

Case No: 1402149/18 and 119 others



EMPLOYMENT TRIBUNALS

Claimant: Mr Mark Baker and 119 others (see attached schedule)
Respondent: Post Office Limited

London Central by CVP

Employment Judge Goodman

Ms H. Craik

Mr M. Reuby

**1-4, 7-9, 11, 21-25, 28 February, 4 March 2022
in chambers 7,11 March 2022**

Representation

For the claimants: Mr S. Cheetham Q.C. and Mr B. Jones

For the respondent: Mr C. Jeans Q.C. and Ms J. Stone

PRELIMINARY HEARING

JUDGMENT

The claimants are not workers within the meaning of the Working Time Regulations 1996

REASONS

1. The claimants are postmasters. They operate post office branches under a contract with the Post Office, made either with themselves as individuals, or with a limited company of which they are directors. They presented claims for holiday pay against the respondent Post Office on 10 June 2018.
2. The issue for this preliminary hearing is whether they are workers, as defined in regulation 2(1) of the Working Time Directive 1998.
3. It has been agreed that the issue will be decided by reference to ten sample claimants. They are not lead cases within the meaning of rule 36.
4. The sample claimants are identified in the table below. This shows contractual arrangements at the date the claims were presented.

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5. Until 2010, with the exception of large retail operators, postmasters were called sub-postmasters, and were engaged on SPSO – sub-postmaster standard terms. Since that date, all are known as postmasters. From 2013 they have been engaged on Network Transformation (NT) terms, whether Mains (M), or Locals (L). Some who were formerly on SPSO have transferred to an NT contract, whether Mains or Local. Others remain on SPSO terms. The type of contract governing their current work is identified in the table as SPSO, M or L.

Claimants – sole traders

L	Mark Baker
L	Robert Wilson
M	Gary Ballman
M	Suzanne Selley
SPSO	Shann Rodgers
SPSO	Vanessa Braithwaite

Branch

Larkhill
Kyle of Lochalsh
Shaldon (to 10/19); Lower Wear
Heavitree
Goldsithney
Stretton-on-Dunsmore

Claimants – directors

L	William Hogg
L	Sandeep Gill
M	Edward Rigg
M	Nirav Vakaria

Company Name

Lovats Ltd
A D Gill Trading Ltd
Ertrad Ltd
Ridhi Sidhi Ltd

Branch

Carnan; Balivanich
Aylmer Road
Tisbury
Oaktree

Evidence

6. The tribunal heard live evidence from the 10 sample claimants. Each had prepared and exchanged a witness statement, and then a supplementary statement answering the respondent's witnesses' statements about their individual circumstances.

7. For the respondent, the tribunal heard generic evidence from the following:

Tracy Marshall described the branch network and the contract history

Mark Dinsdale explained security procedures

Alexandra Goodwin presented systems data on the extent to which individual claimants performed Post Office tasks in their branches

Pamela Heap explained onboarding and training

Chris Howard dealt with the various remuneration systems

David Southall explained the application process and contract compliance.

8. We also heard from **Rachel Chidgey, Gary Addersley, David Duff, Brian Trotter, Alarna Williams, Jesus de Sousa, Stephen Utting, Robert Findlay, Brian Trotter, Tony Sanghera and Paul Williams**, variously area and regional managers or contract advisers, who dealt with material particular to individual claimants, as well as further generic material about how branches were managed. There were eight supplementary statements arising from the primary exchange.
9. We worked with 46 files of documents totalling around 17,500 pages. All but two of these files were available to members of the public observing the hearing on their making a request by email to the respondent's solicitor. In

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the case of bundle 36, an order under rule 50 restricting access had been made by Employment Judge Glennie in earlier case management, as it contained commercially confidential information relating to security of cash and mails, and some medical evidence. Bundle 46 was added during the hearing, and I made an order under rule 50 restricting public access to it because it contained the business plans and accounts of one of the director claimants, where the commercial confidence of the documents outweighed, given the wealth of other publicly available evidence, the requirement for open justice.

