd attributing alleged 'shortfalls' in branch accounts for which the individual says they were not at fault and/or where the cause of these apparent 'shortfalls' was not determined.

The Court has ordered that any individual who wishes to pursue such a claim may join the Group Action by being added to the Group Register of claims from XXX.

The Court has appointed Freeths LLP (GRO) as the Claimants' Lead Solicitors to the Group Action. Freeths LLP are working with Justice For Subpostmasters Alliance (JFSA) on this matter.

However, Claimants may instruct any firm of Solicitors to participate in this litigation. A list of Solicitors instructed in these claims may be obtained from the Law Society (www.lawsociety.org.uk / GRO).

All individuals must have their claims investigated before they can be added to the Group Register so they need to come forward as soon as possible. The Court has imposed a cut-off date of XXX for joining the Group Action and the Court may decide that anyone who has not joined at that date may lose their opportunity to be part of the litigation.

The making of a Group Litigation Order is a procedural matter only to enable the Court to manage litigation affecting multiple parties, and does not imply any view as to the merits of the claims put forward. This advertisement does not contain legal advice. Potential

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claimants may wish to seek legal advice as to the pros and cons of the different options open to them in respect of the potential legal claims they may have against the Post Office as a result of loss suffered in relation to alleged 'shortfalls' in branch accounts. If you are unsure if you can make a claim, please contact the Lead Solicitors.

This advertisement is published by the Order of the High Court of Justice.

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

30 November 2016

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

By email only

Dear Sirs

Bates & Others -v- Post Office Limited
Claim Number: HQ16X01238

1.1 We write further to your letter of 27 October 2016 (**Letter of Reply**) and subsequent related letter of 11 November 2016. Capitalised terms in this letter have the same definitions as they did in our letter of 28 July 2016.

1.2 We are disappointed to find that the Letter of Reply provides few further details of the claims that your clients intend to advance in these proceedings, including those claims that involve allegations of fraud or other dishonesty on the part of Post Office. The context is as follows:

1.2.1 We provided on 28 July 2016 a detailed response to your clients' Letter of Claim dated 28 April 2016 (**Letter of Claim**). Our letter ran to 99 pages and included a detailed response to all of the main points raised in the Letter of Claim (**Letter of Response**). Post Office devoted considerable time and money to providing a substantive and, it was hoped, helpful response to the Letter of Claim.

1.2.2 The Letter of Response included a reasoned request that your clients provide details of the claims that they assert.[1] We explained that there was no realistic scope for resolving the disputes between the parties without your various clients making clear what they intended to claim and on what legal and factual basis.

1.2.3 We noted, in particular, that your clients were advancing entirely unparticularised (and even generic) allegations of fraud, malice and bad faith on the part of Post Office.[2] We do not accept that, as you seek to imply, our concerns in this regard were overstated; nor do we accept that there was anything improper in our reminding your firm of its professional duties in relation to allegations of fraud. We reiterate that it is unacceptable for your clients (or some unidentified group of persons amongst your clients) to raise allegations of fraud that they are not prepared to particularise.

1.2.4 On 12 August 2016, you indicated by letter that your clients would require 3 months to produce a reply to our Letter of Response. By our letter of 18 August 2016, we agreed to this timescale on the basis that your letter would "*genuinely address the points raised in our letter, and set out in detail each of the claims raised by each of the*

[1] See, by way of example, paragraphs 3.2 to 3.9 Letter of Response
[2] Paragraph 3.8 Letter of Response

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Claimants and the facts and matters they rely upon". You did not write back to indicate that your clients were not prepared to provide any such information.

1.3 Having waited more than 3 months for your Letter of Reply (it being provided a week late), we regret to say that it has done almost nothing to further the efficient resolution of the disputes between our clients. In particular:

1.3.1 Your clients have chosen to provide no further details of the specific Claims being advanced, including those that involve allegations of fraud or other dishonesty on the part of Post Office. We remain entirely in the dark as to even who amongst the Claimants is alleging that Post Office acted dishonestly and/or maliciously and/or in bad faith, let alone the factual basis on which such allegations are advanced. We also remain in the dark as to which of the Claimants assert which of the various causes of action that you discuss in entirely generic terms. We see no reason why these details cannot be provided as you must have investigated your client's cases given that you have been instructed on this matter for over a year, have signed a Statement of Truth on the Claim Form and have written us long letters.

1.3.2 The absence of proper detail of the Claims is shown most starkly by the fact that Post Office has not been able to identify 15 of the Claimants. Based on the limited details you have provided so far, our client is in the extraordinary position of having no idea why or on what basis these persons are said to have claims against Post Office.

1.3.3 You have also made no attempt to value the Claims (or any of the various causes of action). We are therefore unable to assess the comparative value and significance of the various claims made and thus the various issues raised by those claims. This exercise is central to certain of the procedural questions that fall to be determined in January 2017. We cannot, for example, assess whether and to what extent legal or factual issues between our respective clients are (a) common to all or many of the Claims and/or (b) are important issues in terms of the proportion of the total sum claimed that may turn on the resolution of those issues and/or (c) sufficient to warrant the extremely wide early disclosure you are seeking. We note in this regard that you must have addressed the quantum of the various Claims when obtaining third party litigation funding.

1.4 We are therefore in no better a position than we were in July. We are no more able than we were to understand the case against Post Office, and we are in no better position to assist the Court in making appropriate orders for the conduct of the Claims. We also have no better foundation on which to consider ADR and settlement. Our client is left facing allegations which may or may not apply to some, all or none of the Claimants. We do not consider that it is constructive or sensible to seek to address fact-sensitive questions of procedure in the absence of any detail of the Claims that the parties and the Court are seeking efficiently to manage.

1.5 In the circumstances, we doubt that further lengthy correspondence is likely to provide the information and clarification we need in order to identify matters which may be suitable for things such as early determination or early disclosure. As it seems to us at the moment, the best process for eliciting the necessary information and clarification for each Claimant will be the pleading process.

1.6 In relation to the pleading process, it appears to be your clients' objective to withhold indefinitely the detail of their individual Claims (including the claims in fraud); your proposal being to provide only "generic" Particulars of Claim that focus only on issues arising in relation to the Postmaster Contract. You propose that there then be a preliminary hearing of the issues raised in this truncated pleading. As to this:

1.6.1 You do not identify which Claimants rely on the matters that would be pleaded in generic Particulars of Claim to advance causes of action that they assert (or some of those causes of action).

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1.6.2 We note in this regard that (a) 15 of the Claimants have an unknown connection to this proceeding, (b) our current understanding is that approximately 16 of the Claimants are known to Post Office because they were engaged as assistants to postmasters, but they have never been in any form of contractual relationship with Post Office and so cannot stand to benefit from the resolution of the contractual issues that you seek to determine before anything else is done, (c) certain of the Claimants were engaged by Post Office on contracts which are different from (and in some cases completely different from) the Postmaster Contract and (d) while your clients place heavy reliance on their having contracted with Post Office as individuals, some of the relevant contracts were in fact entered into by corporate entities.

1.6.3 We do not know which, if any, of the Claimants will seek to rely on the various contentions that you suggest are relevant to the construction or enforcement of the contracts at issue. Merely by way of example, we do not know which (if any) of the Claimants asserts that he or she signed up to an agreement with Post Office without having read (or having had an opportunity to read) the terms of that agreement, and we do not know which (if any) of the Claimants assert that he or she was not aware (at the time of contracting) that the agreement included provisions as to termination for breach and/or termination on notice.

1.6.4 We are unable to assess, even in the most general way, the number or value of the claims that will benefit from a resolution of the contractual issues covered in your proposed generic Particulars of Claim (whether for individual Claimants, classes of Claimant or all the Claimants taken together).

1.7 We had hoped to receive meaningful detail of the Claims well in advance of the hearing in January 2017 in order to enable us properly to understand the Claims and so cooperate more effectively in resolving them as efficiently as possible, including by seeking to agree appropriate directions for preliminary issues and/or group pleadings in relation to some or all of the causes of action. As matters have turned out, we consider that the most pressing requirement in this case, both as a matter of fairness to our client and in the interests of the efficient resolution of the proceedings, is that proper details of the Claims be provided. In light of your clients' refusal to provide such detail in correspondence, the only practical course is for your clients to be required to provide particulars of their Claims as soon as possible.

1.8 We therefore presently intend to seek an order that your clients provide Particulars of Claim covering all of the causes of action asserted in the Claim Form, such pleadings to include (amongst other things) full particulars of any allegations of fraud, malice and bad faith that are relied upon by the relevant Claimants. This is the established way to proceed in group litigation and was the approach endorsed by the Court of Appeal in Prudential v HMRC[3]:

> "*Particulars of Claim must comply with CPR Part 16. If the claim is made under Part 8 rather than under Part 7, then the rules require relevant evidence to be served when the claimant makes his claim. Either way, relevant facts must in our view be pleaded. If they are facts generally applicable to all claimants, they may be pleaded in Group Particulars of Claim; if they are specific to a particular claimant they may be set out in a schedule.*"

1.9 We note that you intend shortly to provide your proposed "generic" Particulars of Claim. We will of course consider that pleading and will, if appropriate, revisit the points that we set out above in light of its content.

1.10 In light of the above, we do not intend in this letter to address in detail the arguments raised in the Letter of Reply. We do not see any merit in spending further substantial time and money in arguing in the abstract the merits of various Claims that your clients may or may not be willing or able to plead. We have already set out in the Letter of Response the reasons for which Post Office's position is that the Claims are bound to fail, and that remains our client's position.

[3] [2015] EWHC 118 (Ch)

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1.11 We nonetheless address below a number of substantive points in your Letter of Reply, principally in relation to the Postmaster Contract, in order to underline why our proposed procedural approach to the GLO and pleadings is to be preferred. These issues may be discussed in detail at the hearing in January 2017. It may therefore assist your clients and the Court to have our client's comments on the relevant parts of the Letter of Reply.

1.12 We ask below for certain information about your clients' case. We think it would be helpful for you to provide such information now, as it will in any event have to be pleaded in due course and must be readily available to your clients. Again, the purpose for doing so is to facilitate the hearing in January. We do not seek all of the information that will have to be provided in the Particulars of Claim.

PART A: SUBSTANTIVE

2. Terms of the Postmaster Contract

2.1 We understand your clients' argument that postmasters should (in some unspecified ways) be treated as being relatively similar to employees. We disagree with that argument for the reasons given in our Letter of Response. However, it is not clear from the Letter of Reply whether or not your clients assert that the Claimants who were or are postmasters were or are, by reason of such engagement, employees of Post Office.[4] Please now make the position clear and identify which, if any, of the Claimants allege that they are or were at material times employees of Post Office.

2.2 It appears from paragraph 79 of the Letter of Reply that there may be some Claimants ("*a number of Subpostmasters*") who allege that they "*were not in fact provided with* [the contract] *...when they were appointed by Post Office*". Your clients contend that Post Office will therefore be required "*in each case*" to prove that postmasters were provided with and agreed to the standard terms of the postmaster contract. As to this:

2.2.1 We do not know which, if any, Claimants allege that they (a) did not read the written terms to which they agreed and/or (b) were not given an opportunity to read those terms before agreeing them and/or (c) are, for this reason, not bound by relevant provisions of their contract with Post Office (identifying such provisions). Nor do we know what terms such Claimants will allege, in fact, governed their relationship with Post Office and, in particular, what terms they will say were breached by Post Office.

2.2.2 It will not assist the parties for these issues to be debated in the abstract and/or on the basis of hypothetical facts that may or may not overlap in whole or in part with the facts asserted by one or more Claimants. We again need to know what is being alleged and by whom.

2.2.3 Accordingly, please identify which, if any, Claimants assert that they did not see (or have an opportunity to see) the terms of their agreement with Post Office, on what basis they say that they therefore contracted with Post Office and, in particular, what terms they say governed the matters in relation to which they assert breaches of contract by Post Office.

2.3 As to the various legal arguments debated in the Letter of Reply:

2.3.1 Please confirm to which of the express terms of the Postmaster Contract the Claimants assert that the *contra proferentem* rule applies, the reasons for that contention and the opposing construction you place on those terms.[5]

2.3.2 Please confirm to which of the express terms of the Postmaster Contract the Claimants assert UCTA 1977 applies and the reasons for that contention. Please particularise the grounds on which such terms are alleged to be unreasonable.[6]

[4] Paragraph 60, Letter of Reply
[5] Paragraph 68, Letter of Reply

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2.3.3 Post Office's position in relation to implied terms remains as stated at paragraph 4.35 of our Letter of Response, namely that there are two such terms: the "Stirling v Maitland term" and the "Necessary Cooperation term". We do not agree that any further terms need be implied. Please confirm whether or not the Claimants (or some of them) agree that such terms are to be implied.

2.3.4 At paragraph 84 of the Letter of Reply (and following), you invite Post Office to express a view on the application of the above implied terms to various factual circumstances that may or may not be relevant to various alleged breaches of contract that some of the Claimants may advance and/or to agree to various further implied terms. We consider that those matters can only sensibly be addressed further through pleadings that set out the relevant factual context in each Claimant's case. Further discussion of these matters in the abstract will not assist either side's understanding.

2.3.5 You allege that "*Post Office undertook to supply the Horizon system*". Please clarify what term (express or implied) is relied upon in making this allegation. It is denied that Post Office agreed to provide the Horizon accounting system.

3. Fiduciary and tortious duties

3.1 At paragraphs 88 to 93 of the Letter of Reply, you discuss the fiduciary duties that your clients (or some of them) allege that Post Office owes to postmasters. In particular, you maintain that "*Post Office was subject to a narrow and specific fiduciary duty, arising from having undertaken obligations to effect, record and account for transactions executed by Subpostmasters.*" Post Office denies that it owes any fiduciary duty to postmasters for the reasons stated in our Letter of Response. As far as we can tell, the duty you are suggesting is not a fiduciary duty as such, as that duty is based on the core concept of loyalty. However, in the light of your correspondence to date, we doubt that any further argument would be useful at this stage, without a proper pleading.

3.2 We remain concerned that your clients' case as to tortious duties is both unclear and likely to be misconceived. In particular:

3.2.1 We are not clear as to the formulation of the (concurrent) duties that Post Office is said to have owed in tort to the postmasters engaged under the Postmaster Contract.

3.2.2 Nor are we clear as to the basis a duty in tort is said to have arisen or responsibility to have been assumed by Post Office.

Once again, however, we doubt that further argument would be useful without a proper pleading.

3.3 You have asked us to confirm whether we dispute the factual matters in paragraphs 70.1 to 70.5 of the Letter of Claim. Our client's position on the relevant facts is clear from the Letter of Response. We do not intend to engage in detailed argument as to the formulation and/or significance of your factual assertions (insofar as they are factual assertions rather than submissions). The proper vehicle for exposing the relevant issues is a pleading.

4. Termination rights

4.1 At paragraphs 77, 78 and 166 to 173 of the Letter of Reply, you address the contractual interpretation of the termination provisions contained within the Postmaster Contract. Our client's position remains as set out at paragraph 4.22 of our Letter of Response.

4.2 At paragraph 172, you state that the "*3 months' notice did not reflect the true agreement under which Subpostmasters were engaged*" and the true agreement between the parties was that "*the 3 months' notice provision would not normally be used by Post Office*". This is an extraordinary argument, which appears to be intended effectively to reverse the effect that the Postmaster Contract's termination provision was obviously intended to have. Although we consider the

[6] Paragraph 68, Letter of Reply

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argument to be misconceived, we are in any event unclear as to its intended scope. Please identify:

4.2.1 The Claimants who assert that they entered into an agreement with Post Office on the basis that their agreements had this restricted (or non-existent) right to terminate on notice.

4.2.2 The precise terms of the alleged agreement and the words used to give rise to such agreement.

4.2.3 Please clarify whether or not the alleged restriction (or prohibition) on the right to terminate on notice applied also to postmasters. If not, please identify the restrictions (if any) that your clients contend applied to the postmasters' right to terminate on notice.

4.3 We do not agree that relying on the express right to terminate on notice to determine the period in relation to which losses may be claimed somehow turns the termination provision into a term limiting Post Office's liability. We consider the case-law to be clear on this point.

5. Assistants, crown employees and corporate Claimants

5.1 Your Letter of Reply focuses on postmasters and the Postmaster Contract, as do the above sections of this letter. At paragraph 209 of the Letter of Reply, you very briefly touch on the claims of crown employees and postmaster assistants. The brevity of your treatment of these persons suggests that you think crown employees and postmaster assistants to be in an analogous position to postmasters. However, they are in a very different position indeed:

5.1.1 Crown employees are employees engaged under employment contracts and not the Postmaster Contract. Their employment contracts are not even similar to the Postmaster Contract. One stark difference is that crown employees are not directly liable under their contracts for shortfalls in branches.

5.1.2 Post Office has no contractual relationship with postmaster assistants at all.

5.2 Please provide confirmation of which Claimants are bringing their claims in their capacity as (a) crown employees, (b) assistants and (c) otherwise than under the Postmaster Contract.

5.3 Please also set out the express terms and other duties that you say exist between Post Office and (a) crown employees and (b) assistants. If you intend to advance claims on behalf of these parties, and wish them to form part of the GLO and also within the scope of your proposed preliminary issues, it is incumbent upon you to explain the position in correspondence, for each of those two categories. We do not, at present, consider your clients to have complied with their pre-action duties in relation to any claims by such persons and, on the information you have provided, we do not understand the basis for including their claims within the GLO.

5.4 We also note that your letter does not address the various different contractual models operated by Post Office, as set out in Schedule 5 of our Letter of Response. Please explain the cases put by the various Claimants who are parties to these different contracts.

5.5 At paragraph 210 of the Letter of Reply, you state that the individuals who contracted with Post Office via a company still have claims in their individual capacity. We do not understand this assertion: if the company contracted with Post Office, the relevant legal relationships are between Post Office and the company. Please identify:

5.5.1 The Claimants who entered into contracts through companies and the companies through which they did so.

5.5.2 The causes of action asserted by each of those companies.

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5.5.3 The legal basis on which the relevant Claimants (as natural persons) are said to have causes of action against Post Office in addition to the causes of action vested in their companies.

5.5.4 How the causes of action asserted by these natural persons are not barred by the reflective loss principle.

5.6 As requested in our letter of 13 October 2016, please also provide your proposals for amending the Claim Form to address the issue of claims which should be brought by different entities. We reserve our client's rights in this regard.

6. Governing law of the Postmaster Contract (and other matters)

6.1 Our client's position on governing law is reserved until such time as the Claims are pleaded. We cannot, without sight of properly articulated causes of action and factual assertions from specific Claimants, determine whether there are any claims that ought to be subject to a Scottish or Northern Irish law analysis.

7. Shortfalls: Real losses and the burden of proof

7.1 You allege at various points that we have conflated shortfalls in branches with losses to Post Office.[7] Our explanation of how shortfalls in branches create losses for Post Office was provided in paragraph 4.14 of the Letter of Response.

7.2 We do not intend to engage in detailed legal argument as to the burden of proof in relation to shortfalls. The legal analysis and importance of the burden of proof may differ depending on the precise facts alleged, and your clients have to date refused to provide particularised allegations. We would simply note the following matters:

7.2.1 At the end of each trading period, a postmaster has to approve their accounts or dispute the accounts through the proper process.[8] Once approved, the accounts are binding on a postmaster and they assume the burden of showing that any accounts they previously approved are inaccurate. This burden is placed on a postmaster because of their status as Post Office's agent. This is a settled matter of law and one that was followed in Castleton.[9]

7.2.2 The approved accounts will state the amount of cash that should be in the branch. The postmaster, as an agent, has a duty (both contractually and as an agent) to return to Post Office all cash shown in the accounts. If there is insufficient physical cash in the branch, the postmaster must make up this shortfall from his own funds. A similar set of principles apply to stock.

