

17 November 2005
By Fax [GRO] & DX

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VERY URGENT

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Our ref:
SJD3/ABG1/348035.134
Your ref:
MDT.113969

Dear Sirs

Our Client: Post Office Limited
Your Client: Mr L Castleton

We refer to our fax of 16 November.

(1) Disclosure

We note the comments in your 10 November letter in respect of which our client's position is fully reserved.

Standard Disclosure has not even taken place yet, but to try to save costs and settle proceedings at an early stage, we have already provided you with voluminous disclosure. Fujitsu examined the computer system at Marine Drive Post Office and confirmed that there were no problems with it. Accordingly, it would appear to be irrelevant as to whether or not a Sub-Postmaster in Chelmsford experienced any difficulties.

Our client will, of course, comply with its standard disclosure obligations when these proceedings move on to service of List of Documents.

(2) Reply to Defence and Defence to Counterclaim

The Claim was served on Mr Castleton on 14 June. You had until 28 June to file a Defence. We gave you a 28 day extension of time to file the Defence and Counterclaim until 15 August. Mr Castleton therefore had a total of 63 days to file his Defence and Counterclaim.

Your letter dated 4 November to the High Court makes it clear that you lodged the default judgment request with Scarborough County Court prior to the transfer to the Central Office. Please confirm the precise date you filed your request for judgment in default. It appears that you did not extend the same courtesy to us that we gave to you in terms of extensions of time before your request was filed. Of course, during the stay period nothing should have been filed as the proceedings are held in abeyance. The Reply to Defence and Defence to Counterclaim has now been filed and served. In real terms, it took just 4 days longer than your client did in filing the Defence and Counterclaim.

We refer you to the case of ***Coll v Tattum Chancery Division, 21 November 2001***. In that case an extension of time for service of a defence under CPR Part 15 was granted whether the defence was prima facie valid. The Court decided that granting default judgment would have been unjust. Mr Justice Neuberger stated that

"...where, as here, the application for judgment in default is made before the filing of the acknowledgement of service or filing of a Defence, but a Defence is filed before the hearing of the application, the proper course is plainly a matter for the court's discretion. In general, I would have thought that discretion will normally (especially where there is a bona fide defence) be exercised in favour of extending time...Albeit very late, the Defendants have come forward with Defences which, on their face, would, if the allegations are made out,

defeat the claim...it would be quite disproportionate to enter judgment thereby throwing the onus onto the Defendants requiring them to justify their being given permission to defend..."

We are applying today to the Court for an order permitting the late filing of the Reply to Defence and Defence to Counterclaim. We invite you to confirm that you agree to this now and also, if any judgment has been entered in default against our client (although, we have not received one), to agree to set this aside. We reiterate that we do not believe that either parties' best interests are served by taking technical procedural points. It would be inconceivable for the Counterclaim to succeed, if the Court accepts the Defendant was responsible for the loss of over £27,000. This dispute needs to be fully aired at trial, if it is not settled beforehand.

Please may we hear from you as soon as possible today.

Yours faithfully

Bond Pearce LLP