10. Witnesses were questioned by counsel and the tribunal. There were tables of agreed facts on each claimant, which in the main were very useful, but they only gave turnover figures for the claimants' non Post Office business, and so we have extracted figures for net profit from accounts and tax returns where available elsewhere in the bundles.
11. With the permission of the tribunal for recording, a daily transcript of proceedings was provided throughout by the respondent.

Conduct of the Hearing

12. The hearing began on 1 February with an introduction to the case materials. The respondent then applied to strike out the claims of the four sample claimants who are directors of limited companies, on the ground that the contracts identified in the pleadings were made not with the claimant but with the companies of which they were directors. After hearing the application, we adjourned, as planned, to read for three days, and on resuming, indicated to the parties that we thought the proposed saving of time by taking this approach as a preliminary point was only superficially attractive. The evidence would contribute to the overall picture, given that content of the NT contracts and their operation was common to both individuals and the directors. At least one of the director claimants had been on SPSO terms. We could better deal with the legal submission on this point as part of the whole, at the conclusion of the evidence.
13. We heard 6 Claimants over the next four hearing days, then there was a one-week gap, as originally planned in the case management hearings, before hearing the remaining 4 claimants and the respondent's witnesses. Evidence concluded on 28 February.
14. We then adjourned for counsel to prepare written submissions to supplement the skeleton arguments presented at the start of the hearing. These were exchanged on the evening of 2 March, leaving time for the parties and the panel to read them before taking oral submissions on 4 March and then reserving judgment. We were provided with a bundle of 40 authorities at the outset and a further 6 on closing.
15. Despite the volume of evidence, there were in fact very few disputes of fact. The case was mainly about what to make of those facts.

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Findings of Fact

Background

16. Until 1969 the General Post Office was a government department. It then became a government corporation, which in 1986 was split into Royal Mail, which collected and delivered mail and parcels, and Post Office Counters, the retail branch network. Under the Post Office Services Act 2011, each then became a limited company. Shares in Royal Mail were sold to the public. Post Office Ltd remains owned by the government.
17. Over the years, as well as selling stamps and receiving parcels, post offices had acquired many government administrative functions. They paid out state pensions and social security benefits. Money could be transferred by buying a postal order. Employers could buy National Insurance stamps for employees' cards. People went there for motor vehicle licences, dog licences and to apply for passports. The Post Office also facilitated government borrowing, operating the National Savings bank, and selling National Savings stamps and certificates. They accepted payment of telephone bills and council tax. The spread of personal banking, and still more the growth of access to the Internet, has removed many of these functions. Pensions and benefits are paid direct to bank accounts. Utility bills are paid through banks, by cheque or online, to privatised companies. Both passports and vehicle licences can be obtained online. There remains demand for traditional services from those who prefer not to access the Internet, or those without a bank account, but demand has much reduced.
18. Traditionally, most towns and cities had one or more "Crown" post offices, where the building was owned by the Post Office and the staff employed by them. Outlying areas and villages were served by sub-postmasters, who owned the premises, employed any assistants they needed, and often ran a retail business alongside.
19. From 1989 onwards, many Crown post offices were closed, or their operations transferred to sub-postmasters or to retail chains. From a network of several thousand, there are now (March 2020) only 126. They are known as 'directly managed' offices.
20. From 1991, sub-postmasters were put onto SPSO contract terms. There are still 2,274 postmasters on those terms, or variants of them, and colloquially, postmasters are still sometimes called sub-postmasters. In this decision, as among the witnesses, both terms are used without meaningful distinction.
21. The reduction in demand for post office services reduced post office income, whether derived from government or individual customers. This has only partly been made up by ventures into selling foreign exchange or insurance. From 2007 it was government policy to substantially reduce the subsidy to the post office branch network. Unprofitable branches were to be closed. At the same time, by reason of social policy, it was important

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that every community, however small, should have physical access to a post office. This reduction in subsidy accelerated with the programme of austerity following the banking crisis. The network transformation (NT) programme began in 2010, with the aim of increasing the profitability of individual branches so that they could offer continue to supply Post Office services without requiring as much subsidy. Much of this was to be achieved by moving sub-postmasters on SPSO terms onto new NT terms as postmasters, accompanied by some investment into the network to upgrade equipment.