7.2.3 It is an established common law principle that "*when an agent cannot explain exactly what has happened to money or property, presumptions may be made against him*".[10]

7.3 Please confirm that you accept that postmasters are subject to the usual rules applicable to all agents in relation to rendering accounts, returning cash and stock to their principal and the making of presumptions against them.

7.4 For the avoidance of doubt, Post Office denies applying any "*economic duress*"[11] or engaging in "*unconscionable dealing*"[12] in relation to the Claimants' accounting to Post Office and, in particular, the decisions taken by certain Claimants to submit false accounts. It does not know which Claimants make these serious allegations and it has no understanding of the factual basis

[7] See, for example, paragraph 65, Letter of Reply
[8] See the description of the "settle centrally" process at paragraph 7.5, Schedule 4, Letter of Reply
[9] 6-090 onwards in Bowstead & Reynolds on Agency
[10] 6-096 Bowstead & Reynolds on Agency
[11] Paragraph 103, Letter of Reply
[12] Paragraph 103, Letter of Reply

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on which the allegations are made. It also does not reflect Post Office's constructive dealings with the vast majority of its postmasters. In any event, the Claimants who falsified accounts cannot blame Post Office for their decisions to do so or for the consequences of doing so.

8. Investigations into Horizon

8.1 At paragraph 24 of the Letter of Reply, you address Post Office's investigations into Horizon in specific cases. You are maintaining your allegation that Post Office has instructed its investigators to ignore issues in Horizon. Please explain the factual basis of this allegation.

8.2 You go on to refer to the case of Elizabeth Stockdale as an example of Post Office's failure to investigate and ask us to clarify our position in this respect. Mrs Stockdale admitted to falsifying her branch accounts and, despite repeated requests, she was unwilling to provide any guidance as to the specific transactions (or time periods of transactions) she considered may be anomalous or explain how she had been running her branch. Making general allegations that Horizon might be at fault was not sufficient. Where postmasters have failed to maintain properly their branch accounts and then do not cooperate with a subsequent investigation, like Mrs Stockdale, it will be very difficult (if not impossible) for Post Office to assist a postmaster. Indeed, in Mrs Stockdale's case, due to her false accounting Post Office was not even aware at the time that there was an issue to investigate. In the circumstances, Post Office undertook all the investigations it could sensibly be expected to undertake.

8.3 You have also asked us at paragraph 129 of the Letter of Reply about obtaining data from Fujitsu in relation to investigations into Horizon. Post Office considers whether it is necessary to obtain historic data from Fujitsu in the context of each request to investigate and depending on the issues raised by the postmaster. It would, for example, take into account any reasoned argument that a postmaster could not, without such data, comply with his duties to Post Office. However, in most cases accessing bulk historic data is not necessary and, as you note at paragraph 127, data is already available to postmasters for up to 42 / 60 days in branch.

8.4 At paragraph 114 of the Letter of Reply you ask us to identify which branches have been affected by the Calendar Square / Falkirk, Payments Mismatch and Suspense Account bugs and to provide copies of correspondence on these issues. This represents a further disclosure request. In our letter of 13 October 2016, we explained that whilst we have complied with your numerous documents where Post Office is able, your requests are putting Post Office to significant and, in the absence of any claim valuations, an entirely disproportionate cost. For the reasons set out in our letter of 13 October 2016, the information and documents requested at paragraph 114 will not be provided at this stage of the litigation.

9. Remote access to Horizon data

9.1 At several points in your Letter of Reply you contend that Post Office has been tampering with transaction data, suggest that this is the root cause of shortfalls in branches and allege Post Office has attempted to cover this up. Although we do not think it appropriate to explore all the issues raised by these allegations in correspondence, it is necessary to make a few comments.

9.2 At the outset, it is important to note that:

9.2.1 No Claimant (nor Second Sight) has identified any change to transaction data that was effected without a postmaster's knowledge and has caused them loss. If any Claimants are alleging that the transaction data for their branch was changed, please identify the Claimants who are saying so and provide details of the allegedly changed data. If not, in the interests of saving time and costs, please say so.

9.2.2 For data manipulation to be the cause of shortfalls in hundreds of branches since Horizon has been in operation, there would have to have been a surreptitious and coordinated effort between Post Office and Fujitsu staff to manipulate data over a 16 year period.

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9.2.3 We cannot think of a plausible reason why Post Office would manipulate transaction data in this way. Quite apart from anything else, intentionally changing data to make branch accounts inaccurate would obviously place Post Office in breach of the obligations it owes its commercial partners (to whom Post Office accounts for the transactions it performs for them in the branch network), and also in breach of numerous regulatory requirements. If nonetheless you or your clients contend that this has in fact taken place, please plead the details of this alleged fraud with the proper particularisation required of such allegations.

9.2.4 It is illusory to suggest that Post Office would contemplate perpetrating a fraud of this sort. It is even more unreal to claim that Fujitsu, an external supplier of IT services, would do so. In this regard, we note that you have not joined Fujitsu to these proceedings as a co-conspirator. Nevertheless, if any Claimants are saying that Fujitsu staff have misused any access rights so as to create false shortfalls in their branch accounts, this would require a further allegation of fraud against Fujitsu, which would involve pleading who would have done this, when and why.

9.3 It is also important to assess the statements that Post Office has made about "remote access" in their proper context. The questions around "remote access" have changed over time, particularly during Second Sight's engagement:

9.3.1 The first "remote access" allegation identified by Second Sight came from Mr Michael Rudkin who claimed that Fujitsu was running a "black ops centre" from the basement of its office in Bracknell (see Spot Review 5). This was checked and proven to be wrong (in a witness statement that was provided to Second Sight, a member of staff from Post Office confirmed that the test environment in the basement at Bracknell was not connected to the live Horizon system).

9.3.2 A different issue was subsequently raised, namely whether Post Office could access Horizon branch data. Post Office has always had the ability to "access" (in terms of having read only access) Horizon data and it took some time to clarify with Second Sight what they were querying.

9.3.3 At times it was asked whether Post Office could remotely log on to a branch terminal and conduct transactions in the name of a postmaster. Investigations at the time determined that Post Office could not do this but Fujitsu could log on to branch terminals in order to provide technical support, though transactions could not be conducted through this route.

9.3.4 A further question was whether Post Office or Fujitsu could add transactions into a branch's accounts through back-end systems without a postmaster's knowledge. This is the Balancing Transaction issue that is addressed below and that was disclosed to Second Sight.

9.3.5 When preparing our Letter of Response, we identified the theoretical potential for Fujitsu administrators to access Horizon databases in a way which could change branch accounts. This is discussed in more detail below. Post Office regrets that it did not previously identify this possibility even though it is unreal to suggest that this is a true factor behind the shortfalls suffered by any postmasters.

9.4 At each stage, Post Office ascertained the position to respond to the questions it believed it was being asked. With the benefit of hindsight, some of Post Office's statements may have been incorrect in light of what has since been identified in relation to Fujitsu's administrator access rights (see below). But Post Office refutes any suggestion that it ever made false statements deliberately or did so to mislead, deceive or conceal. The Post Office personnel responsible for those statements made them in good faith: what was said reflected what they understood the position to be after they had made relevant enquiries at the time.

9.5 In any event, there is no suggestion that Post Office made any incorrect statements before Second Sight began its work in 2012. By this time, many of the Claimants had left their branches

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and so could not have relied on such statements. Indeed, you have presented no material to suggest that any postmaster has relied on any such statements by Post Office or suffered loss as a result.

9.6 Nevertheless, given the prominence which the Claimants appear to place on these allegations, in connection with this litigation Post Office has undertaken further investigations into whether Global Users, Balancing Transactions and Fujitsu administrator access could be behind the shortfalls you allege. These investigations have focused on Horizon Online, being the version deployed in 2010 and which is still in service.

9.6.1 Except for Global User access and Balancing Transactions, Horizon is designed so that transactions recorded on Horizon that make up a branch's accounts are either input or approved by branch staff before they form part of the relevant accounts.

(a) We addressed Global Users in our Letter of Response. The ability of Post Office staff to log on to terminals when physically in a branch has always been known to postmasters and their actions have always been entirely visible to postmasters.

(b) We also addressed Balancing Transactions in our Letter of Response. Any Balancing Transactions input into the Branch Database[13] are identifiable by Postmasters as they appear on the transaction log report to which Postmasters have access (and which they should review when considering a shortfall in the branch accounts). The transaction user ID does not appear as that of any member of staff at the branch, but appears as "SUPPORTTOOLUSER99".

(c) The existence of Balancing Transactions was disclosed to Second Sight during the mediation scheme. In addition, the fact that Balancing Transactions show up in a branch's accounts means that there can be no allegation that the existence of a Balancing Transaction was concealed from a Claimant.

(d) If any Claimants are alleging that a Global User improperly conducted transactions whilst in a branch or that a Balancing Transaction was the root cause of a shortfall (or that Post Office tried to conceal either of these), please identify the Claimants who are doing so and provide details of their allegation. If not, now is the time to say so.

9.6.2 In relation to Fujitsu's administrator access:

(a) There are certain circumstances where this access could in principle be used to change parts of Horizon, including the raw data in its databases that reflect transaction records. Although this would be very difficult to do in practice and of questionable benefit to anyone who tried, changes could in theory be made to the Branch Database which could then manifest as a discrepancy in a branch's real-world accounts.

(b) There are a significant range of controls in place to limit access to this data and to make it very difficult (and in many cases impossible) to add, amend or delete data without leaving an audit trail in the system.

(c) Post Office therefore denies that Fujitsu's administrator access has been misused so to cause the shortfalls attributed to any Claimant.

[13] In Horizon Online, the Branch Database holds the live version of the transaction data used in day to day operations. It is located on a server in a central data centre. Transaction data (other than the immediate data for a transaction being conducted in real time with a customer) is not held locally on terminals in branches. For example, when a postmaster in a branch requests on his local Horizon terminal a list of all the transactions conducted on a specific day, this data is drawn from the Branch Database and sent over the internet to the terminal in the branch. A similar flow of data happens when conducting transactions and rolling over a branch's accounts.

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(d) It should also be noted that a number of Post Office's historic statements were describing the functions of the Horizon system as designed, not what Horizon could be changed to do or show using Fujitsu's administrator access. In the context of those statements, administrator access was not a relevant consideration. As stated above, the context behind each statement is of paramount importance.

9.7 The simple fact is that, while allegations about data manipulation may make good headlines, they have no substance. It is fanciful to contend that there was a conspiracy between Post Office and Fujitsu to manipulate data in order to cause deliberately false shortfalls to appear in Post Office branches. Taking a step back and assessing the realities of this case sensibly, there is no credible material to support such allegations, but only supposition about what Horizon *might* in theory be able to do.

9.8 Turning to the other related questions asked in your letter:

9.8.1 At paragraph 194 you ask whether the Courts have ever been informed about "remote access" issues. Post Office is fully aware of its disclosure duties (including in prosecutions) and believes it makes such disclosures when required.

9.8.2 In response to paragraph 195, Post Office was aware following Professor McLachlan's evidence in Court of a number of issues that could, in a broad sense, be described as concerns over Post Office's investigation into the Misra case. However, this evidence was ventilated before a judge and jury and Seema Misra was convicted of theft. It is not appropriate to comment on this further while the prosecution of Mrs Misra is being considered by the Criminal Cases Review Commission (**CCRC**).

10. Causes of action

10.1 You suggest that the parties agree that "*all claims in which a Claimant has been convicted of a criminal offence relating to an alleged shortfall*" be stayed pending the outcome of the reviews by the CCRC[14].

10.2 We can see the attraction of that approach as regards certain of the claims to which it would appear to apply. However, we are (as ever) in the dark as to the details of the very serious allegations being made against our client, and our client cannot be expected to agree the proposed stay without further detail of the claims to which it would relate, particularly as regards the claims in malicious prosecution. Accordingly, please provide the information requested in paragraphs 10.3, 10.4.2 and 10.5.5 below.

10.3 Please identify the Claimants whose claims would be the subject of the stay that you are proposing.

10.4 As to malicious prosecution claims:

10.4.1 You have not stated which of the many Claimants for whom you act assert a claim in malicious prosecution and in relation to what prosecution or civil proceedings.

10.4.2 Please (a) identify the Claimants who assert a claim in malicious prosecution and, for those Claimants, please (b) identify the conviction or civil judgment (as the case may be) relied upon as having been obtained wrongfully and (c) state whether and on what basis it is contended that those proceedings have been determined in the Claimant's favour.

10.5 As to malicious prosecution claims where there are criminal convictions, the following points are worth noting:

[14] Paragraph 199, Letter of Reply

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10.5.1 You note that certain of the Claimants have criminal convictions that are under review by the CCRC, but you accept that a claim in malicious prosecution based on a conviction "*cannot lie*" unless and until the conviction is in fact overturned[15]. It follows that these claims are untenable and should not have been brought.

10.5.2 Further, as you appear to acknowledge it is not enough for the conviction to have been reviewed by the CCRC or even referred by the CCRC to the Court of Appeal, there is no cause of action in malicious prosecution based on criminal proceedings unless and until those proceedings have been determined in the claimant's favour: see Dunlop v Customs & Excise Commissioners, The Times, March 17, 1998; (1998) 142 S.J.L.B. 135 and in Walpole v Partridge & Wilson [1994] Q.B.106 at 117G-H, *per* Ralph Gibson LJ.

10.5.3 It is improper to issue a Claim Form asserting a claim that, to the Claimant's knowledge, cannot presently be articulated and advanced (even if such a claim may be capable of being asserted in the future): see Nomura International Plc v Granada Group Ltd [2007] EWHC 642 (Comm).

10.5.4 There is no scope for a "protective claim" in relation to malicious prosecution given that, as made clear in Dunlop, time will not run against the Claimant for limitation purposes until the criminal case is determined in his favour.

10.5.5 The claims in malicious prosecution brought by Claimants whose convictions have not been overturned are therefore misconceived and demurrable. The position is even more stark in relation to Claimants (if there are any such) who assert a claim in malicious prosecution based on a criminal conviction which is not under review by the CCRC. In circumstances where a Claimant has not sought to overturn his or her criminal conviction, we cannot see how using these proceedings to mount a collateral attack on the conviction is anything other than an abuse of process, quite apart from being misconceived for the reasons given above. Please identify any Claimants to whom this applies.

10.6 As to malicious prosecution based on civil proceedings that have been determined in favour of Post Office, we consider that the principles set out above apply *mutatis mutandis*. We note that you invite Post Office to identify which Claimants have concluded civil proceedings with Post Office that may give rise to *res judicata* and/or issue estoppel defences. This information can and should, indeed must, be provided by your clients. They are the ones bringing the claim.

10.7 Our ability to identify any such defences is of course hampered by your ongoing refusal to provide any meaningful detail of the claims asserted by the Claimants and the fact that our client does not know who all the Claimants are. We do not consider it appropriate at this stage to provide also the pleadings.

10.8 As regards claims that have been settled, we disagree that it would be unreasonable or disproportionate to strike out claims that are advanced in breach of settlement agreements. The pursuit of such claims is a breach of contract and a plain abuse of process. If any of your clients wish to advance an allegation that Post Office acted deceitfully in the negotiation of a settlement, he or she should provide proper details of that allegation immediately. It is improper to raise an unparticularised allegation of fraud and we would again remind you of your professional obligations in respect of raising such claims.

11. Loss

11.1 At paragraph 177 of the Letter of Reply, you refer to devaluation in the sale price of postmasters' businesses. We explained at paragraph 7.9.4 of the Letter of Response that postmasters do not "*own*" the Post Office branch and it is therefore not a saleable asset or an asset the devaluation of which reflects a recoverable loss to the postmaster.

[15] Paragraph 161, Letter of Reply

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11.2 In relation to the appointment of postmasters our client has absolute discretion in the selection and appointment of the person or entity with which it contracts to provide services. Any attempt to fetter this discretion, by way of implied terms or seeking to tie the appointment to premises where there is an existing branch or otherwise, is bound to fail.

11.3 In response to paragraph 179 of the Letter of Reply, Post Office's case is that any damages for stigma / reputation losses can only be grounded in claims for defamation and malicious prosecution. For the reasons given above, the claims for malicious prosecution are misconceived and should not be pursued.

PART B: GLO AND OTHER CASE MANAGEMENT ISSUES

12. Pleadings and preliminary issues

12.1 As we understand it, you propose to only prepare generic Particulars of Claim that focus solely on the legal relationship between Post Office and postmasters who are or were party to the Postmaster Contract[16]. For the reasons stated at the opening of this letter, we do not accept that this is the correct way to proceed.

12.2 In addition to the reasons stated above, we note that a preliminary issues trial on contractual matters would not be a straightforward case of legal submissions. On the case you argue in the Letter of Reply, it would require a significant amount of factual matrix evidence on the circumstances in which the relevant contracts were entered into and on what documents were provided at what times. It would also apparently require factual matrix evidence on the operation of a Post Office branch and Horizon. Alternatively, the Court might be asked to make assumptions as to the factual position that may prove to be misplaced on the real facts of some or all of the Claims. We do not consider that the trial of preliminary issues on assumed facts (which may be difficult to agree between the parties) is sensible, given that the material facts will differ from Claim to Claim (and have not even been identified in outline at this stage). Even the factual matrix relevant to the construction of the contracts at issue could differ from one period of time and one Claimant to another.

12.3 From the correspondence to date, it appears that the basic facts of the operation of Horizon and branches more generally are likely to be contested, requiring disclosure, witness statements and the cross-examination of appropriate witnesses. We also could not rule out the possible need for expert evidence on certain aspects of Horizon. In short, a preliminary issue trial would be a complex undertaking requiring considerable time and substantial cost. For the reasons touched on above, it would be of very uncertain value to Post Office and to at least some of the Claimants. The Claims (or many of them) would still require a substantive trial on liability issues, and the expense of a trial of preliminary issues would likely prove to exceed the value of the outcome of that trial, especially where the parties may seek to distinguish the facts and issues in their individual cases from the assumed facts on which the preliminary issues were tried.

12.4 There is also a very real risk of duplication of disclosure and evidence. For example, disclosure and factual matrix evidence in relation to training and support generally would likely need to be re-heard when dealing with specific cases.

12.5 Finally, it is difficult to see how the Court can make decisions on issues of construction in a vacuum. A judge will be being asked to decide on contractual provisions without knowledge of how those provisions may have an impact on the particular conduct which is actually alleged. It is undesirable for a Judge to be asked to consider the meaning of a contractual provision without knowing the factual context in which the competing constructions are advanced, including by reference to the nature of the alleged breaches of the relevant provision.

12.6 For all the above reasons, our client is not in a position to agree that the issues you propose should be tried as preliminary issues, or that they should be tried in the way you suggest, on the basis of incomplete "generic" Particulars of Claim. We believe that full pleadings should be

[16] It is unclear whether this pleading will also extend to crown employees and assistants, but even if this is correct, our position would be the same.

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produced before it can be decided whether it would be appropriate to try any preliminary issues and before any such issues can be selected.

12.7 To be clear, we are not insisting that each Claimant produces individual Particulars of Claim at this time. We can see scope for the Claimants' claims to be batched together and dealt with in group Particulars of Claim, with further Claimant specific information appended in detailed schedules. Our concern is to make sure that all relevant causes of action and necessary facts are pleaded for each Claimant, such that Post Office can understand and respond to the case against it and the Court can manage the Claims effectively in light of their content.

13. Criminal cases

13.1 At paragraph 199 of the Letter of Reply you propose we agree that all claims in which a Claimant has been convicted of a criminal offence relating to a shortfall be stayed. We have already pointed out that, in principle, malicious prosecution claims should be discontinued, but that our client would be willing to consider a stay, subject to your providing the information requested in section 10 above).

13.2 In our view, if a stay is to be imposed, it should be imposed after pleadings have closed. Pleadings are needed in order to identify those claims that should be stayed, as this is not a straightforward exercise. First, some of the Claimants were not convicted, but persons in their branches were convicted. There may still be an abuse of process argument in these cases. Second, given that you do not accept that raising a collateral challenge to the basis of a criminal conviction would necessarily involve an abuse of process, we need to know the details of the relevant Claims to assess any abuse of process arguments (including the nature and extent of contradiction between the facts underpinning the criminal conviction and the facts now asserted by the relevant Claimant). We anticipate that you may contend that, when dealing with a convicted Claimant, some of their claims may overlap with their conviction and some may not.

13.3 Please confirm that you agree with the above approach. If you do agree, we believe that this matter would be best addressed at the first CMC (not the GLO hearing).

14. Counterclaims

14.1 Post Office declines your invitation at paragraph 204 of the Letter of Reply to rely on its counterclaims only in the event the Claimants' claims succeed. Post Office does not agree that pursuing valid debts constitutes victimisation and it will plead such counterclaims as are properly open to it in the course of the litigation.

15. GLO

15.1 We welcome many of the changes you have made to the draft GLO, in particular your adoption of our proposed approach to the GLO Issues which now focus on those issues that are common to multiple Claimants. It is regrettable that it has taken several revisions of the draft Order for you to accept this crucial point.

15.2 Having reviewed your letter, our conclusion is that the GLO should be limited to only postmasters who are or were engaged under the Postmaster Contract (i.e. the Subpostmasters Contract 1994 edition, as amended) or other similar contract to operate a Post Office branch. On the information you have provided, our client is not prepared to agree to crown employees and assistants being part of the GLO on the grounds that (a) you have made no attempt to explain the claims of these individuals or the issues arising on those claims and (b) the legal relationship between these individuals and Post Office is completely different from the legal relationship between postmasters and Post Office.

15.3 We have also proposed a number of changes to the GLO Issues in Schedule 1. As raised in previous correspondence, the GLO Issues need to be common issues of fact or law as per CPR 19.10 and 19.11 and a number of the issues you have included do not appear to meet this criterion. Our alterations reflect our provisional views on the common issues we have been able to identify in your correspondence to date. We will further consider these issues once we have

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sight of your draft generic Particulars. If you accept our proposed approach to pleadings, then we envisage that these issues may need to be further revised after full pleadings have been provided.

15.4 We enclose a mark-up of your draft GLO, along with a comparison to the version circled with your Letter of Reply, and provide comments below by reference to amended numbering used in our enclosed draft Order unless otherwise stated.

15.4.1 Paragraph 1: We have made two substantive amendments. First, we have included a cross-reference to the GLO Issues, making it clear that the relevant claims must give rise to those issues, as required by CPR 19.10 and 19.11(2)(b). Second, we have included a description of the applicable Claimants (ie. only postmasters). We consider that it is important to make clear who may join the Group Action at the top of the Order.

15.4.2 Paragraph 8: We are content to include a definition of Lead Case. However, it should be made clear that the parties have not agreed that selecting a lead case is a satisfactory way to proceed.

15.4.3 Paragraph 13: In our last draft GLO we included the words "*All such future claims should be commenced by issuing new Claim Forms (whether individual or in batches).*" We have asked you to confirm on several occasions (in our letters of 1 September 2016 and 13 October 2016) that you agree with this approach but you have again not addressed this point in the Letter of Reply. Please now either accept this wording or explain why it is opposed.

15.4.4 Paragraph 16: We still oppose the loose wording "*or similar*". Our client communicates every day, often by letters and emails, with postmasters regarding matters that are similar to the subject matter of the GLO. Expanding this paragraph would place an onerous burden on our client to monitor hundreds, if not thousands, of routine communications during the life of the GLO in case they fell under this paragraph and, in cases of error, would expose our client to the risk of unfair accusations of contempt of court. By contrast, any Claim Forms or Letters of Claim are already routed to our client's internal legal team and can be readily disclosed to you.

15.4.5 Paragraph 17: We have added an extra piece of information to be shown on the Group Register: the date in which the Claimant operated their branch. This is because there may be two or more separate Claimants who have operated the same branch and these dates will help distinguish them.

15.4.6 Paragraph 19: We maintain that the Group Register should be updated monthly and provided within 7 days thereafter. This is not an onerous task. We also do not understand why it would take 14 days to provide the updated Group Register to our client – is this not just a matter of attaching the register to an email?

15.4.7 Paragraph 23: A monthly updated register is not onerous. Please be cooperative and agree that the progress of this litigation should be promptly recorded.

15.4.8 Paragraph 26: This has been amended to bring it in line with paragraph 1 and to avoid duplication of wording.

15.4.9 Paragraph 27: We have added the "statement of truth" wording which we believe is agreed but appears to have been accidentally omitted in your draft Order.

15.4.10 Paragraph 28: Your wording around "*consent not being unreasonably withheld*" is not accepted. Please provide evidence that this wording is "*entirely standard*"[17]. Please also address the point we have made previously that this wording circumvents the usual Court rules on managing extensions of time. We also do not see why this deadline should have a special regime for extending time.

[17] Paragraph 207 (19), Letter of Reply

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15.4.11 Paragraphs 30, 31 and 32: Your proposed "generic" pleadings are not agreed for the reasons stated above. We have proposed new wording and timings for your consideration.

15.4.12 Paragraph 33: We do not accept your cost sharing provisions. Please see our more detailed comments below.

15.4.13 Paragraph 34: We have made a few small changes to this paragraph to make clear that the advertisement in Schedule 4 is the only form of advertising that is permitted; otherwise this clause is otiose.

As amended, this paragraph envisages the parties agreeing the distribution channels for the advertisement. Please could you provide your proposals in this regard so that we may try to agree them now, thereby avoiding any delay. Also, should there be any disagreement, then this could be resolved by the Court in January.

15.4.14 Paragraph 34 (using the old numbering on your draft of the GLO). This is the paragraph that required our client to provide lists of possible Claimants. For the reasons stated in previous correspondence, this paragraph is not accepted and has been deleted.

15.4.15 Paragraph 35. The subject matter of the GLO was highly publicised before the current claims were started. Post Office ran and publicised a mediation scheme, there was coverage in the national press and debates in parliament and the JFSA has been actively seeking members for years. Further, your firm has been involved in this matter and seeking clients for more than a year. There is therefore no need for the GLO window to be open for 6 months. This will cause unnecessary delay. We propose 3 months, to the end of April 2017.

We also cannot envisage any steps that could be taken in 6 months that could not be completed in 3 months. Please could you explain why 6 months is needed.

15.4.16 Paragraphs 38 and 39: We have made provision for a CMC after pleadings have been finalised. We still do not understand the need for a second CMC to be listed at this stage and in any event the parties can apply to the Court for further directions if necessary.

15.4.17 Schedule 1 (comments below refer to the old numbering on your draft of the GLO):

(a) Footnote 1 is not accepted for the reasons stated above.

(b) Issue 1(K) has been deleted. It is not acceptable to include an imprecise "catch-all" provision when the GLO Issues are supposed to only reflect common issues of fact or law.

(c) Issue 4: This paragraph makes no sense and, in any event, is unhelpfully broad and has been deleted. Despite the lack of information you have provided on the issues of "economic duress" or "unconscionable dealing", these issues appear to be fact specific to individual Claimants and not be common issues.

(d) Issue 5: You have confirmed that you are not asserting that there was a systemic issue in Horizon that affected all the Claimants. The factual operation of Horizon is not therefore a common issue and this paragraph has been deleted.

(e) The issue raised in (7) is extremely vague and is likely to be duplicative of other issues (e.g. issue 6) or be specific to individual cases. It has been deleted.

(f) Issue 8, 9(a) and 10(a): These issues have been deleted. They focus on Post Office's "policy" or "standard practice" in relation to training, support and investigations. However, over and above the instructions you have suggested

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(i.e. the instructions referred to in Issues (9) and (10)), it has not been alleged that there has been a single policy or standard practice applied to these matters. Moreover :

(i) Horizon has been active for 16 years and over that time training and support have been frequently updated.

(ii) The breadth of topics covered by Post Office's training and support is very wide. Many parts will have no bearing on the Claimants' cases.

(iii) Even within those elements that could be relevant, until the Claims are fully pleaded it is not known which parts of Post Office's training or support will need to be examined and to how many Claimants that examination would benefit.

(iv) Even if similar threads could be identified, dealing with these issues in the abstract would not be helpful. The application of training and support to individual Claimants in light of their specific complaints is needed in order to dispose of these issues. We cannot see how a hypothetical factual enquiry will be useful.

(g) Issue 11 (harassment) is not a common issue but one that is factually sensitive. It has been deleted.

15.4.18 Schedule 3: As this letter was being finalised, we received your letter of 30 November enclosing a new Schedule of Information. Dealing with the elements of GLO in this ad hoc manner is not helpful - you could have provided this new Schedule with your letter in October. It is less helpful still that you have provided it under cover of a letter accusing us of having not behaving cooperatively – which we do not accept. We were intending to provide a mark-up of Schedule 3 with this letter but will now review your new draft and revert to you as soon as possible.

15.4.19 Schedule 4: Please find enclosed a marked-up version of the advertisement.

15.5 In relation to the cost sharing provisions in the GLO, the provisions at paragraph 32 of your draft GLO are very confusing and, at times, illogical and unworkable. For example:

15.5.1 The definition of "Costs" refers to CPR 43.2 which concerns the scope of the costs rules and applicable definitions before 1 April 2013. As explained in CPR 48.1, the provisions in CPR 43 relate to pre-commencement funding arrangements as they were in force immediately before 1 April 2013. It is unclear why these provisions are applicable to a matter commenced in 2016 or why the date 1 March 2013 has been referred to in 32(a).

15.5.2 Throughout this section there is reference Lead Cases. To date, you have not proposed any Lead Case and accordingly we have not agreed any Lead Cases. Indeed, there may never be any Lead Cases, in which case these provisions would be unworkable.

15.5.3 Even if there were Lead Cases, it is not understood why the assessment and payment of costs to our client should be deferred until after the conclusion of those Lead Cases - see 32(f)(7) and 32(f)(8).

15.5.4 You appear to have allocated costs associated with Lead Cases to both Individual and Common Costs – even if we were to accept Lead Cases, their respective costs could only fall into one pot or the other.

15.5.5 In 32(f)(2) the first accounting period is stated to run from 1 October 2015, yet in 32(f)(3) the first accounting period is stated to run from 1 January 2017.

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15.5.6 We also do not understand why the first accounting period runs from either 1 October 2015 or 1 January 2017 – neither of these dates have any particular significance.

15.5.7 Paragraph 32(f)(8) refers to "Common Issues" but this term is not defined.

15.5.8 In relation to 32(h), we do not understand why your firm should have a veto over our client's ability to recover costs incurred in dealing with another firm of solicitors acting for certain Claimants.

15.6 Putting aside the above drafting issues, more fundamentally, we do not believe that the parties are yet in a position to set out a prescriptive regime for costs sharing:

15.6.1 First, the course of this litigation is far from clear, as we have explained in the rest of this letter.

15.6.2 Second, this Group Action does not lend itself to the usual binary distinction between common and individual costs. There are dozens of sub groups in this litigation already which militates towards giving the Court more discretion to deal with costs questions on an issue by issue basis. For example:

(a) If your formulation of the GLO Issues were accepted, there would be three distinct groups of Claimants: postmasters, employees and assistants.

(b) Within these groups there would then be sub-groups of Claimants facing particular procedural issues, e.g. where they are subject to criminal convictions, settlement agreements, limitation defences, etc.

(c) It is far from clear that all the Claimants will raise all the substantive issues raised in your correspondence. Indeed it is highly likely that they will not or cannot.

15.6.3 Third, if you accept the points raised in our letter of 8 November 2016 regarding security for costs, then all the costs of this action will flow between Post Office on the one hand and Therium / your client's ATE insurers on the other hand. This may well eliminate the need to draw a distinction between common and individual costs, as no particular individual Claimant will actually be paying either your firm's or our client's costs.

15.7 We therefore propose that the default costs provisions in CPR 46.6 apply for now, with the matter reviewed at the first CMC. Our proposed drafting reflects this.

PART C: OTHER MATTERS

16. Document requests and preservation

16.1 In the Letter of Reply you request a wide range of documents. In our letter of 13 October 2016, we set out in detail the extensive disclosure exercise required in order to provide the documents you have sought. Since you have not particularised the claims brought by each individual Claimant and when each cause of action is alleged to have arisen, Post Office is unable to target any searches for documents towards categories of documents which are relevant. Therefore, giving disclosure at this early stage in the litigation process would be massively inefficient and wasteful of time and costs. The proportionality of giving such disclosure also cannot be assessed as you have not valued your client's claims.

16.2 By way of example, at paragraph 125 of the Letter of Reply you request that Post Office provides the training records for all of the named Claimants, or alternatively, the records in relation to the first 25 named Claimants. It may not be the case that all of the 198 Claimants' claims are based on the grounds of inadequate training being provided and therefore the training documents may not be relevant to all Claimants. It would be disproportionate and unreasonable to provide documentation which is irrelevant to the matters in dispute. Once an explanation has been provided as to which Claimants are bringing a claim under this head and why this level of

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documentation is required at this early stage in the proceedings then Post Office can consider whether it is reasonable and proportionate to provide the documents. In the interim, we refer you to the Part 1 Mediation Briefing Report which sets out the training provided by Post Office and how this has evolved.

16.3 A further example is at paragraph 20 where you state that you "*have not asserted a systemic flaw*" in Horizon. Despite this clarification, at paragraph 113 you repeat your request that we provide internal notes, memoranda, correspondence, emails and briefing documents regarding errors, bugs or problems in the Horizon system. On the basis of your assertion there is no systemic flaw in Horizon your request is disproportionate and unjustified.

16.4 Whilst we have only highlighted the two above examples, they reflect Post Office's general inability to assess whether the documents requested are properly disclosable, proportionate and reasonable in relation to the claims. Once particularisation of the individual Claimants' claims have been provided so as to allow Post Office to understand the documents which are relevant to each Claimant, Post Office will be in a position to begin to assess the provision of these documents. This is of course the usual way that litigation is conducted – pleadings are provided first and then disclosure is given.

16.5 At a number of points in your Letter of Reply, you say that you are unable to particularise your clients' claims without further disclosure. We do not accept that this is correct. For example, you have refused to explain your clients' claims in relation to training until training records are disclosed.[18] However, your clients will be able to say what training they received and why they considered it deficient. This is information within your clients' knowledge and can be provided now without disclosure being given. Instead, you seem to be asking our client to incur costs in order to avoid the need for taking instructions yourselves. This dynamic applies to many of the issues you raise and is inappropriate.

16.6 We refer to your query about whether Post Office has informed Royal Mail and Fujitsu of the need to preserve documents in relation to your litigation.[19] Post Office is aware of its disclosure obligations however, Royal Mail and Fujitsu are third parties to this litigation and are not themselves under Post Office's control. Due to the lack of particularisation and absence of pleadings, we do not yet know what the scope of disclosure is. To the extent either Royal Mail or Fujitsu have documents which are under Post Office's control, Post Office will act appropriately.

17. Access to Second Sight

17.1 As explained in our letter of 13 October 2016, the proposed Protocol should ensure that any legally privileged information which is held by Second Sight remains protected and that the privacy of postmasters who are not Claimants is not infringed. Post Office has only sought to avoid appreciable risks and we do not believe that it unduly fetters your access to Second Sight. We maintain that the Protocol represents a reasonable way to proceed and that as the lead solicitors for the Claimants you should be bound to the Protocol.

17.2 Due to the role played by Alan Bates and the fact that a number of the Claimants participated in the Mediation Scheme, Post Office are proceeding on the basis that you have access to the many documents which were generated by Second Sight. If this is not the case, please identify which documents your clients do and do not have. Assuming it is the case, the only information which is available from Second Sight and you have not had access to is the information stored in the minds of the persons working for Second Sight which was not considered sufficiently important to be worth including in their various reports.

17.3 This being the case, we find it difficult to see the benefit to your clients in having access to Second Sight, given that anything significant will have been included in their reports. We are concerned that money and time may be wasted on this issue.

[18] Paragraph 124, Letter of Reply
[19] Paragraph 215, Letter of Reply

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17.4 Nonetheless, you wish to communicate with Second Sight and our client does not seek to prevent this, even though it is under no obligation to waive any of its rights as regards Second Sight. Your proposal of an independent solicitor is not workable as that solicitor, who will have no understanding of this matter or Post Office, would not be able to reliably identify our client's privileged material, particularly in the course of any live and free flowing discussions you may have with Second Sight. This would also place on Second Sight the burden of filtering out privileged material and we would be surprised if they were prepared to take on such a heavy burden.

17.5 We have therefore reviewed the objections you have raised to the Protocol contained in our Letter of Response and amended the Protocol with a view to achieving a workable consensus. Please find enclosed a revised version of the Protocol incorporating some amendments, including removing the bar on the Claimants seeking Court orders that challenge the Protocol and removing the indemnities sought from your firm.

17.6 We hope that this matter can now be agreed. If you do not accept our revised Protocol, please confirm by return whether you intend to raise the issue of access to Second Sight at the hearing in January 2017, since we will need to address this in our evidence.

18. Claim Form amendments application

18.1 You say in paragraph 221 of your Letter of Reply that our client's conduct in relation its application under CPR 17.2 has been unreasonable. We disagree, for the following reasons:

18.1.1 You amended and served the Claim Form on 5 August 2016 without reference to us, notwithstanding that we had already (in our letters dated 1 July 2016 and 15 July 2016) raised the point that some of the existing and anticipated claims were (or would soon be) time-barred.

18.1.2 You chose to make the amendments without acknowledging that some of them, unless disallowed through an application under CPR 17.2, would have the effect of depriving our client of any limitation (or similar) defences arising after the date of the original Claim Form but before the service of the Amended Claim Form. This is the result of "relation back" under the Limitation Act 1980. You have asked on what basis we assert that the Court may not prevent the doctrine of relation back taking effect. Please see section 35 of the Limitation Act 1980, which imposes mandatory rules (reflected in CPR 17.4 and 19.5) from which the Court may not depart.

18.1.3 As soon as you served the Amended Claim Form, we explained that our client's position appeared to be prejudiced by the doctrine of relation back, we invited you to issue a new Claim Form for the relevant claims and we pointed out that, under the mandatory rule CPR 17.2, our client had only 14 days from the service of the amended Claim Form to oppose the amendments. We also noted that any delay in issuing a new Claim Form was at your clients' own risk.

18.1.4 You did not reply until 17 August 2016 (following our request that you provided us with a response), only two days before the CPR 17.2 deadline expired. In your letter of that date, you claimed that our client had no basis for opposing the amendments, and refused to contemplate any change to your clients' position. Significantly, you made no proposal to address any prejudice our client might suffer as a result of relation back, you did not suggest that the parties should discuss the matter further with a view to achieving a compromise that was fair to both sides, and you did not even offer any extension of the CPR 17.2 deadline.

18.1.5 In those circumstances, it was not merely reasonable for our client to issue its application on 19 August 2016 but in the light of your clients' uncompromising position it was the only course that our client could sensibly take to protect its position.

18.1.6 Since then, your clients have not conceded the application or demonstrated that it was unnecessary. On the contrary, they continue to oppose the application. However, you

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have now proposed what you say is a practical compromise that would save your clients the cost of paying the Court fee that would be due had they issued a new Claim Form as they should have done. We have previously stated in our letter of 1 September 2016 that this is not a good reason in circumstances where your clients have the benefit of litigation funding and the issue of the new Claim Form amounts to less than £100 per a new Claimant.