22. One of the principal differences was that whereas the traditional contract was with an individual postmaster, under the new contracts corporate bodies, whether limited companies or partnerships, could also be postmasters.
23. In March 2010, 9,014 branches were operated by individuals, 270 by limited companies, and 3 by partnerships. 10 years later, in March 2020, the number of branches operated by individuals had halved, to 4,433, while 2,520 were now operated by limited companies, and 859 by partnerships (including Limited Liability partnerships). Over the same 10 years, government subsidy of the post office network fell from £200 million to £50 million.
24. Another was a change in remuneration. Sub-postmasters received a core tier payment, related to previous years' sales, plus commission on sales payment rates in the current year. The new terms did not include a core tier payment, just commission.
25. There remained a residue of traditional post office services offered to the public through branches, whether letters and parcels, national savings banking, money transfer or vehicle licences and passports. In addition the post office was by now, in competition with private retail, selling national lottery tickets for Camelot, had an ATM service under contract with Bank of Ireland, and provided foreign exchange, and various forms of insurance through four external providers.
26. Along with focus on commercial success, the post office retains its aim of providing a universal service across Great Britain. Branches are sited with regard to centres of population and public transport routes. There are now 1,700 "outreach" services attached to branches, providing limited opening hours in remote locations or by mobile services to communities for whom an existing branch is inaccessible. If a branch is deemed necessary for a new centre of population, managers may "walk the patch" looking for suitable local business to pitch to for a post office counter.
27. The post office concedes that these are difficult times for postmasters. The non-variable elements of their remuneration have mostly been removed. Their staff have to be paid a national minimum wage. Footfall on high streets has declined with the growth of Internet sales. They are in competition for letters and parcels, for bill payment services, the national lottery, and banking and insurance services. It is difficult to cover costs from post office activity alone. The Post Office therefore seeks to encourage a wider and

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more substantial range of non-Post Office retail activity in the businesses where their post office branches are placed, to ensure they are financially viable, and so make the network more secure.

28. When taking on a postmaster, the post office looks to see if the business is commercially viable, as well as that the people who will be running it are suitable for handling cash and mail. An application by a prospective postmaster requires a site visit if there is not already a post office there, and submission of a business plan, background checks for criminal records and solvency, and an interview.
29. Currently there are post office branches co-located with the business of an estate agent, pet shop, a pharmacy, a travel agent, an optician, a veterinary centre, a florist, garden centre, butcher, petrol station, book shops, café's and clothing shops, as well as the traditional general store or card shop. The respondent has deemed unsuitable businesses which may discourage sections of the general public, such as a funeral director, or betting shop, or a public house, with an exception for the latter if it is an outreach service.
30. As of 2020, there were 9,938 branches covering (by adding the outreach services) 11,638 locations. There remain 126 directly managed branches. The other 9,812 branches are run by postmasters, who may be sole traders, partnerships or limited companies, who by contract provide the premises and employ staff. Some postmasters run more than one branch. Of the total number of branches, 1,983 are administered by one of 36 large retail partners (WHSmith, for example, or the Co-op) where there is a post office counter within a store. In these cases there used to be an SPSO contract with a nominated employee of the business, but now an NT contract with the business itself.
31. Next we examine the terms of the contracts governing post office branches. For the SPSO contracts we use the pronouns he and his, even though many of the postmasters are women, as that is the terminology of the contract, no doubt relying on the Interpretation Act that use of the male gender incorporated the female, but not the other way round..