18.2 It is in this context that your clients demand that Post Office provide its agreement to a Consent Order. We have made clear that, in our view, the Court cannot properly make (or at any rate effectively make) the kind of order that is being proposed. Notwithstanding that the Consent Order confirms that the parties have agreed that the commencement date for the purposes of limitation is to be treated as 3 August, we note that section 35(1)(b) of the Limitation Act 1980 provides that the commencement date should be the date on which the Claim Form was originally issued (namely, 11 April 2016). You do not dispute that there is a risk that the Consent Order may fail (because, as we have suggested, the Court may consider itself bound to apply section 35(1)(b) despite the proposed agreement between the parties).

18.3 At paragraph 222 of your letter, you make clear that your clients' position is that this risk should rest with our client and that your clients should have the benefit of certainty. On any view, the risk is substantial, but there is no justification for exposing our client to any risk of any sort in connection with your clients' exposure to the expiry of limitation periods. Post Office is entitled to, and does, assert its right to the preservation of any limitation (or other similar) defences that accrued after the date of the original Claim Form and before the service of the Amended Claim Form.

18.4 It is for your clients to ensure that Post Office is not prejudiced by the amendments that they have unilaterally made, especially given that there is an obvious alternative course that would preserve Post Office's right to assert limitation defences, namely your clients bringing the new claims within a new Claim Form. This is what the Court requires where amendments could otherwise deprive the defendant of a limitation defence.

18.5 We therefore do not accept that our client's conduct has been unreasonable, and nor do we accept that it should be put to any risk of prejudice as a result of your clients' decision not to serve a new Claim Form, as is the proper practice.

18.6 Nonetheless, our client has from the outset made clear that it would consider any practical compromise that would not jeopardise its ability to pursue its limitation (or similar) defences.

18.7 In these circumstances, although it is not obliged to do so, our client is willing to make one last effort at compromise. We attach a draft agreement that we think could provide our client with the protection to which it is entitled. By the draft agreement, our client seeks to obtain the same protection it would have been provided if your clients had on 3 August 2016 issued a new Claim Form containing the new claims. We invite your clients to agree the terms of this draft agreement. Given that our client is entitled to the preservation of all its limitation (or other similar) defences, it would not countenance any substantial departure from these terms, or from the order as to costs discussed below.

18.8 The draft agreement is between the Claimants, as per the Amended Claim Form, and Post Office. We assume that on the basis of the solicitor – client relationship between yourselves and the Claimants that you have authority as their agent to sign such an agreement on behalf of the Claimants. However, please provide confirmation of this and details of any decision making governance structure through which such authority is obtained.

18.9 If these terms can be agreed, we would propose to have (in addition to a signed agreement), a Consent Order referring to such agreement and recording the discontinuance of the CPR 17.2 application. As for the costs of the application, as a matter of principle, our client should have all the costs it has incurred in seeking to deal with the difficulties caused by your clients' decision to unilaterally amend their Claim Form, and their uncompromising stance once those difficulties were explained to them, despite the need to make the application being evident from the draft Consent Order which you provided. This would include our client's costs in making its application,

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of our subsequent correspondence and of drafting the attached agreement. However, if the terms of that agreement are all agreed without the need to incur any further costs, our client would be prepared to consider an order under which they have their costs of preparing and issuing the application, to be assessed if not agreed, and the other costs are reserved.

19. Non-Victimisation

19.1 Your Letter of Reply is the first time you make explicit reference to employees and contractors of Post Office and Fujitsu who may be assisting the Claimants. We are not aware of who these people may be or what they may be doing. It is not our client's intention to "*victimise*" any person merely because they are involved in this litigation. Our client has from the outset sought to engage constructively in resolving the subject matter of the Claims, and it has already spent considerable amounts of money providing information and documents to your clients (including information and documents that they should have been able themselves to provide).

19.2 Our client does not, however, agree to give up in advance any rights it may have to take appropriate steps to restrain any breach of duties owed to it by any third parties, including duties of confidentiality. Nor can it be expected to do so. If and to the extent that any such breaches have taken place, Post Office reserves its rights. Your clients have no doubt already been advised as to any potential liability for any steps wrongfully taken to procure any breaches of contract and/or confidence.

20. Security for costs

20.1 We shall respond separately to your letter of today's date on security for costs.

21. ADR and next steps

21.1 Post Office is open to alternative dispute resolution proposals. However, until sufficient details are provided so as to understand the Claims being brought by each individual Claimant, when and how these causes of action arose and the value of the loss allegedly suffered, the parties are not in a position to meaningfully approach any form of alternative dispute resolution. We cannot see how a further mediation at this point would have any prospect of success. We consider that the appropriate stage at which to revisit the possibility of mediation or other ADR is after full Particulars of Claim have been served which properly set out who is claiming what and how much.

21.2 In terms of the provision of evidence for the hearing in January, we agree with your proposals in your letter of 11 November 2016 subject to you providing:

21.2.1 your draft "generic" Particulars of Claim by 1 December 2016 as per your previous commitment; and

21.2.2 a reply to the various procedural matters raised in this letter (namely sections 12,13, 15, 17 and 18) by 8 December.

21.3 Any delay in providing these two documents may delay the provision of our evidence until the New Year.

21.4 We should be grateful if you would submit your evidence in two statements: one in reply to our evidence in respect of the GLO and a second statement in relation to our application regarding the Claim Form amendments. As these are two separate applications, it makes sense to keep the evidence separate. We trust that you do not object to our client filing any further supplemental statement in reply to your evidence on the Claim Form amendments by 19 January 2016.

21.5 As we have stated previously, we and our client remain prepared to meet with you and your clients to discuss this litigation if it would help progress matters expediently.

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Yours faithfully

GRO

Bond Dickinson LLP

Enclosures

1. Draft GLO (clean and tracked versions)
2. Invitation / Publication to join GLO (tracked version)
3. Agreement in compromise of the application under CPR 17.2
4. Protocol governing Second Sight's interaction with Freeths (clean and tracked versions)

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FREETHS

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30 November 2016

Our Ref: JXH/1684/2113618/1/KL
Your Ref GMR1/AP6/364065.1369

By DX and Email Andrew.parsons@GRO

Dear Sirs

BATES & OTHERS -V- POST OFFICE LIMITED
CLAIM NUMBER: HQ16X01238
SCHEDULE OF CORE INFORMATION

We write to you in relation to Schedules of Information, and valuation of the claims.

We have asked you on a number of occasions to provide us with your proposals in relation to Schedule 3 of our draft GLO, which is the draft Schedule of Information for each Claimant.

On 11 October 2016 we explained that we intended to gather information from our existing claimant group in good time in advance of the GLO hearing, therefore it was important for you to let us know what, if any, information you considered should be required additional to that which we had proposed. We again referred you to this point in our Letter of Reply dated 27 October 2016 at paragraph 207(30).

Save for your comment that information gathered from each Claimant should be "much more extensive" (see paragraph 10.14 of your Letter of Response dated 27July 2016), you have provided no substantive comments on this issue.

Despite your lack of substantive engagement, we have taken account of your requirement for a much more extensive Schedule, and accordingly propose the attached updated draft. The costs of gathering this more detailed information will obviously be much more substantial than the costs of gathering the more limited information we initially proposed to you.

It is necessary for us to start contacting our Claimant group very soon so that the Schedules of Information can be further progressed. Please let us have any reasonable proposals as to any further information you say should be included in the Schedule, so that we can ensure the process of gathering information from our Claimant group is as efficient as possible.

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Your letter of 17 November 2016 asked us to provide an approximate valuation of the claims. We intend to gather information relating to loss in accordance with the draft Schedule attached. We will address Claimant losses in our witness statement provided before the GLO hearing, relating to those Claimants that we have been able to contact in the time available.

Yours faithfully

GRO

Freeths LLP
Please respond by e-mail where possible

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1 December 2016

Our Ref: JXH/1684/2113618/1/KL
Your Ref GMR1/AP6/364065.1369

By DX and Email Andrew.parsons@ GRO

Dear Sirs

BATES & OTHERS -V- POST OFFICE LIMITED
CLAIM NUMBER: HQ16X01238
DRAFT GENERIC PARTICULARS OF CLAIM

Please find attached draft generic Particulars of Claim, which we agreed to provide you with by today.

Please note, we have deliberately not enclosed the attachment referred to (namely the 1994 Subpostmaster Contract), as this document is already in circulation between the parties.

To the extent necessary, we will respond separately to your letter received after close of business yesterday in due course.

Yours faithfully

GRO

Freeths LLP
Please respond by e-mail where possible

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8 December 2016

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For the Attention of Mr J Hartley
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By email only

Email: james.hartley@ GRO

Dear Sirs

Bates & Others -v- Post Office Limited
Claim Number: HQ16X01238
Draft Generic Particulars of Claim and Schedules of Core Information

1.1 We write further to your letters of 30 November 2016 and 1 December 2016 under cover of which we were provided with drafts of your proposed Schedule of Core Information (**SOCI**) and "generic" Particulars of Claim.

1.2 As stated in our letter of 30 November 2016, we had hoped to receive meaningful detail of the Claims made by your clients well in advance of the hearing in January 2017 in order that we could properly to understand those Claims. This would then have allowed us to cooperate more effectively in seeking to agree how the Claims should be categorised and how pleadings should be organised and formulated, as well as seeking to agree possible directions for lead/test cases and/or preliminary issues. Regrettably, your draft "generic" pleading and your draft SOCI, like your previous correspondence, do not provide the necessary information.

1.3 We are also concerned that you appear only now to be gathering information from your clients in circumstances where (i) you have been instructed for over a year and (ii) you have signed a Claim Form with a statement of truth.

1.4 We address below our views and concerns with your proposed approach and draft documents, and then set out our suggested way forward.

2. Your draft SOCI and "generic" POC

2.1 As we stated in our letter of 30 November 2016, the resolution of issues in the abstract will not assist the overall resolution of this matter. As we have tried to make clear in our correspondence with you, we and the Court need a proper understanding of the alleged facts underpinning each claim in order to have a proper understanding of (i) the issues in dispute, (ii) the relative significance and substance of those issues and (iii) how best to resolve them.

2.2 Even if a judge were to determine questions of construction in the abstract as you suggest, these "generic" determinations will need to be revisited at a later date so as to determine whether and, if so, how they apply in each individual case. For example, it would remain open to the parties to seek to distinguish the factual matrix of any specific case from the assumed factual matrix on which the "generic" issues would be determined. It would also be open to the parties to argue

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that the abstract requirements of any "generic" term implied by the court have or have not been met in any particular case.

2.3 We do not accept that it is feasible to use your proposed "generic" Particulars of Claim to determine some issues in the abstract, but even if it were feasible, it would be a substantial undertaking, involving a lengthy trial with significant oral evidence. After incurring considerable cost and time in arriving at various "generic" determinations, substantial issues would remain outstanding between the parties, and further pleadings, evidence and trials would be needed to resolve those issues.

2.4 We are also concerned by your proposed interplay between the SOCI and your "generic" Particulars of Claim. The usual purpose of a SOCI is to contain sufficient information for Claimants to be identified and the essential features of their claims to be understood, thereby making it possible to determine whether a Claimant should be part of the Group Action. It can also be a useful tool for case management. So far as we can tell, your approach is based upon the supposition that, for a considerable time at least, the SOCI should stand in the place of proper pleadings. If that is your approach, we disagree with it.

2.5 As to your "generic" Particulars of Claim, there are numerous problems with your draft pleading. Indeed, it is not really a pleading at all. For example (and these are only examples):

2.5.1 Most fundamentally, the draft pleading does not identify which of the Claimants rely on which of the pleaded matters. Indeed, the word "*Claimants*" is used throughout when clearly it is intended to refer in some places to only some Claimants (who are unidentified) and in other places to other Claimants (who are also unidentified). Quite apart from making the "generic" Particulars of Claim difficult to follow, this means that we cannot tell which categories of Claimants will actually be affected by any "generic" findings that might ultimately be made.

2.5.2 The "generic" Particulars of Claim are ambiguous, or worse silent, on crucial issues around the legal relationship between Post Office and the Claimants.

(a) The draft pleading makes no attempt to address the contractual position of Crown Office employees or assistants, but we presume that you still maintain that these individuals should be included in the GLO.

(b) The draft pleading proceeds on the assumption that all the subpostmasters for whom you act are or were parties to the 1994 standard contract, when that contract has been all but phased out by Post Office over the last 4 years. The current suite of standard contracts (of which there are several variations, sub-agreements and addendums) are significantly different. Even before this change, there were several different types of contract used by Post Office (as we have explained to you previously). Your draft pleading does not address these different contract models.

(c) The draft pleading says that there was a "*true agreement*" between subpostmasters and our client. We assume, based upon allegations made in your letter of 27 October 2016, that this "*true agreement*" is based on the factual premise that subpostmasters did not see, and therefore were not bound by, our client's standard contract. However, this is not actually alleged in the generic Particulars of Claim. See paragraphs 46 of the "generic" Particulars of Claim, which avoids making a positive case about this.

(d) Paragraph 44 et seq appears to allege that the Claimants entered into the 1994 standard contract but in some (or perhaps all) cases particular clauses in that contract should be disregarded (for example, the clauses dealing with termination). The draft pleading is ambiguous as to which clauses should be disregarded and, if they are so disregarded, what precise rights and obligations should be substituted in their place.

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2.5.3 The pleadings at paragraphs 20 and 46 are a nonsense. As Claimants, your clients must assert a positive case in relation to (i) whether they were aware or not of the possibility of suspending amounts that were settled centrally and (ii) whether they saw the contracts by which they agreed to be bound. They cannot just say that these factual matters are 'not admitted'.

2.5.4 The draft pleading is riddled with extremely vague concepts and language. For example:

(a) Paragraph 7 is entirely unclear. Are your clients or any of them alleging that they are or were in fact employees of our client?

(b) Paragraph 28 – what does "*impliedly led to believe*" mean?

(c) The list of "*indicative*" breaches in paragraphs 60 et seq is entirely unhelpful. Even if they were not merely "*indicative*" (whatever that means), the breaches are summarised in such a broad-brush way that it is near impossible to make out the specific acts or omissions which will ultimately be relied upon.

(d) Paragraph 74.5 provides that Post Office's conduct has "*otherwise breached one or more of its specific duties in contract, tort and/or fiduciary duty*" but fails to identify which specific duties have been breached in relation to each action complained of.

2.5.5 Many of the elements of particular causes of action have not been pleaded:

(a) The allegation of harassment in paragraphs 75 to 77 is hopelessly non-specific.

(b) This is also true of the allegations of deceit made in paragraph 80. These cry out for proper particulars. None are given.

(c) Similarly, the attempt to allege unlawful means conspiracy in paragraphs 85 and 86 is deficient.

2.6 None of the above deficiencies in your "generic" Particulars of Claim are resolved by the SOCI. The SOCI you have proposed would not provide anything like enough detail to satisfy the requirements of CPR 16 or enable our client to understand the claims it has to meet. For example:

2.6.1 The "yes/no" nature of the questions will not elicit the allegations of fact on which your clients intend to rely.

2.6.2 The SOCI does not even purport to be a full or exhaustive list of the claims made against our client or of what are alleged to be the essential ingredients of those claims.

2.6.3 Your SOCI does not ask any questions about the allegations of fraud, deceit and conspiracy.

2.6.4 There are number of important matters that are not covered by the SOCI, for example:

(a) Which (if any) specific standard Post Office contract is relied on by which Claimants?

(b) Whether a Claimant asserts that he/she did not see such standard contract before accepting his/her appointment or at any other time?

(c) Whether a Claimant asserts that he/she was not bound by such standard contract and, if so, on what terms does that Claimant say that he/she was appointed?

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2.6.5 There are no questions regarding breach. For example, in relation to training, there is no question addressing the alleged deficiencies in Post Office's training provided to each Claimant and how that training was inadequate.

2.6.6 The SOCI gives no information about causation. For example, how did an alleged breach of duty in relation to training cause (a) a shortfall, (b) termination and (c) loss?

2.7 Your approach also raises practical difficulties. The sequence of steps provided for in your proposed GLO would require our client to serve a "generic" Defence by 18 May 2017. However, Claimants may file SOCIs up to 28 days after the GLO window closes, which you say should happen in August 2017. Our client is entitled to understand the cases it is facing before it is required to file a Defence.

3. An alternative approach

3.1 As we explained in paragraph 12 of our letter of 30 November 2016, we do not think that "generic" Particulars of Claim represent a sensible vehicle for resolving the issues arising in this case, and this view is reinforced by the draft "generic" Particulars of Claim and the draft SOCI that you have now provided. A clear articulation of the claims a defendant is facing is the cornerstone of any fair litigation process. Your "generic" Particulars of Claim and SOCI (even if this could stand in place of a pleading) simply do not provide our client with a clear statement of the claims made against it.

3.2 We therefore maintain that full pleadings should be produced. We repeat that we are not suggesting that each Claimant produces individual Particulars of Claim at this time. There may scope for the Claimants' claims to be batched together and dealt with in group Particulars of Claim, with further Claimant specific information appended in detailed schedules. There may be scope for more than one group Particulars of Claim, but on the information you have so far provided about the various claims made by your various clients, we are not in a position to identify the different groups of Claimants for whom it would be useful to have their own pleading. But whether this is the case or not, our client needs and is entitled to a level of information about the claims made against it that complies with CPR 16.

3.3 If you are prepared to agree to this, then we believe that a significantly shorter version of the SOCI could be used. Please find enclosed a draft for your consideration. This is based on the original version of your SOCI, with our amendments shown on top.

4. Timing of correspondence and evidence

4.1 We had asked that you provide a response to our letter of 30 November by no later than 8 December. This would have afforded us the opportunity to consider your response before submitting our evidence on 22 December. You now say (in your letter of 7 December) that you are unable to meet this deadline and will provide a response one week later on 15 December.

4.2 If you do not provide a response until 15 December, we believe that there is a significant risk that we will be unable to prepare and serve our client's evidence before Christmas as key personnel at our client will be unavailable in late December. We would therefore urge you to respond as soon as possible and by no later than midday on Monday 12 December 2016.

Yours faithfully

GRO

Bond Dickinson LLP

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FREETHS

Andrew Parsons
Bond Dickinson LLP
DX Southampton3

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

12 December 2016

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

By email only: andrew.parsons GRO

Dear Sirs

BATES & OTHERS -V- POST OFFICE LIMITED
CLAIM NUMBER: HQ16X01238

We write further to our letter dated 7 December 2016 in relation to the general categorisation of Claimants as Subpostmasters or otherwise.

The vast majority of Claimants are or were Subpostmasters as your client is aware.

You have not disclosed any of the documents held by your client which record the basis on which individual Claimants were engaged by Post Office, and we will be writing to you further about this issue shortly.

However, on the basis of the records and information we have obtained from our clients to date (prior to the process of gathering information for the Schedules of Information), the position is that:

1. Two Claimants (Ms Nichola Arch and Ms Tracy Banks) were employed as Crown Office employees.

2. Five Claimants (Mr Kamran Ashraf, Ms Carol Bains (also operated in a Subpostmaster role), Mrs Marion Holmes (the personal representative of Peter Holmes (deceased)), Ms Sarah Javed and Mr Damian Owen) were engaged as assistants or branch managers.

3. There are a further three Claimants in respect of whom we are carrying out further enquiries (Mrs Mamonah Khan, Mr Mario Lummi and Mr Dermot Lynch).

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4. Two Claimants (Dr Seifudin Nazarali Kutianawala and Mr Vijay Parekh) established companies for the purpose of entering into franchise agreements with Post Office and themselves entered into personal guarantees with Post Office.

See the below table regarding points 1, 2 and 3 of this letter for your reference:

No	Title	First Name	Surname	Branch Address	Position
1 (No. 8 Amended Claim Form)	Ms	Nichola	Arch	Chalford Hill Sub Post Office	Crown Office Manager
2 (No. 10 Amended Claim Form)	Mr	Kamran	Ashraf	Hampstead Heath Sub Post Office London NW3 2QB	Branch Manager
3 (No. 13 Amended Claim Form)	Ms	Carol	Bains	Branch 1: 66-68 Whinney Lane Streethouse, Pontefract WF7 6DJ Branch 2: 91- 93 Station Lane Featherstone WF7 5BJ	Operated in Subpostmaster role at Branch 1 and Branch Manager at Branch 2
4 (No. 16 Amended Claim Form)	Ms	Tracy	Banks	25 Denmark Hill Camberwell London SE5 8RT	Crown Office Manager
5 (No 75 Amended Claim Form)	Mrs	Marion	Holmes (the personal representative of Peter Holmes (deceased))	Jesmond Post Office St George's Terrace Jesmond Newcastle upon Tyne Tyne and Wear NE2 2SY	Branch Manager
6 (No. 86 Amended Claim Form)	Ms	Sarah	Javed	7-9 Broomhouse Market Edinburgh EH11 3UU	Assistant
7 (No. 98 Amended Claim Form)	Mrs	Mamonah	Khan	9 North Gower Street Glasgow G51 1PW	Further enquiries underway
8 (No. 109 Amended Claim Form)	Mr	Mario	Lummi	Branch 1: Mount Florida Post Office 4 Clincart Road Glasgow G42 9DJ Branch 2: Bothwell Post	Further enquiries underway

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				Office 34 Main St Bothwell Glasgow G71 8EY	
9 (No. 110 Amended Claim Form)	Mr	Dermot	Lynch	Clanabogan Post Office Clanabogan Road Omagh BT78 1SN	Further enquiries underway
10 (No. 128 Amended Claim Form)	Mr	Damian	Owen	Glanadda Post Office 247 Caernarfon Road Bangor LL57 4SB	Branch Manager

We will write to you further in relation to your letters of 30 November and 8 December 2016 by this Thursday 15 December 2016.

Yours faithfully

GRO

Freeths LLP
Please respond by e-mail where possible

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FREETHS

For the attention of Andrew Parsons
Bond Dickinson LLP
DX Southampton 3

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By DX and email:
Andrew.parsons@ GRO

15 December 2016

Our Ref: JLH/1684/2113618/1/OR
Your Ref AP6/364065.1369

Dear Sirs,

BATES & OTHERS -V- POST OFFICE LIMITED
CLAIM NUMBER: HQ16X01238

1. We write in response to your letters dated 30 November 2016 and 8 December, and further to our letters dated 7 and 12 December 2016. We provide this letter in line with the timeline we identified to you in our letter dated 7 December 2016.

2. We are conscious that a number of matters which arise in the correspondence have been the subject of discussion between us for many months now. We provide a proportionate response to your letter but do not fully set out our position on every issue where we consider it unnecessary, where the matter has been canvassed before, or where we do not anticipate your position will change such that the point will need to be addressed at the hearing on 26 January 2016 in any event. We have raised this issue of proportionality with you before.

Particularisation of Claims

3. Your complaints about lack of particularisation in our letter of reply expressed in your letter dated 30 November 2016 were curiously timed; as you knew we were going to serve draft generic Particulars of Claim the following day, as we did, on 1 December 2016. We in any event do not accept the criticisms you make of our letter of reply and the document speaks for itself. We certainly did not ever indicate we would be providing individual particulars of each of the claimants' claims in that letter, and have always made clear our position that the process by which we will provide initial information about individual claimants is by

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Schedules of Information. However if there are particular claimants you say you are unable to identify (your paragraphs 1.3.2 and 1.6.2) then please let us know who they are and we will provide you with more information in relation to each of them.

4. We note the criticisms you make of the draft generic Particulars of Claim in your letter dated 8 December 2016. In essence you contend that each of the claimants should plead out their claims fully, providing the same level of particularisation as would apply to a unitary action. We disagree. That would be disproportionate and inappropriate, and would undermine the benefits of the Group Litigation procedure in Part 19.

5. Further, it is important to note that the Particulars of Claim we have served is a draft document, intended to assist you and the Court in understanding the issues in advance of the hearing on 26 January. To the extent we are able to do so we will provide further details of the generic pleadings on which all or some Claimants rely prior to serving final generic Particulars of Claim. It is of course relevant that we have asked you for information and documents in order to be able to do this, but in many respects our requests remain outstanding or have been refused.

6. We have provided draft generic Particulars of Claim which particularise the generic causes of action. The draft Schedules of Information we have proposed include provision for individual Claimants both to identify information relating to their claims and to identify which of the generic causes of action they rely upon. We have also made provision in the Schedules of Information for each Claimant to provide information regarding, and estimates of, loss. We agree that there will need to be further particularisation of claims identified as lead cases, and propose the way in which this should be done is by providing full particulars of cases identified as lead cases. We made this clear to you on page 2 of our letter dated 11 October 2016.

7. It is correct that the draft generic Particulars of Claim plead the contractual position by reference to the 1994 Subpostmaster contract as amended and do not plead the contractual position in relation to crown office employees or assistants (paragraph 2.5.1 of your 8 December letter). At present there are only two Claimants we have identified who were crown office employees, therefore it is not sensible for their contractual position to be pleaded in generic Particulars of Claim. Similarly, we have only identified five Claimants who were assistants or branch managers. We propose that the claims of crown office employees (i.e. who had employment contracts with Post Office), and assistants or branch managers (i.e. who did not contract directly with Post Office), are case managed within the GLO and entered on the group register, but that their claims are then stayed pending the determination of the claims of the Subpostmasters who form the significantly largest group. Your proposal that these claimants are excluded from the GLO (paragraph 15.2 of your letter dated 30 November 2016) would mean that these eight claims are required to proceed as unitary actions separately from the determination of GLO issues in respect of Subpostmasters, despite a very significant overlap in the underlying issues concerning the

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operation of Horizon. We do not think that proposal is in accordance with the overriding objective: in particular, it would give rise to unnecessary costs and would risk Courts making inconsistent findings.

8. As to your point that the draft generic Particulars of Claim does not address all different contract models or variations of the standard Subpostmaster contract (paragraph 2.5.2(b) of your 8 December letter), we did ask you in our Letter of Claim to provide a clear explanation as to how the contracts were amended from the 1994 contract, and expressed the view that we hoped agreement could be reached as far as possible as to which contracts were in force during which periods, and the express terms of those contacts (Letter of Claim 28 April 2016, paragraphs 49 to 50). Your Letter of Response did not provide this information; rather you said that you had, "*like [us], concentrated on the Standard Subpostmaster Agreement (as varied from time to time). This is because the vast majority of the Claimants were engaged under such agreement*" (Letter of Response 28 July 2016 paragraph 4.3). You also did not provide any different types of contract in your disclosure to us despite our disclosure request number 1 for "*Contractual documents between Post Office and the postmasters and crown officers since 1998*". In response to that request, you provided us with variations to the standard Subpostmasters contract, and indeed we refer to the variation relating to training of assistants in our draft generic Particulars of Claim at paragraph 50.2. If you consider that there are other material variations to the standard Subpostmaster contract we invite you to identify them.

9. In this context, and in circumstances where you are seeking a direction for each of the Claimants to assert a positive case at this stage as to whether each of them saw the written contracts which Post Office relies upon (paragraph 2.2.3 of your 30 November letter, and 2.5.3 of your 8 December letter), please will you now disclose, in respect of each Claimant copies of all contracts or contractual documents in your client's possession or control which contain the Claimant's name and/or signature. This documentation is of course personal data to which each Claimant could request by way of Subject Access Request. If you provide this disclosure then we agree that each Claimant will identify in their Schedule of Information details in respect of the contractual documentation which was provided to them. Obviously this is an individual issue and cannot otherwise be pleaded in the draft generic Particulars of Claim, so your criticism of the draft generic Particulars of Claim on that basis is misplaced (paragraph 2.5.2(c) of your 8 December letter).

10. It is an odd situation that you expressly decline to engage with legal points raised in our Letter of Reply (paragraphs 1.10 and 2.3.4 of your letter dated 30 November 2016), but nevertheless request that we provide further detail of particular legal arguments as to construction and UCTA etc (paragraphs 2.3.1, 2.3.2, 2.3.3 and 2.3.5 of the same letter). This is not a sensible way to proceed and we decline to do so. For our position in relation to UCTA please see paragraph 81.2 of our Letter of Reply which identifies specific examples of terms which were not fairly and reasonably brought to the attention of Subpostmasters on taking up appointment, and invites you to identify any specific steps

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you say were taken if you contend otherwise. You have not responded to this. The draft generic Particulars of Claim also make clear that the Claimants will identify in a Reply which of the terms which may be relied upon by the Defendant in its Defence are onerous or unreasonable, but nevertheless identifies specific terms that will be relied upon by the Claimants in the event the Defendant does rely on them in its Defence (paragraph 45).

11. We otherwise consider that the points made in your correspondence in relation to particularisation are misplaced. In particular we do not agree your proposal for "batches" of Particulars of Claim by group (paragraph 3.2 of your letter dated 8 December 2016). That would be a disproportionate way for the Claimants to provide an appropriate level of particularisation. Further, it would not obviate the need for individual Particulars of Claim for those cases selected as Lead Cases.

12. We understand that your amended Schedule of Information (SOI) is proposed expressly on the basis that we agree to provide such batches of Particulars of Claim (paragraph 3.3). We do not agree, and therefore we will proceed to gather information in the form of the SOI we sent to you on 30 November 2016. For the avoidance of any subsequent confusion, the track changed version of the SOI you have sent us does not show in track all of your changes to the SOI we originally provided with our GLO on 27th October, and in many respects what appears to be unamended text is in fact changed from our original SOI.

Provision of Documents and Information by Post Office

13. You have not provided straightforward, or in some cases any, responses to many of the questions we have asked. We do not rehearse them all here, because it now appears clear that your client has taken a conscious decision to withhold information and documents from the Claimants. This is particularly unreasonable in circumstances where you are simultaneously demanding specific details of each of the Claimants' claims. We invite your client to reconsider its approach.

14. By way of illustration of information and documents we think your client could and should readily provide but has not done so:

    a. You repeatedly relied on the *Castleton* proceedings throughout your Letter of Response, and therefore at paragraph 55 of our Letter of Reply we asked you for copies of the pleadings, witness statement and correspondence relating to these proceedings. Despite again relying on Castleton in your 30 November 2016 letter (paragraph 7.2.1) you have not provided any of these documents or acknowledged this request.

    b. At paragraph 72 of our Letter of Reply we asked you to make clear Post Office's position in relation to the operation of its Suspense Account, but you have not responded to this. It is obviously important.

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c. At paragraph 114 of our Letter of Reply we asked you which branches had been affected by the three particular "bugs" referred to in your Letter of Response and whether any Claimants were so affected. We asked you for this information in context that we understood you knew precisely which Subpostmasters had been affected in each case. We also asked to see the communications you had sent to Subpostmasters relating to these issues. Your letter of 30 November 2016 expressly refuses to provide any of this information (paragraph 8.4), purportedly on the basis of proportionality.

d. At paragraph 194 we stated that we were unaware of any criminal court being made aware of the possibility of the remote alteration of transaction records, a matter which might obviously inform any fair appraisal of the existence of a reasonable doubt. We asked you to please confirm if we were correct and that no criminal court was ever informed of this possibility. We also asked you the same questions in respect of any civil court. Your letter of 30 November 2016 is deliberately evasive on this issue, simply stating "*Post Office is fully aware of its disclosure duties (including in prosecutions) and believes it makes such disclosures when required*". We would be grateful if you could instead answer our straightforward questions and let us know if any court was ever informed of the possibility for transaction records to be remotely altered.

15. In relation to documents, we further refer you to paragraph 53 of our Letter of Reply, and the examples given there in relation to training materials and documents provided to Second Sight, and further our request for contractual documentation concerning Post Office's relationship with Fujitsu as set out in our letter dated 24 November 2016. With regard to Second Sight, we understand that at some point in time, Second Sight sent to Post Office a schedule/list of all documents returned/sent by Second Sight to Post Office when the latter required that after Second Sight's appointment had been terminated. Please confirm whether our understanding is correct, and if so provide us with a copy of that schedule/list.

16. The unreasonableness of your client's position in simultaneously refusing to give us access to documents and information, and yet demanding particulars from our clients is illustrated by paragraph 8.1 of your letter dated 30 November 2016 in which you ask us to explain the factual basis of our position at paragraph 24 of our Letter of Reply, that Post Office has instructed investigators to ignore issues in Horizon. In fact, paragraph 24 does provide information about this, including by reference to the Second Sight report on this issue. However Post Office has refused all of our requests for investigation guidelines, and this is also one of the issues Post Office requires to be excluded from any discussions we have with Second Sight (as addressed further below).

17. We confirm in relation to training that we anticipate the vast majority if not all Claimants will allege breach of duty by reference to paragraph 62 of the draft generic Particulars of Claim;

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however we will confirm this information as part of the SOI process. You have provided no documents relating to training to date despite our entirely reasonable requests. Please agree to provide all records of training which include the Claimant's names or signatures. As with our request at paragraph 9 above, these are documents which contain personal data and to which the Claimants are entitled in any event.

18. We note with concern that your client has not informed Royal Mail or Fujitsu of the need to preserve documents despite our specific request. You know the names of the Claimants, the substance of the matters in issue, and indeed you also know about particular requests for documents we have made to date. In the event documents are not preserved as a result of your client's inaction in this respect we will draw this matter to the attention of the Court.

GLO and Further Case Management

19. We note your position in relation to the potential considerations which may arise in relation to trial of a preliminary issue at paragraphs 12.2 to 12.5 of your letter dated 30 November 2016. We consider this issue would be best revisited at the first CMC once we have provided finalised generic Particulars of Claim, your client has filed a Defence and when a substantial number of SOIs have been completed.

20. We do not agree that Claimants with malicious prosecution claims should be required to fully plead their position prior to a stay being imposed, as you suggest at paragraph 13.2. We think that would likely be wasteful of costs.

21. We disagree that the GLO should be limited to Subpostmasters only for the reasons set out at paragraph 7 above.

22. Our position in relation to your proposed changes to the draft GLO are as follows:

    a. Paragraph 1: We don't agree your proposed amendments because we do not agree the group should be limited to Subpostmasters and we do not think it appropriate to define scope by reference to GLO issues which may be amended (as we have previously expressed).

    b. Paragraph 3: agreed.

    c. Paragraph 8: agreed.

    d. Paragraph 12: not agreed. In our experience a costs sharing order is almost invariably made when the GLO is made, albeit that the Court retains the power to vary the order at subsequent CMCs. It is important that the parties, and potential claimants considering whether to join the group, should have clarity as to how the

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costs will be apportioned. A costs sharing order will be required even if the Court decides to determine the GLO issues without selecting Lead Cases.

e. Paragraph 13: agreed.

f. Paragraph 16: not agreed. We are not suggesting that all routine correspondence must be monitored. We are identifying that a document which is similar to a Letter of Claim but which may technically not meet that definition should be encompassed.

g. Paragraph 17: agreed. We additionally propose that the wording should say "worked" rather than "operated" to avoid any unintended legal interpretation of the word "operated".

h. Paragraph 19: not agreed. We have previously proposed a reasonable compromise on this issue.

i. Paragraph 22: agreed.

j. Paragraph 26: we agree the principle of avoiding duplicative wording but propose that the wording should read "*and the Claimant's claim must fall within the scope of this GLO as set out at paragraph 1 above*".

k. Paragraph 27: agreed, although our position is reserved in relation to the date to be inserted, which is dependent on a number of factors which will be crystallised on the 26th January.

l. Paragraph 28: not agreed. Paragraph 27 makes clear that the SOI should be verified by a statement of truth, and that does not need to be repeated in paragraph 28. Further, the Defendant plainly should not be unreasonably refusing requests for extensions of time. The wording in this paragraph has been used in several previous GLOs, including for example, several of the GLOs made in the 'Metal on Metal' hip litigation.

m. Paragraphs 30 and 31: not agreed. Our proposals and timings were reasonable. Your dates would introduce very significant delay. Further, for the reasons set out above, our proposals provide a reasonable and proportionate level of particularisation of the individual claims.

n. Paragraph 32: not agreed, for the reasons set out above. However in light of your comments at paragraph 15.5, we propose revisions of the subparagraphs as follows:

    i. 32(a), delete wording after "CPR 44.1" which we agree is unnecessary;

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ii. 32(b), add the words "in the event there are lead cases selected" before the phrase "in respect of any lead cases.." to expressly deal with your objection that there may not be lead cases, and similarly at 32(c);

iii. 32(b) correct "from the date upon which each of them was nominated", to "until the date upon which each of them was nominated", which was a typo on our part, and addresses your concern about overlap;

iv. 32(f)(3) correct the date of the first accounting period to 1 October 2015 to reflect the position at 32(f)(1);

v. 32(f)(4) amend "Common Issues" to "GLO Issues";

o. Paragraph 34: not agreed. Schedule 4 provides for the advertisement sanctioned by the Court. Your wording would prevent any other media involvement or engagement in relation to the case, and is not agreed.

p. Paragraph 35: not agreed. Our position is as expressed in our Letter of Reply at paragraph 207(24) on this issue.

q. Paragraph 36: not agreed. It is important that potential claimants have a proper opportunity to join the litigation after this GLO is advertised. A 3 month period is unreasonable.

r. Paragraph 38. Not agreed. The first CMC should take place in late spring / early summer after service of Post Office's defence to the generic Particulars of Claim.

s. Schedule 1 (the GLO Issues):

i. We do not agree the proposed limitation to Subpostmasters as proposed in the definitions;

ii. We do not agree the changes from "Claimants" to "Postmasters" throughout – the Court is concerned with the claims brought by the Claimants and not some wider group who have not brought claims;

iii. We do not agree the deletion of "identifying" at (1)(g);

iv. We agree the deletion "of contract" at 1(i);

v. We propose (2) should, to provide additional clarity, be amended to read "in relation to the effecting of, recording and accounting for transactions" (rather than referring back to (1)(e));

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vi. We propose (3) should read "Did the Defendant owe a fiduciary duty to Claimants in relation to the matters set out at 1(a) to (i) above and if so what was their scope and effect?";

vii. We agree to delete (4) but only if you agree that these matters will fall to be determined within (1) in any event;

viii. We do not agree to delete (5), this is an important issue affecting all Claimants;

ix. We do not agree to your proposed amendments to (6);

x. We do not agree to delete (7) which is a separate issue.

xi. We do not agree to your deletions at (8), (9a) and (10a);

xii. Issue (11) reflects a point of law which you had previously put in issue, it is not fact sensitive as you suggest. Does your client now concede that as a matter of law, demands for payment, threats to terminate and/or the threat or pursuit of civil or criminal proceedings by the Defendant can amount to harassment?

t. Schedule 3 (the SOI): we have addressed this above. We will not rehearse the position in correspondence concerning this.

u. Schedule 4 (Advertising): We note that only some of the amendments that you have made to the draft invitation/publication notice are tracked. Your proposed exclusion of non postmasters is not agreed.

Second Sight Protocol

23. We do not accept your revised Protocol. We acknowledge you have made amendments to the document in light of points made in our Letter of Reply, but fundamentally we do not agree that we as a firm should be party to any type of contractual obligation of this nature, and significantly your proposals in relation to the restriction in relation to matters which shall not be discussed remains unchanged. These restrictions are entirely unreasonable for the reasons set out at paragraph 218.5 of our Letter of Reply. There is no reason why any material other than genuinely privileged material should be excluded.