The Contracts

32. The 1994 SPSO subpostmasters contract states at paragraph 1 that it is: "a contract for services and consequently the subpostmaster is an agent and not an employee of the Post Office". By paragraph 5 he is: "not obliged to attend the sub-office personally but he is required, whether he is there or not, to accept full responsibility for the proper running of his sub- office and the efficient provision of those post office services which are required to be there". Retention of the office depends on the sub- office being "well-managed" and "work performed properly to the satisfaction of the post office".
33. Clause 3 says the subpostmaster must provide and maintain, at his own expense, reasonable office accommodation required by Post Office

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Counters Ltd, and also pay at his own expense “any assistants he may need to carry on Post Office Counter’s business”.

34. Opening hours are set in the contract. Normal opening hours are 9am to 5.30pm Monday to Friday, and 9am to 12.30pm on Saturday, and he must not change them without permission from the regional general manager. He could also get permission to close one afternoon a week and for an hour at lunchtime. He could request opening outside standard hours if that accorded with normal shopping patterns locally.
35. The classes of business at the time of appointment can be altered by the post office at any time, without compensation if the service is withdrawn.
36. The subpostmaster is not entitled to sick or annual leave, pension or compensation for loss of office.
37. If he sells his business premises, the purchaser is not entitled to preferential consideration for appointment as subpostmaster.
38. The contract can be terminated on either side by giving three months’ notice. The post office can also end it if the subpostmaster breaches a condition or fails to perform his obligations. There is no retirement age.
39. The postmaster must follow operational rules and postal instructions issued from time to time. He must see that his assistants follow them too. By clause 19, all instructions received from a regional general manager should be carried out as promptly as possible.
40. Section 3 elaborates on absence from the office. He was to notify the regional general manager if he was to be away for more than three days. and name the person substituting for him. He was to make proper provision at his own expense for the conduct of the office while he was away, but if he normally attended the office more than 18 hours a week, and he was absent on holiday, a holiday substitution allowance would be paid, starting at seven weeks over two year period, and rising with increasing service. If he had more than one branch, there was only one allowance. While on holiday he need not prepare the weekly cash account, so that within the holiday period the cash account could cover up to 3 weeks transactions on two separate occasions. A substitute can sign a cash account in his absence however. Subpostmasters normally attending more than 18 hours a week could also claim for absence for territorial training. For jury service, there was no allowance, but if he could not find an adequate substitute he was, exceptionally, allowed to close the branch.
41. There was also a sickness absence substitution claim for those who gave more than 18 hours service a week and were aged under 70 (65 for women). It was paid in retrospect for sickness absence lasting longer than three weeks, for period of up to 3 months. Under section 8 of the contract, there is a detailed scheme by which it is stated that, as officeholders who receive emoluments liable for income tax under schedule E, subpostmasters are

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eligible for statutory sick pay, in place of the previous state sickness benefit, for up to 28 weeks. The sickness absence substitution claim was subject to abatement of state benefit.

42. Section 2 deals with remuneration. He is “paid according to the amount of work which is transacted at his... Branch”. By a 2004 variation these varied between branches designated as commercial, and those designated as small. There is a core tier payment which is related to the previous year's sales, and in addition a sales payment, in effect commission on sales. The amounts vary according to the product.
43. Section 12 deals with stock and cash. He may not use post office cash in his own business. He is strictly responsible for the safe custody of cash, stock, documents and date stamps. By clause 12 of section 12 is responsible for all losses caused through his own negligence, carelessness or error, and also for losses of all kinds caused by his assistants. Deficiencies due to such losses must be made good without delay. Theft burglary and fraud must be reported.
44. On premises, he must own them or lease them on at least one quarter's notice. He must heat light and clean them, and display the post office sign outside. The Post Office supplies a security screen for the post office counter. The office cannot be moved or altered without the agreement of the regional general manager. He has to display his opening hours in the window.
45. He is allowed to advertise commercially, with the exception of alcoholic liquors, betting and gambling, football pools, illegal business, controversial advertisements which might suggest the post office supported one side or the other, or commercial businesses which provide services in competition with those of the post office.
46. He was free to negotiate wages, hours and holidays with his assistants. It was “strongly recommended” that he satisfy himself as to the character and suitability of applicants for employment, checking their identity and for past convictions, and whether they had ever worked for the post office or another subpostmaster before (in case he had been dismissed for gross misconduct). Anyone who was to work as an assistant, whether employed or a member of the subpostmaster's family, must complete a declaration, the text of which reminds them of the requirements and penalties of the Post Office Act, to be sent to the regional general manager. If an assistant was dismissed for dishonesty the postmaster must tell the regional general manager. If the post office had “good reason to believe that it would not be in its best interests for a particular person to have access to Post Office Counters Ltd cash and stock as a sub- office assistant” it could call on a subpostmaster to refrain from offering a person a job or to ensure that he was no longer employed on Post Office business.
47. There were restrictions on divulging official information, and a reminder that in contact with the media subpostmasters and their staff must only comment