CPR 17.2

24. We remain of the view that the appropriate course of action is for the parties to agree an Order by consent for all of the reasons previously set out in correspondence. Such an

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order would achieve the objectives set out in recitals (A) to (D) of your draft contract. By contrast your proposed contract will not achieve those objectives. As we understand your draft contract, it effectively seeks to convert the limitation issues into issues of contract. We do not think that is appropriate. For example, paragraph 3 of the draft contract appears to be attempting to confer on the Court a power to strike out a claim in particular circumstances. It is not appropriate for a contract to seek to confer such a power. Thus we consider the agreement reflected in the recitals is best effected by way of a consent order in the way we have previously proposed and for the reasons previously expressed. We in any event do not agree to your proposals in relation to costs for reasons previously set out.

Yours sincerely

GRO

Freeths LLP
Please respond by e-mail where possible

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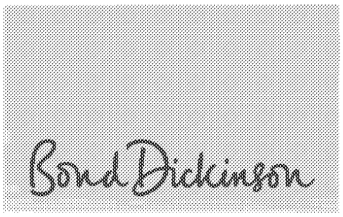

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GRM1/AP6/364065.1369
Your ref:
JXH/1684/2116459/1/CS

19 December 2016

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

By email only

Email: james.hartley GRO

Dear Sirs

Bates & Others -v- Post Office Limited
Claim Number: HQ16X01238

We write further to your letters of 12 December 2016 and 15 December 2016, in response to our letter of 30 November 2016.

We had asked for your response by 8 December 2016 so that we might provide before Christmas our client's witness evidence for the GLO Hearing in January. We are now fully engaged in preparing that evidence. Also, the key personnel at the Post Office who provide us with instructions are working in Post Office branches over the Christmas period or are away at this time of year. In these circumstances, seeking instructions from our client on all the points raised in your letter prior to early January will not be possible. We are still working towards providing our evidence before Christmas but this has been hindered due to the dates of your responses.

In respect of the 15 Claimants which Post Office have been unable to identify, the information which you provided on 12 December clarified the position in respect of 3 of these and further investigations by Post Office has identified one more. The Claimants which Post Office remains unable to identify are:

1. Tabasam Ahmed
2. Harpeet Singh Bhondi
3. Evon Botoros
4. Lorraine Kirkman
5. Usman Kiyani
6. Hitesh Korat
7. Nahman Nisar
8. Upendra Kumar Patel
9. Ennosel Joseph Dominic Savio
10. Setpal Singh
11. Julie Steward

Please clarify the position in respect of the above Claimants.

We note there are 3 Claimants in respect of who you are "*carrying out further enquiries*". It is concerning that you have filed and served a Claim Form, confirmed by a statement of truth, that includes claims by individuals in relation to whom you apparently hold little or no information.

Please also confirm that you agree with the sequencing and structure of evidence set out at paragraph 21.4 of our letter of 30 November 2016.

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Please respond to the above points by 5:00pm today.

Yours faithfully

GRO

Bond Dickinson LLP

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PROPOSAL TO CREDITORS FOR AN INDIVIDUAL VOLUNTARY ARRANGEMENT (IVA)

Proposals addressing the requirements of the Insolvency Rules and Statement of Insolvency Practice 3.1 (SIP 3.1)

1. I, Keith Jones, of Rhigos Post Office and Convenience Store, GRO GRO state that I am unable to pay my debts as and when they fall due and currently have an undischarged Bankruptcy Order made against me, made in the Merthyr Tydfil County Court on 6 September 2016, No: 26 of 2016, on my own bankruptcy petition.

2. I am normally domiciled in England and Wales and my present difficulties are caused by spending failing to properly account for my tax affairs, trading difficulties and living beyond my means.

3. I am 66 years old, married with no dependent children. My liabilities exceed my assets. At the present time I am trading in partnership with my wife at our store Rhigos Post Office and Convenience Store.

4. My wife and I bought our business in 2008, very little money had been spent on the business over the years; however, after we bought it we had visits from the Trading Standards, Food hygiene and Health & Safety. They gave us full reports requiring the business and property be completely modernised and refurbished to continue trading even though the previous owner had run the shop in the condition it was, the agencies stated as it had now changed hands the new standards now applied. We obtained loans and had overdrafts to carry this out thinking with a full refit and modernisation we could substantially increase the turnover and pay back our creditors and enjoy a reasonable standard of living.

5. Due to the financial recession in the latter part of 2008 our turnover started to decrease. However, as we had invested all our savings and took out considerable borrowing we had no choice but to continue with the refurbishment in the hope that we could still keep our customers and even increase them with the expansion of our product range and a modernised shop. We made our staff redundant and consequently my wife and I worked 12 hours a day to keep the shop going, as we still do today.

6. In 2013, we encountered a problem with the post office Horizon system generating a large shortfall; as a result, the Post Office was closed on a temporary basis losing the income from the Post Office and many customers. This also meant again a large drop in customers who used the Post office and usually bought in the shop. We managed to have the Post office re-opened late in 2013 with my wife acting as Subpostmaster.

7. We recently had a VAT inspection, which was the first in many years. We thought it would be fine as we were up to date with our Tax returns and VAT returns all done by our accountant, however the inspector found a problem that we were not aware of going back over four years, it was accumulative resulting in a VAT repayment amounting to approximately £23,750, the inspector did say it was not deliberate and sympathised with us and if we had been inspected in previous years this would have been picked up.

8. We take full responsibility for the error and we have tried everything to be able to raise this money but we cannot we are devastated after managing to overcome all the problems and keep going over the years.

9. My wife and I had not sought suitable advice before petitioning for bankruptcy. The Post Office prevents any person with a bankruptcy order made against them from holding a Post Office licence. The Post Office income allows the business to make a small profit each year. If we remain in bankruptcy the business will no longer be viable and we will be unable to continue to meet the mortgage payments. We live at the shop and if we cannot reopen the Post Office we will lose our business and our home. We do not make much money but we manage with

 GRO

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my pension as I am 67 years old and partially disabled. We have not increased our debt for many years and have paid as much as we can afford to our creditors to reduce our debts in a previous debt management plan.

10. Our store is the only shop in Rhigos, a small rural community with a large proportion of elderly residents. It provides the community with a local store and Post Office and we believe the community would suffer if the Convenience Store and Post Office were to close.

11. My son-in-law and his wife have agreed to support our IVA Proposals by paying £30,000 into the IVA and by removing their secured charge against the Rhigos Convenience Store and Post Office property. Of the £30,000 to be paid in, £4,700 will be used replenish our stock levels and purchase a replacement motor vehicle for £1,000 – this will allow us to meet our turnover projection and make the monthly contributions in to the IVA. Without this cash injection our business would not be viable.

12. I have previously attempted to resolve my financial difficulties by entering a Debt Management Plan with StepChange. This plan proceeded successfully from 2013 until 2016, when the HMRC claim was received. I paid £134/month into the plan in the first year, rising to £220/month. When the error with the VAT returns was discovered and HMRC made their claim the Debt Management Plan was became unsustainable and my spouse and I sought to enter an IVA.

13. An IVA Proposal was made to creditors in August 2016 based upon monthly contributions only. The Proposal Nominee was Gareth Neill of Aperture Debt Solutions LLP. The Proposal was rejected by HMRC because they considered I had provided insufficient detail concerning my circumstances. I wrote a full letter to them to set out my financial history however the Proposal was rejected again at the second Meeting of Creditors.

14. The Proposal was for 60 monthly contributions of £300 per month. Since making this offer to creditors the income from the Rhigos Post Office and Convenience Store business has reduced as a result of losing the Post Office function due to the bankruptcy orders made against us. Our present monthly offer in respect of contributions from income is lower based upon prudent estimation of the trading income and a realistic increase in turnover over the first year of the Arrangement. It is our intention to increase the turnover of the business to make greater monthly contributions into the Arrangement. No monies were paid to the Aperture Debt Solutions LLP in respect of these IVA proposals.

15. Within the last 24 months I have not submitted an application for an interim order

16. Within the last 24 months I have submitted two other proposals for an IVA, both with Aperture and based solely upon making monthly contributions for £300/month for the five year duration of the IVA. The proposals were both rejected.

    This proposal is different to my previous IVA proposals for the following reasons:

    i) My son-in-law and his wife will contribute a lump sum of £30,000 into the arrangement.

    ii) My son-in-law and his wife will contribute the £30,000 on the understanding that £4,700 will be immediately paid into the business to allow us to purchase £3,700 of stock, which is required to trade at full capacity, and to buy a £1,000 motor vehicle required to collect stock from wholesalers. I currently own a 16 year old Vauxhall Omega which is unreliable and requires repairs. It will be disposed of when the replacement vehicle is purchased. This injection of funds will enable us to generate sufficient profits for the business to be viable going forward and to provide IVA contributions from month 1 of the arrangement to month 60.

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iii) A lump sum of £9,152 will be received into the IVA arising from the sale of the property at 38 Waunddu, Pontnewynydd, Pontypool, Gwent, held in joint names with my spouse. The property is currently in the process of being sold. My IVA Nominee has arranged for the proceeds of £9,152 from the sale of the property to be held in a client account by the conveyancing solicitor ready to pay into the IVA on the instruction of the IVA Supervisor.

iv) My son-in-law and his wife will remove their secured charge with an outstanding balance of £59,000 against the Post Office and Convenience Store property. This will enable unsecured creditors to share in any equity released in the fifth year of the arrangement.

v) The contributions in the first year of the arrangement will be paid at £150 per month for three months, then £250 per month for the remainder of the year. This is to reflect a prudent estimation of the turnover of the business of £49,734 in the first year. It is anticipated the turnover of the business will increase toward £75,000 per year, the level of turnover achieved in year ended 30 April 2016. The Supervisor of the IVA will review the profitability of the business every 12 months and I will increase the monthly contributions into the IVA as required.

vi) My spouse and I both petitioned for bankruptcy without taking legal advice. Since entering bankruptcy we have been informed that, as an undischarged bankrupt, my wife cannot hold a licence to operate a Post Office. The Post Office brings customers in to our store and the loss of the Post Office licence makes our business unsustainable. In bankruptcy, we would be unable to make any monthly contributions and would lose our home.

vii) My financial affairs have been scrutinised by the Official Receiver and his findings have been provided in his Report to Creditors. As such, creditors should be satisfied that the outcome comparisons between an IVA and remaining in bankruptcy are accurate.

17. I consider that an IVA is desirable because it provides my creditors with a better return than they would receive in bankruptcy. If my wife and I remain in bankruptcy we will be unable to continue trading. The Bankruptcy Orders prevent us from holding a licence to operate a Post Office. We will be unable to make any monthly contributions and my son-in-law will not willingly contribute £30,000 into our estates in bankruptcy. Under an IVA we are offering to pay 60 months of contributions, receive a lump sum of £30,000 into the IVA from my son-in-law and his wife, and also release equity in the store in the fifth year, as detailed below.

18. This proposal is for an IVA in composition of my debts in full and final settlement. Provided that I complete the arrangement successfully, creditors bound by the arrangement will not have any recourse against me for the balance of their claims that remains unpaid at the end of the arrangement.

19. This proposal should be read in conjunction with the standard terms produced by the Association of Business recovery Professionals ("R3") ("The standard terms") version 3, issued in January 2013. Where there is any conflict between the standard terms and these proposals, these proposals will prevail, but wherever possible conflict has been avoided.

20. All references in this proposal to "the insolvency legislation" are to the primary and secondary legislation governing individual voluntary arrangements in force at the date my voluntary arrangement is approved by my creditors.

21. The details of my assets and any security held by creditors over those assets are set out in the attached statement of affairs.

GRO

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22. If I am found to have any potential claims for PPI mis-selling those claims shall be part of this arrangement. Any money received, net of the costs of identifying and pursuing the claim, will be paid into the arrangement in addition to the agreed contributions. It is anticipated that any claims company used to identify and pursue any claims will contract with me or my Supervisor and will deduct their costs from any recoveries before accounting for the balance to my Supervisor. However, if money is paid direct by a financial institution to my Supervisor he will be allowed to pay the costs to the claims management company and only retain the net realisation for my arrangement. Any claims management company will be employed at typical industry rates. I do not intend to use a claims management company that has any connection with my Supervisor or any associated companies and if that were to be considered in future their fees would require approval as a variation to this arrangement.

Paragraphs used in interlocking arrangements only

23. This arrangement is linked to an individual voluntary arrangement being proposed by my spouse Rosemary Jones, so any reference to my income or property shall include the income or property of my spouse. In addition, the expenditure and contributions from income set out in this proposal refer to our combined expenditure and contributions. A similar clause is contained in the proposals of my spouse.

24. In order for this arrangement to be approved, sufficient valid votes in favour of both proposals must be received from at least one joint creditor or at least one sole creditor for each proposal. Once the arrangements have been approved, all contributions received will form a single 'pot' and all creditors of both myself and my spouse will be treated, for the purposes of the voluntary arrangement, as creditors of the combined arrangements. Each creditor will rank equally in the combined pot for dividend purposes, such that joint creditors of both me and my spouse will have only a single claim in respect of our joint and several liability. A similar clause is contained in the proposal of my spouse.

25. If either this arrangement or that of my spouse is rejected by creditors, both arrangements are deemed rejected. If one or both of us wish to resubmit proposals to creditors they will be new proposals for a new arrangement, to be notified and approved in accordance with the insolvency legislation as if there had not been any prior attempt to obtain an arrangement, except that the previous unsuccessful attempt to propose an arrangement will be clearly disclosed in the proposals, Nominee's report and letter sent to creditors convening the meeting to approve the arrangement. A similar clause is contained in the proposal of my spouse.

26. Any modifications introduced by my creditors will apply equally both to this arrangement and to that of my spouse. A similar clause is contained in the proposal of my spouse.

27. If, during the currency of the arrangement a meeting of creditors is convened for any purpose, only one meeting of creditors will be convened in respect of both my arrangement and that of my spouse. It will be a joint meeting of creditors and as such the requisite majority for passing any resolutions sought will be that of creditors voting at the meeting, irrespective of whether they are a sole creditors of myself or my spouse or a joint creditors. Any resolutions passed at such a meeting of creditors will apply equally to my arrangement and to that of my spouse. A similar clause is contained in the proposal of my spouse.

28. In the event that the arrangements fail, creditors will only be able to claim against me or my spouse as they would have been able to if the arrangement had not been approved, such that any sole creditors of my spouse would only be able to claim against her and any of my sole creditors would only be able to claim against me. A similar clause is contained in the proposal of my spouse.

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29. If my relationship with my spouse ends by a permanent separation, divorce or death during the term of the IVA, the Supervisor has discretion to allow my IVA (and if appropriate that of my partner's IVA) to continue as a distinct and separate proposal. On the date that either myself or my spouse confirms in writing to my Supervisor that the relationship has ended permanently and that either one of us no longer wishes to have an interlocking IVA then my Supervisor has discretion to apply the following if appropriate:

    - In the event that there are any realised funds available in the interlocked voluntary arrangement but not distributed they will be distributed pari passu in the order of priority as set out in the proposal as if the proposal were still interlocked.
    - Any liability for debts will no longer be treated as joint and several unless the debts were joint and several prior to the approval of the proposal once any realised funds as set out above have been distributed (if available).
    - My arrangement and that of my spouse will no longer be treated as being interlocked and will no longer be administered as if one arrangement once any realised funds as set out above have been distributed (if available).
    - Any unrealised assets will no longer be treated as being jointly owned in equal shares but will revert to the ownership applicable prior to the approval of the arrangement.
    - The Supervisor will convene separate meetings of both mine and my spouse's individual creditors to agree the terms on which each of our IVAs may proceed and notice of those meetings will be sent to mine and my spouse's respective creditors and be separately voted upon.

30. In this arrangement, breach, failure and all similar terms except any specific reference to "termination" will be construed to refer to any event that may lead to the early unsuccessful end of the arrangement. This will include, but is not necessarily limited to the failure of any interlocking arrangement proposed by my spouse; and any failure by me to comply with the terms of this arrangement. In the event of a breach, the standard terms will apply subject to the modification in the "terms included to comply with the requirements of HM Revenue and Customs" below. A similar clause is contained in the proposal of my spouse.

Contributions and Arrangement Assets

31. **Contributions from Income:** Details of my current income and expenditure as verified by my Nominee are in the attached income and expenditure account, at Appendix E.The expected realisations under this proposal comprise payments of £150 per month for the first 3 months, rising to £250 per month from month 4 and for the remainder of the duration of the IVA, giving a total of £14,700. These contributions are based on prudent and realistic assumptions about the turnover of the business based on our past turnover and profits, with a turnover of £49,734 in the first year of the Arrangement. Creditors will note from the Report to Creditors, at Appendix G, that the Official Receiver has analysed the turnover and profits of the business, showing turnover of £73,389 in the year to 30 April 2015 and £95,529 in the year to 30 April 2014. It is my intention to increase the turnover to these levels and make increased contributions into the Arrangement. The Supervisor of my IVA will review the profitability of the business every 12 months and will increase the required contributions as appropriate.

32. Creditors will note that my living expenses will be reduced in the first 3 months of the arrangement in order to provide contributions into the arrangement while the profits of the business are growing. We consider the living expenses in the first 3 months to be entirely manageable. From month 4 of the arrangement our living expenses will increase slightly to more normal levels, while still providing for sufficient surplus to meet contributions of £250 per month.

33. **Third party Contribution**: At the date of this IVA Proposal the property 38 Waunddu Pontnewydd, Pontypool, Gwent is currently owned by my wife and I in joint names. The property was purchased in December 2002 for £43,000 and was our home until 2008, when

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we purchased the Rhigos Post Office and Convenience Store. In June 2009 my wife and I borrowed £30,000 from my son-in-law Robert James and his spouse Sarah James to renovate the property for sale.

34. The property is currently under offer and is scheduled to be sold before the date of the Meeting of Creditors. The sale of the property has been agreed at £110,000, which the Official Receiver has reviewed and confirmed to be the market value of the property. After meeting the costs of sale and the first mortgage the sale of the property will release £39,152. My son-in-law and his spouse hold a secured charge against the property in the sum of £30,000 in respect of a loan agreement dated July 2011. The Official Receiver noted in his Report to Creditors that "In May 2016, a charge was placed on the property in favour of a family member; the amount of the charge is stated to be £30,000. The Official Receiver is making enquiries to determine the validity of the charge." My IVA Nominee has arranged for the conveyancing solicitor to hold the sale proceeds of £39,152 in a client account until the outcome of the Meeting of Creditors is known.

35. If the IVA is agreed £9,152, representing the equity share of my spouse and I, will be paid into the IVA.

36. Of the £30,000 payable to my son-in-law and his spouse under their charge, they will pay the full £30,000 into the IVA on the understanding that of these monies, £4,700 will be paid into the Rhigos Post Office and Convenience Store business, in accordance with their undertaking at Appendix H. The shop has depleted stock levels following the making of the bankruptcy order. This money will be used to purchase £3,700 to fully restock the store and to purchase a £1,000 vehicle required to travel to wholesalers to collect stock. Without this injection of funds the business could not continue trading because the limited stock would not generate sufficient gross profits to meet the business overheads. This cash injection will allow us to generate sufficient net profits to make contributions from month 1 of the Arrangement and trade profitably going forward.

37. I will provide the Supervisor of my IVA with copies of the all the receipts evidencing the stock purchases and the motor vehicle. Any surplus funds which have not been spent on stock or a motor vehicle in the first month will be repaid into the IVA. If any of the £4,700 cannot be accounted for by way of documentary evidence I understand that this will be considered a breach of the arrangement and will result in the immediate failure of the IVA.

38. The Official Receiver's office have confirmed that if the IVA is rejected the £30,000 will be paid to my son-in-law and his spouse. The Official Receiver has indicated he may attempt to recover these funds at a later date. It is uncertain whether he will attempt to recover these monies, the costs involved in pursuing such a claim or the level of recovery that may be achievable. If the Voluntary Arrangement is agreed the full £30,000 would be received into the arrangement directly from the conveyancing solicitor.

39. **Rhigos Post Office and Convenience Store,** GRO
As can be seen in the attached Statement of Affairs (Appendix A) the property at Rhigos Post Office and Convenience Store, GRO jointly owned with my spouse. I estimate the current value of this property to be £80,000 which is based on a valuation of the property provided by a local estate agent on 21 October 2016, taking into account the goodwill of the business.

40. Creditors should note that the Official Receiver had provided a valuation of the property at £165,000 in his Report to Creditors dated 21 September 2016, attached at Appendix G. The report confirmed that valuation was based upon the purchase price of the property when it was bought by myself and my spouse in April 2008. At the date of purchasing the property the former owner had generated a turnover of £350,000 per annum and business goodwill was reflected in the sale value. In the last three years my spouse and I have not generated a turnover above £96,000 per annum. The estate agent took these factors into account when

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providing his valuation of £80,000, which I consider the be a realistic valuation of the property and the present goodwill of the business.

41. The property is subject to a mortgage held by Commercial First Business Limited in the sum of £100,509. The mortgage in place against the property with Commercial First is a commercial mortgage which requires capital repayments. I have sought to transfer to an interest only mortgage however this has been unsuccessful due to the property being in negative equity and as a result of the ages of myself and my spouse. The capital repaid against the mortgage during the period of the arrangement will result in the outstanding balance having reduced to around £70,000 by the fifth year of the arrangement. The reduced outstanding balance of the mortgage, together with my son-in-law and his spouse removing their secured charge, means it is more likely the property will hold equity which can be released in the fifth year of the Arrangement.

42. There is a secured loan attached to the property in favour of my son-in-law and his wife, Robert James and Sarah Louise James, which has a current outstanding balance of £59,000. My spouse and I borrowed £80,000 in June 2009 from Robert James and Sarah James to renovate and modernise the Rhigos Post Office and Convenience Store. A written Loan Agreement was signed at this time confirming the loan of these monies. A total of £21,000 has been repaid against the loan, at £250 per month since June 2009, which has reduced the outstanding balance to £59,000. The Official Receiver's Report to Creditors advises the Official Receiver is making enquiries to determine the validity of the charge.

43. Robert James and Sarah Louise James have provided the Nominee of this IVA Proposal with a signed undertaking, attached at Appendix H, to confirm that, in the event of the interlocking IVA Proposals being accepted by creditors, they will remove their charge registered against the property. In doing so they improve the prospects of releasing equity in the property in the fifth year of the Arrangement, for the benefit of the unsecured creditors as a whole.

44. At present, the property is in negative equity against the first mortgage provider. In month 54 of my arrangement, an open market valuation will be carried out on the property by an independent professional valuer.

45. If the valuation of the property in the fifth year of the arrangement shows that 85% of my interest in the value of the property (after deducting my share of the mortgage referred to above) is less than £5,000 (net of all costs to take out a new mortgage) then I need contribute no more to the arrangement in respect of the property.

46. If that valuation shows that 85% of my interest in the value of the property (after deducting my share of the mortgage referred to above) is £5,000 or more (net of all costs to take out a new mortgage loan), then I will seek to remortgage my interest in the property and introduce this money into the arrangement. Remortgage includes other secured lending such as a secured loan.

47. However, the amount that I have to borrow and pay into the arrangement is subject to the following limits:

    - The remortgage amount will be a maximum of 85% of my loan to value (LTV).
    - The incremental cost of the remortgage, including cost of any new repayment vehicle, will not exceed 50% of the monthly contribution at the review date.
    - The net worth released will not exceed 100p in the £ excluding statutory interest.
    - The remortgage term does not extend beyond the later of my State retirement age or the existing mortgage term.
    - The amount of money introduced into the arrangement will be the mortgage proceeds less the costs of the remortgage, including any costs to redeem any existing mortgage.

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- The increased amount that I have to pay because of the remortgage will be deducted from the remaining monthly contributions in the arrangement.
- If the increased amount that I have to pay at any time following the remortgage means that the required contribution to the arrangement falls below £50 per month, monthly contributions are stopped, and the IVA is concluded.

I will provide a broker or prospective lender with my written consent authorising them to keep my Supervisor fully informed of progress throughout the remortgage process.

If I am unable to obtain a new mortgage, this will not be viewed as a failure to comply with the terms of the IVA and my Supervisor will have the discretion to consider accepting one of the following alternative proposals:

- a third party sum equivalent to 85% of my interest in the property; or
- 12 additional monthly contributions (with the aggregate sum paid to the Supervisor being limited to 85% of my interest in the property).

48. To protect the interests of creditors my Supervisor will register a restriction against the property at HM Land Registry. To facilitate this, my spouse and I will provide the Supervisor with signed form RX1 within 3 months of the approval of the IVA. Failure to do so following one month's written notice to us from the Supervisor requiring us to remedy the default will constitute a breach.

49. I will seek my own advice on an appropriate lending product at the time but I will not unreasonably refuse a fair remortgage offer. If my Supervisor considers that I am refusing a reasonable offer it may be treated as a breach and could result in the failure of the arrangement if not addressed in accordance with the standard terms.

50. **Claim against the Post Office in respect of a class action:** I am currently a Claimant in a Class Group Action against Post Office Limited. In July 2013 the Post Office alleged a shortfall of £24,214 had been found in their Horizon accounting system and suspended my contract of services as a Subpostmaster. My wife continued as acting Subpostmaster from this date, until her licence was revoked as a result of the Bankruptcy Order. The Post Office has claimed repayment of the £24,214 from me which I have disputed to date. The Group Action against Post Office Limited is a claim for damages. The Legal Advice I have received confirmed that I would not receive any compensation unless the total recovered by the group from Post Office Limited exceeds £21,000,000. I have included Post Office Limited in my schedule of creditors but dispute their claim at present. However, should their vote prove decisive in agreeing the Voluntary Arrangement I will accept their claim and withdraw from the Group Action. By doing so I intend for creditors to benefit as a whole from the greater return under a Voluntary Arrangement than they would receive in bankruptcy, rather than retain an uncertain and unquantifiable claim.

51. No more than three months before each anniversary of this arrangement the Supervisor will conduct a review of my income and expenditure. Where appropriate, and at the request of the Supervisor, I will verify increases in outgoings by providing documentary evidence. In the event that my surplus income has increased, whether through increases in the net profits of the business, my basic pay or that of my spouse, or of any routine overtime included in the original surplus calculation, or through a reduction in my personal expenses, I will increase payments from the anniversary of the arrangement by 50% of the increased surplus. I undertake to provide the Supervisor with any information that he may require to conduct the review and to repay any arrears that arise from any delay in completing the review before the next anniversary of the arrangement.

52. If I am unable to continue trading while in an IVA I must:

    a. Inform the Supervisor within 14 days

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b. Where possible, continue to make monthly contributions into the IVA as set out at the last annual review date; and
c. Keep the Supervisor informed of any changes in by trading and employment status.

Where I am unable to make contributions, this will be reviewed by the Supervisor. At the point new trading income or employment is obtained the Supervisor will review my IVA contributions and at that point there will be an expectation that any remaining redundancy funds will be paid into the IVA, and my performance in this regard will be reported to creditors.

53. Failure to disclose any such entitlement to redundancy payment will be considered a breach of the IVA.

54. The only third party property included in this arrangement is the £30,000 contribution to be received from my son-in-law and his wife. None of my liabilities are guaranteed by a third party, whether connected to me or not, and no guarantees are offered in support of this arrangement.

Liabilities, antecedent transactions, duration, claims, dividends and variation

55. My liabilities are set out in the attached statement of affairs at Appendix A. Secured creditors will rely on their security, other than my son-in-law and his wife (Robert James and Sarah James), who will remove any charges they hold against GRO GRO and Rhigos Post Office and Convenience Store, GRO GRO and claim in the IVA as unsecured creditors. Any preferential creditors, as defined by the insolvency legislation, will be paid in priority to the other unsecured creditors, although I am not aware that I have any such creditors. All other unsecured creditors will rank equally for dividend.

56. There are no claims in respect of antecedent transactions, as defined by the insolvency legislation.

57. The payment period under the arrangement will be 60 months. After this period, the arrangement can continue for 3 months to allow my Supervisor to make the final distribution and complete his administration.

58. Creditors other than HM Revenue and Customs not submitting claims within 4 months of the meeting to approve the proposal will be excluded from participating in dividend payments, unless a reasonable explanation is provided for why this delay has occurred. In cases where the Supervisor accepts the explanation is reasonable, those creditors will be entitled to receive their full share of dividends, notwithstanding the fact that some distributions may have been made prior to submission of the claim.

59. The first dividend shall be paid to creditors 3 months after the anniversary after the Nominee's fee has been drawn, provided that HM Revenue and Customs have agreed their final claim, and subsequently paid annually as a minimum thereafter. Distributions will depend on the contributions received, but will be approximately £nil in year one, 18.54p in £ in total in years 2 to 4 and 1.46p in the £ in total in year five. These amounts are not certain and may vary as the circumstances of the case change.

60. The Supervisor or I may propose variations to the proposal after it has been approved and these may be considered at a creditors' meeting convened by the Supervisor for this purpose.

Terms included to comply with the requirements of HM Revenue and Customs

61. [Interpretation] Where a modification to the proposal is approved by creditors and accepted by the debtor, the entire proposal shall be construed in the light of the modification and read to give effect to that modification such that any contrary or potentially contrary provisions in

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the proposal shall either be ignored, or interpreted, in order that the intention of the modification is given priority and effect.

62. [Windfall] Should the debtor receive or become entitled to any assets/funds which had not been foreseen by the proposal details shall be notified to the Supervisor immediately and such sums shall be paid into the IVA until all costs, creditors' claims and statutory interest have been paid in full. Until costs, claims and statutory interest are paid in full the debtor's other obligations under the arrangement shall continue and the payment shall not reduce the amount of contribution due from the debtor.

63. [Arrangement trusts] Upon termination of the arrangement the arrangement trusts expressed or implied shall cease, save that assets already realised shall [after provision for Supervisor's fees and disbursements] be distributed to arrangement creditors.

64. [Payments/Reviews] The debtor is to make joint monthly voluntary contributions of not less than £150 per month for the first three months and £250 during the remainder of the arrangement.

65. [Payments/Reviews] The Supervisor is to conduct a full review every 12 months of the debtor's business income and expenditure and obtain an increase in voluntary contributions of not less than 50% of any rise in the debtor's net income after provision for tax and NIC.

66. [Duration] The duration of the arrangement shall not exceed 5 years without the prior approval of a 75% majority in value of creditors' claims voting for the resolution.

67. [Variation] The debtor shall not, within 12 months of approval propose a variation to the arrangement that will reduce the yield to creditors below the forecast of 25p in £ unless the Supervisor can provide clear evidence that the variation proposal results from changed trading or personal circumstances that could not have been foreseen when the arrangement was approved. For the avoidance of doubt, simple misforecasting of business turnover of profitability shall not provide cause for variation. The Supervisor's evidence, supporting financial information and notice of a creditors' vote shall be circulated to creditors giving at least 14 days clear notice. Creditors shall be asked to say whether the costs associated with the variation shall be met from VA funds in the event that it is rejected.

68. [HMRC claim] The HMRC (former IR) claim in the IVA will include SA payment on account due for the year 2016/17 and PAYE/NIC due to the date of approval, plus any earlier unpaid liabilities.

69. [HMRC] The HMRC (former HMC&E) claim in the IVA will include assessed tax, levy or duty to the date of approval.

70. [Post approval returns and liabilities] All statutory returns and payments due to HMRC post approval shall be provided on or before the due date.

71. [Outstanding returns] All statutory accounts and returns overdue at the date of the creditors' meeting must be provided to HMRC within 3 months of the approval date together with any other information required.

72. [Interim payment provision] The debtor's monthly provision for income tax/NIC shall, from the date of approval of the IVA to the 5th April 2017 be paid into the arrangement.

73. [Dividend prohibition] No non-preferential dividend will be made until (i) the SA return for the year 2016/17 and (ii) a VAT or other levy or duty return due to the date of the meeting, has been filed or (iii) a HMRC determination or assessment has been made and the Supervisor has admitted their final claim.

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74. If you were not self-employed and have not traded during the tax year in which the IVA was agreed and if there are no outstanding returns due to HMRC and no contact has been made by HMRC with the Supervisor within 4 months after the effective date, the Supervisor has the discretion to disregard the above dividend prohibition. If the Supervisor commences payment of dividends, notification should be sent to HMRC and funds may be retained to pay an equivalent dividend to HMRC based on the amount shown in the statement of affairs.

75. [Expenses of VA] CGT or VAT due on realisation of assets included in the arrangement will be regarded as an expense of realising the asset payable out of net sale proceeds.

76. [Tax overpayments] Set-off of refunds due from the Crown against debts due to the Crown will be in accordance with statute and established legal principles.

77. [Expenses of VA] HMRC distress/petition costs are to be paid as an expense of the Arrangement, in priority to the Nominee's fees and Supervisor's fees, remuneration and disbursements.

78. [Co debtors] The release of the debtor from liability to creditors by the terms of the IVA shall not operate as a release of any co-debtor for the same debt.

79. [Termination] The arrangement shall terminate upon:
    - The making of a bankruptcy order against the debtor
    - The debtor's death
    - (where there is express authority for the Supervisor doing so) the Supervisor issuing a certificate of termination.

80. [Bankruptcy provision] The Supervisor shall set aside sufficient funds for bankruptcy proceedings against the debtor and any such funds will rank ahead of any other expenses of the arrangement.

81. [Non compliance] Failure to comply with any express term of the arrangement shall constitute a breach of the debtor's obligations under the arrangement. The Supervisor shall work with the debtor to remedy any breach of obligation. Rule 5.23 shall apply where any variation is proposed. But if any breach of obligation is not remedied within 60 days of its occurrence this shall constitute default of the IVA that cannot be remedied and the Supervisor shall petition for a bankruptcy order.

82. [Claims] The Associated creditors Robert James and Sarah James have offered to withdraw their secured claim against the property Rhigos Post Office and Conveneience Store and also to pay in to the IVA a total of £30,000 received as a result of their secured charge against GRO GRO These actions have been for the benefit of the unsecured creditors as a whole. As a result of this voluntary reduction in their ranking to unsecured creditor, and their contribution in to the IVA, they will not defer or waive their dividend entitlement as unsecured creditors to rank equally with other unsecured creditors.

83. [Contributions] Should any voluntary contributions fall three months into arrears or fall below the amount specified in the arrangement and remain so after 90 days this shall constitute a failure of the arrangement and the Supervisor shall petition for a bankruptcy order.

84. [Contributions] If the Debtor should fail to pay two monthly contributions (these need not be consecutive) this shall constitute default of the IVA that cannot be remedied and the Supervisor shall immediately petition for a bankruptcy order.

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Nominee and Supervisor

85. Due to the VAT Tribunal decision "Re Paymex", most IVAs are now exempt from VAT. Because there are circumstances where standard rate VAT may still apply, I have taken a prudent approach and included reference to VAT, should it apply, in the proposal terms. If the situation changes and VAT is again applicable, this will allow the arrangement to continue as approved without the additional cost of a variation meeting and the revised outcome will be explained in any subsequent progress report.

86. The Nominee is expected to become the Supervisor. He is to be remunerated on a fixed fee basis of £2,500 plus VAT in total for acting as Nominee in respect of both of the interlocking IVA Proposals of myself and my spouse. He will make no charge for his disbursements or expenses other than those directly attributable to the case, defined as Category 1 expenses in Statement of Insolvency Practice 9 (SIP 9). The Nominee's fee will be deducted first from any monies I have paid to the Nominee prior to the arrangement, then from realisations under the arrangement. The Nominee has interviewed me and collected information about my personal and trading income and expenditure, and assets and liabilities. The Nominee has advised me about the available options to deal with my circumstances and has assisted in drafting these proposals. The Nominee will convene a meeting of creditors to consider approving these proposals and chair the meeting. This work is necessary to enable me to address my financial problems and propose a voluntary arrangement. Some of the work was required by statute and regulatory guidance, but it directly contributed to the commercial offer that I am now making to my creditors. In addition, the Nominee has liaised with the Official Receiver's Office, arranged for the sale proceeds the sale of the property GRO GRO to be held in a client account, arranged for the valuation of the property Rhigos Post Office and Convenience Store, worked with me to formulate a realistic Cash Flow forecast and will oversee an application for the annulment of the Bankruptcy Order for myself and my spouse as is necessary to continue trading. I think that this shows that the fee paid to the Nominee is a fair and reasonable reflection of the work carried out.

87. The Nominee and proposed Supervisor is Christopher Whiteoak of Whiteoak Morris Limited, Merlin House, Langstone Business Park, Newport NP18 2HJ, who I believe is a licensed insolvency practitioner authorised in the UK by the Association of Chartered Certified Accountants. When carrying out all professional work relating to an insolvency appointment, Insolvency Practitioners are bound by the Insolvency Code of Ethics.

88. The Supervisor's main function will be to accept my contributions from income and other property forming part of the arrangement and make distributions to creditors. He shall conduct income and expenditure reviews not more than three months before each anniversary of the arrangement and collect any additional payments that may be due under the terms of this proposal. He shall have the power to do anything necessary to facilitate this main function. Neither the Supervisor, his firm, nor any of his agents or employees shall incur any personal liability in negligence or otherwise for any act or omission carried out by him or any of them in connection with the arrangement, unless such act or omission constitutes one of dishonesty or a breach of the Supervisor's obligations under the insolvency legislation or the arrangement.

89. The Supervisor will be remunerated at a rate of 15% of realisations forming part of the arrangement, plus VAT. He will not charge for disbursements or expenses other than those directly attributable to the case, defined as Category 1 expenses in SIP 9. The supervisor's main task is to administer the arrangement. The Supervisor will monitor and collect my contributions, conduct periodic reviews of my trading income and expenditure, issue reports when required by statute, deal with creditor claims and make distributions and deal with any equity release provisions. If necessary, the Supervisor may seek to vary or fail the arrangement, but it is currently anticipated that the Supervisor will eventually conclude the arrangement. This work is necessary to administer the voluntary arrangement. Some of the work is required by statute and regulatory guidance, but it will contribute to the payment of

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the agreed dividends to my creditors and the conclusion of this arrangement. I think that this shows that the fee paid to the Supervisor is a fair and reasonable reflection of the work carried out.

90. Further information on office holder's remuneration and creditors' rights in IVAs can be obtained by visiting the creditors' information micro-site published by the Association of Business Recovery Professionals (R3) at http://www.creditorinsolvencyguide.co.uk/. A copy of 'Voluntary Arrangements - A Creditors' Guide to Insolvency Practitioners' Fees' also published by R3 is available at the link www.whiteoakmorris.co.uk/info. An explanatory note which shows Whiteoak Morris Limited's fee is provided at Appendix I.

91. Any funds received by the Supervisor will be held in a separately designated clients' account at a UK bank or in a separately designated 'leg' of any aggregated or 'hub' account operated by the Supervisor. These funds must be kept separate from any other estate, clients' monies or practice funds and be held on trust for the benefit to the arrangement creditors. Any funds not required for the immediate purposes of the arrangement may be put in an interest bearing account or otherwise invested as permitted under the insolvency legislation.

92. Any funds not paid on termination of the arrangement, whether as a result of unclaimed dividends, increased payments or windfalls, will be dealt with as follows. Any amount under £200 will be returned to me with a list of those to whom it is due and I will be responsible for accounting to them if they subsequently claim. Any amount over £200 will, so long as the costs of distribution are not prohibitive, be re-distributed among the remaining creditors until they have been paid in full, together with statutory interest.

Trading

93. My spouse and I intend to continue trading our business the Rhigos Post Office and Convenience Store at Troed-Y-Bryn Road, Rhigos, Aberdare CF44. We have owned the business since 2008. We live in a room at the rear of the store, meaning that if trading were to cease we would also lose our home.

94. We were forced to close the Post Office function when the Post Office suspended my spouse's licence as a result of the making of the Bankrutpcy Orders. The Post Office provides a revenue stream of £960/month and the customers who attend the Post Office also make purchases in the Convenience Store, making the Post Office vital to the success of the business. The Cash Flow Forecast at Appendix D provides as follows:

    a. Funds introduced of £4,700, derived from the £30,000 contribution from my son-in-law and his wife. This money will be used to purchase £3,700 of stock, which is the monthly stock requirement to trade with sufficient turnover to generate profits, and £1,000 to be used to purchase a replacement motor vehicle to be used to collect stock from wholesalers. Without this injection of funds to restock, and purchase the vehicle, the business would not be viable because we would be unable to generate sufficient sales to pay our fixed overheads. A fully stocked shop is vital to ensuring our customers return regularly rather than venture further afield to local supermarkets.

    b. Turnover of the business gradually increasing over the first three months of the IVA as our customer base grows and goodwill increases as our shop is fully stocked. During the first 3 months of the Arrangement the business will pay £200 each month into our household budget.

    c. The Post Office function generates additional income of £960/month without increasing the overheads of the business. This income is anticipated to commence from month 4 of the Arrangement. The Insolvency Act 1986 provides that a hearing for the annulment of the bankruptcy orders cannot be heard until 28 days following

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the agreement of an IVA. When the Bankruptcy Orders are annulled we will request the Post Office return the licence, which is anticipated to take place in month 4. From month 4 of the Arrangement the business will pay £400 each month into our household budget.

95. In the last three years the business has turned over £74,955 in the year to 30 April 2016, £73,389 in the year to 30 April 2015 and £95,529 in the year to 30 April 2014. The shop will continue to trade at the same location and in the same style as it had done during these years. Although a prudent approach has been taken when forecasting the turnover and profits of the business, forecast at £58,374 in the first 12 months as shown at Appendix D, it is also my expectation that the business turnover may increase to former levels. I will provide the Supervisor of my Arrangement with accounts information every 12 months to review the profits generated and will increase my contributions into the Arrangement as required.

96. My spouse and I have always submitted all of our tax returns on time, including the shop VAT returns and our own personal Self-Assessment returns. We shall continue to do so for the duration of the Arrangement.

97. It is not anticipated that the IVA Supervisor will have any direct control or oversight over the business of the Rhigos Post Office and Convenience Store, other than review our accounts on an annual basis as described above.

98. I will include details of any VAT on the Nominee's and Supervisor's fees and expenses in my VAT returns and account for the repayment to the Supervisor. These amounts will be treated as extra contributions in addition to the agreed payments into the arrangement.

EC Regulations and obtaining credit

99. The EC Regulations will apply, and because I live and work in Wales these proceedings shall be main proceedings.

100. I will not obtain any further credit greater than £500 without the prior written approval of the Supervisor, except for public utilities and to re-finance any balloon payment at the end of a vehicle Hire Purchase Agreement. Should credit greater than £500 be obtained without the prior written approval of the Supervisor, this will constitute a default of the arrangement. This clause does not apply to any re-mortgage or equity release.

Meetings, variations, failure and successful completion

101. The Supervisor may convene a meeting of creditors to resolve any matter under the arrangement, to seek the views of creditors, or to vary its terms in accordance with the standard terms.

102. In this arrangement, breach, failure and all similar terms except any specific reference to "termination" will be construed to refer to any event that may lead to the early unsuccessful end of the arrangement. This will include, but is not necessarily limited to: any failure by me to co-operate with my Supervisor; any time when I fall three payments into arrears on my arrangement, not necessarily consecutively; the failure of any interlocking arrangement proposed by my spouse; and any failure by me to comply with the terms of this arrangement. In the event of a breach, the standard terms shall apply.

Referral source and any payments made to date

103. I was not referred to the Nominee and found his firm's information through an online search.

104. The Supervisor is not providing me with any additional services.

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105. The Nominee has not received any payments to date and will not have received any payments by the date of the meeting.

106. The Supervisor's fee is expected to total £8,078, based on the assumptions that I make all payments in accordance with the arrangement, the arrangement runs its full term, I co-operate fully and my equity interest is approximately as disclosed in the attached outcome statement.

Proposal terms addressing the requirements of SIP 3.1

107. A comparison showing the estimated outcomes of the arrangement and if a bankruptcy order is made against me is attached. This shows that creditors may be paid **20.00p in the £ under this arrangement** but would receive **0p in the £ in bankruptcy**. The estimated outcome statement shows that the costs of the IVA are anticipated to be £15,874, made up of the following fees and costs together with the basis on which they are charged:

- Nominee's fees – fixed fee - £2,500
- Supervisor's fees - percentage of realisations basis - £8,078
- Official Receiver's Costs - £4,000
- Bond – (cost of external provision) - £400
- Other expenses and disbursements - £896

108. I confirm that I have been fully advised of all of the options for dealing with my indebtedness and that I understand that advice. I confirm that I understand the consequences of proposing an IVA and am prepared to be bound by the arrangement if approved by creditors.

109. This voluntary arrangement will be binding on any creditor whose claim has been omitted from it, but who would have been entitled to vote if they had been notified of the creditors meeting called to approve it. On discovering the claim of such a creditor, the Supervisor must send immediate notice requiring them to give details of their claim as at the effective date. Four months after sending the above notice, the Supervisor may use his/her discretion to exclude such a creditor from dividend if the creditor has not by then made the claim in writing.

110. I do not expect that a creditors' committee will be required. Where the creditors elect such a committee, then its constitution, powers and functions will be in accordance with the standard terms.

111. I undertake to provide the Supervisor with any charge or other suitable security, declaration of trust or power of attorney that he may need to realise my equity interest in my residential property or any after acquired asset or windfall.

112. I am not subject to any matrimonial or family orders or attachment of earnings orders, or fines.

I understand that these proposals are based on standard proposals used for individual voluntary arrangements and that I am liable to criminal prosecution if I fail to make full disclosure to my Nominee or Supervisor or disclose false or misleading information to creditors to procure their agreement to this proposal.

The contents of this proposal are true to the best of my knowledge, information and belief.

Name: Keith Jones GRO Date: 31/10/2016

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Are you currently a sub-postmaster or have you been since 1999?

While working for the Post Office did you experience transaction problems in your branch due to the Horizon system?

Were you required by the Post Office Ltd to cover the alleged shortfall?

Did the Post Office take action against you either because of transaction problems or other alleged failures by you?

If you answered YES to the above questions then you potentially have a claim and may be eligible to join a Group Legal Action Against Post Office Limited (POL) and receive compensation.

Freeths are the lawyers acting for a large group of sub-postmasters and we are working with Justice For Sub-Postmasters Alliance (JFSA). All of the people have suffered by reason of demands by POL to pay alleged "financial shortfalls" in their branch or other action taken by POL.

Freeths are also helping a number of Crown Office employees who have suffered in a similar way.

The purpose of the legal action is to obtain fair redress through the High Court, and to recover compensation. We already have a substantial number of claimants and by joining the Group you will be strengthening the collective power of the Group. You'll therefore be helping the hundreds/thousands of other sub-postmasters who have suffered serious consequences.

The group legal action is a High Court claim, so there is no guarantee of success, however the legal team are confident.

You should act now by registering your claim with Freeths and joining the group.

CONTACT US

To join the hundreds of claimants already registered, the first step is to complete the form by clicking the button below. Alternatively, please call GRO (tel:GRO) or email us at poclaim@GRO (mailto:poclaim@GRO).

On receipt of your information a member of our dedicated legal team will contact you.

START YOUR CLAIM

Help others: The previous sub-postmaster of your branch may have a claim.

If you are in contact with the previous sub-postmaster of your branch, then please ask them to contact us to discuss joining the Group.

Justice For Sub-postmasters Alliance (JFSA)

THE LATEST FROM JFSA

"We at JFSA consider that the Post Office's denial of what so many people know to be the truth has now left JFSA and its membership with no other option but to seek redress though the courts."

"A significant number of people continue to sign up with the legal team, who have a very positive view on the prospects of success. So if you were a Subpostmaster at any time from 1999 when the Post Office brought in Horizon and you suffered inexplicable or mysterious losses, or had your contract suspended or terminated for no fault of your own, you should consider contacting FREETHS."

"Even if you have previously made an agreement with Post Office about your case, it may well be worthwhile discussing your position with FREETHS."

LEARN MORE ABOUT JFSA
(HTTP://WWW.JFSA.ORG.UK/ABOUT-US1.HTML)

EXISTING CLIENTS

If you have already registered a claim and need further assistance, please use the number on your correspondence. Alternatively, please email us and will get back to you.

POCLAIM@GRO
(MAILTO:POCLAIM@GRO

NEWS ARCHIVE

JFSA prepares for Group Litigation against Post Office

November 2015

READ MORE...
(HTTP://WWW.JFSA.ORG.UK/NOVEMBER-2015.HTML)

Early Day Motion 427 (Session 2015-16) - Post Office Horizon Computer System

September 2015

READ MORE...
(HTTP://WWW.JFSA.ORG.UK/SEPTEMBER-2015.HTML)

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CASE STUDIES

Case Study 1

Details

After being appointed to the position of Sub-Postmaster, the training focused solely on promoting and selling Post Office products, rather than other important tasks such as book-keeping, balancing and problem identification and resolution. There were no major discrepancies until the introduction of Horizon online.

Problem

Once Horizon was in use, stock was often not transferred correctly on the system, resulting in supposed shortfalls. Lottery terminal figures didn't balance with Horizon and the number of scratch cards activated was often duplicated, affecting the stock levels.

The Helpline was alerted in all instances, but there was a lack of knowledge and assistance. It was advised that any losses would 'resolve themselves'

Effect

The Sub-Postmaster had to inflate cash figures to keep the business open. This led to a termination of their contract following an audit, without a full investigation into how and why the shortfalls had occurred. A Restraint Order was obtained against the Sub-Postmaster. This was discharged after nine months after alleged investigations into the losses were completed. The results/findings of the investigation were never provided and no further action was taken against the Sub-Postmaster.

Action

The Sub-Postmaster joins the legal group action.

Case Study 2

Details

The Sub-Postmaster didn't experience any major discrepancies within the first six months of operating the branch, then shortfalls occurred over a ten week period.

Problem

During the first four weeks in which the losses occurred, a base unit frequently lost power, the screen kept freezing and the keypad was sticking. The base unit was subsequently replaced.

Losses that were placed into the suspense account started to show on both sides of the transaction data, which should not have occurred and caused further losses.

Amounts placed in the suspense account mirrored the shortfall amount that occurred the following week.

Over 90 calls were made to the Helpline requesting assistance and a review of Horizon. No help was ever provided. The Helpline staff did not understand the problems described, had no experience of working on Horizon and were simply reading off crib sheets.

Effect

The Sub-Postmaster was suspended following an audit. They offered to pay the money back if the Post Office could provide raw transactional data to evidence a physical loss and if it could be shown that the loss was caused by the Sub-Postmaster or his staff. No data could be provided but the Sub-Postmasters contract was terminated.

The Post Office then commenced a civil legal action against the Sub-Postmaster, the costs of which forced the Sub-Postmaster to petition for bankruptcy.

Action

The Sub-Postmaster joins the legal group action.

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Case Study 3

Details

The branch had been in the family for years. Prior to Horizon, any discrepancies were minor and easily resolved by reviewing the paper audit trail of the transactions.

Problem

The introduction of Horizon reduced the information available to the Sub-Postmaster when attempting to investigate any shortfalls. The information available was further limited with the introduction of swipe card banking as customer details were no longer contained on records, the receipts simply showed the amount of the transaction.

The Helpline refused to contact banks, etc to provide details of the account holders to allow the Sub-Postmaster to contact the relevant person to resolve the discrepancy.

Installation of a Bank of Ireland ATM in branch led to balancing issues on Horizon and large shortfalls. Giros went missing between being sent from the branch to being processed by Alliance and Leicester and the branch was also not credited for bounced cheques, when the money paid had been returned direct to the Post Office.

No assistance provided by the Helpline as they have never seen these issues before. The Sub-Postmaster was advised that the call would be passed onto the appropriate person but never received a call back.

Effect

Sub-Postmaster was blamed for all losses without any investigation and was advised to resign as if not their contract would be terminated in any event. The Sub-Postmaster was also required to make good the losses to avoid any further action being taken against them.

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Action

The Sub-Postmaster joins the legal group action.

ABOUT FREETHS

Freeths is one of the UK's leading national law practices, ranked as a top 100 law firm. We offer services to both the commercial and private client across the entire legal spectrum.

We operate from offices in Birmingham, Derby, Leeds, Leicester, London, Manchester, Milton Keynes, Nottingham, Oxford, Sheffield and Stoke. Although mainly regional based, Freeths has a wide range of clients throughout the UK. Our client base reflects our strength and our nationwide service delivery.

We are committed to continuous improvement and our increasing success as a business is built on achieving success for our clients.

We work in close partnership with clients, providing positive, practical solutions and clear, comprehensible advice. Across the board, the firm are ranked in the top tier for 20 legal categories, with a further 48 rankings for other specialisms.

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JUSTICE FOR SUBPOSTMASTERS ALLIANCE (/)

Legal Action

11th April 2016 - High Court Proceedings Issued against Post Office Limited

What is happening and why

If you have spent any time reading the pages on this website, you would have seen that, despite the genuine willingness of JFSA and its members to meet with Post Office Limited over the years, denial and cover up has been the only response from this government supported organisation. Therefore, in order to finally bring resolution and redress to those who have had to suffer injustice by a corporate bully abusing its power, we have had to issue proceedings against it in the High Court.

Post Office Limited has refused to accept the truth of what has been presented to it by the applicants, or its victims, of the various schemes that have been run. It has also flatly refused to accept the damning findings of the three year investigation that a firm of independent experts produced, a firm which was both selected, and paid for, by Post Office Limited.

JFSA has, in response to Post Office Limited's corporate blindess and arrogance, had little option but to seek expert legal assistance in order to expose in the courts what really has been going on behind the closed doors of post offices, and that Post Office Limited is so deperate to keep hidden. As you read through the pages of the website, if you, or anyone you know of has been similarly affected, you or they should join the legal action (/contact-freeths.html) that is underway.

JFSA has appointed the solicitors Freeths LLP to act on behalf of its membership and others affected by Post Office Limited. With the work Freeths has already undertaken to notify others of its role, there are now many hundreds of claimants reistered with the group, with more joining daily.

The purpose of the legal action is to obtain fair redress through the High Court, and to recover compensation. By joining the Group you will not only receive representation for your case but you will be strengthening the collective power of the Group, helping other Subpostmasters who have suffered serious consequences as a result of wrongful enforcement action taken by Post Office Limited.

Who can apply?

POL00110586

- Are you currently a Subpostmaster or were you at any time between 2000 and 2016? Have you been made to suffer financial losses or other serious consequences due to Post Office Limited's Horizon system or any associated process?
- Did you ever work directly for Post Office Limited in a Crown Office and you too were made to suffer because of financial losses relating to Post Office Limited's Horizon system or any of its associated processes?
- Or did you work in a sub post office but still were pursued by Post Office Limited due to issues surrounding the Horizon system or other associated processes?

If you can answer YES to any of these questions then you may be eligible to join a Group Legal Action against Post Office Limited and potentially receive compensation.

Freeths are the appointed solicitors acting for Subpostmasters, former Subpostmasters and other, all of whom have suffered by reason of accusations or demands by Post Office Limited and/or to pay alleged "financial short-falls" in their branch. If you too were affected then you should act now, by registering your claim with Freeths and joining the group.

What will it cost me?

Nothing - and if you don't believe that, speak with Freeths and let them explain why it will cost you nothing at all. Remember we have spent years building up the evidence that has enabled us to secure the aid of a first rate legal team and the funding we need to expose Post Office Limited in the courts and media.

How to apply

You can complete and submit a form HERE (/contact-freeths.html) and Freeths will contact you directly, alternatively you can call them GRO or contact them by email:- poclaim@ GRO

Questions?

If you have any questions at all about the forthcoming legal action against Post Office Limited and your eligibility to join the group, you can contact Freeths directly by phone, email or via this contact form (/contact-freeths.html).

Any other queries can be raised with JFSA through our usual contact form (/contact.html).

TOP OF PAGE(/ABOUT-US.HTML)

POL00110586

FREETHS

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

The Current Sub-Postmaster
The Post Office
5 Market Place
Chapel-en-le-Frith
Derbyshire
SK23 0EW

22 March 2016

Our Ref: JXH/1684/IT106/2KL

Dear Sir/Madam

If you can answer YES to the following 3 questions then you potentially have a claim and may be eligible to join a Group Legal Action Against Post Office Limited (POL) and receive compensation.

Are you currently a sub postmaster or were you at any time between 2000 and 2016?

While working for the Post Office did you experience transaction problems in your branch with the Horizon system?

Were you required by the Post Office Ltd to cover the alleged shortfall?

Freeths are the lawyers acting for a large group of sub-postmasters and former sub-postmasters, all of whom have suffered by reason of demands by POL to pay alleged "financial short-falls" in their branch.

The purpose of the legal action is to obtain fair redress through the High Court, and to recover compensation. We already have a number of claimants and by joining the Group you will be strengthening the collective power of the Group, and you'll therefore be helping the many hundreds/thousands of sub-postmasters who have suffered serious consequences as a result of wrongful enforcement action taken by POL.

You should act now by registering your claim with Freeths and joining the group

Please complete the enclosed Form and return it to **Freeths** in the pre-addressed envelope. Alternatively, please call GRO 7 or email us on poclaim@ GRO

On receipt of your information we will contact you.

POL00110586

FREETHS

Help others: The previous sub-postmaster of your branch may have a claim

If you are in contact with the previous sub-postmaster of your branch, then please ask them to contact us to discuss joining the Group.

We look forward to hearing from you.

Yours faithfully

GRO

Freeths LLP

Freeths LLP is a leading national law firm with 11 UK offices and over 352 lawyers

POL00110586

GROUP LEGAL ACTION AGAINST POST OFFICE LIMITED
CLAIM REGISTRATION FORM

Please complete this form and return it in the accompanying envelope, to register your claim in the Group Legal Action.

Alternatively, please call GRO or e mail us on poclaim@ GRO

Full Name	
Branch Address	
Home Address	
Mobile/ Preferred Contact Number	
Email Address	
Date of Birth	
Are you **currently** a sub-postmaster? If so, when approximately did you take over the Branch?	
Are you a **former** sub-postmaster? How long were you a sub-postmaster? When approximately did you leave the Branch? Are you able to put us in touch with the former sub-postmaster of your Branch?	

Once you have registered, you will be contacted within 48 hours of receipt by one of our team to discuss your case.

POL00110586

Claim No: HQ16X01238

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ABERYSTWYTH DISTRICT REGISTRY

B E T W E E N:

ALAN BATES & OTHERS

Claimant

AND

POST OFFICE LIMITED

Defendant

EXHIBIT AP2

Bond Dickinson LLP
Oceana House
39-49 Commercial Road
Southampton
SO15 1GA

Tel: GRO
Fax:
DX: 38517 Southampton 3

Our Ref: GRM1/ALP1/364065.1369

Solicitors for the Defendant