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on Post Office matters “in a responsible manner”. Otherwise in public comment he must make it clear that he did so in a private capacity. He could engage in political activity off the premises. If he was standing for Parliament he must cease to run the office and if elected nominate a deputy to run it.

48. If there was an allegation of breach of contract terms or rules, there was provision for a written explanation, or a meeting at which the subpostmaster could be accompanied by another subpostmaster, postal assistant or post office employee. Subpostmasters are encouraged to take the opportunity to give written and verbal explanations “as repeated breaches of the rules, even if minor in themselves, may lead to the determination, without further warning or appeal, of the contract by means of the giving three months notice”. He could appeal a summary notice of termination, but not three months notice.
49. There is a detailed code of what should happen if dishonesty was shown, or subject to investigation, or civil or criminal proceedings or arrests occurred. This could include suspension without remuneration.
50. Section 22 sets out quality standards. Customers must be treated “fairly courteously and helpfully”, and waiting times reduced.
51. There could be a separate agreement for mail work, with its own detailed code.
52. There were several amendments in 2005 and 2006. By this time there were 14 key services, where the subpostmaster should not engage a competitive provider. New provisions for assistants were introduced in order to comply with regulatory requirements for financial services, the mails, money-laundering and immigration control. The subpostmaster must now satisfy himself that an applicant for employment as post office assistant had the right to work in the UK, and had produced documents to prove his identity, national insurance number and address. The Post Office was to provide training material, and the postmaster had to see that his assistants were trained. The tribunal understood from evidence that this is now online training, and concerns dangerous goods in the mails, to comply with the Carriage by Air Act, money laundering, and the provision of foreign exchange and insurance.

Network Transformation (NT) Contracts – Mains and Local

53. These contracts date from 2013 and 2014. The parties to the contract are the Post Office and the “operator”. It states: “the operator agrees to operate the branch on behalf of in accordance with the terms of the agreement (including the manual)” and that: “the agreement is a contract for services and the operator is an agent and not an employee”. Where the operator is a partnership, the partners are jointly and severally liable under the contract.
54. Post Office products and services must only be provided at post office premises. There is a new provision for a helpline.

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55. An assistant is “a person employed by the operator as approved by Post Office Ltd” to work in the branch in accordance with the manual and to be trained if the post office requires. The operator must “ensure that there is always a trained manager and/or sufficient trained and experienced assistants to operate the branch to the standards required by the post office and to meet demand for products and services”. The manager can be “the operator himself (where an individual)” or, if a company or partnership, “shareholder, director or partner of the operator who is also an assistant, or an “assistant who is appointed by the operator to act as a manager”.
56. The operator shall “act honestly at all times in the operation of the branch”.
57. Termination can be effected by either side giving 12 months notice, or the contract can be terminated by the Post Office if there is a material breach which is not remedied in 14 days, or the operator ceases to operate the basic business, or there was false information pre-contract, or on insolvency, or where an individual or sole director dies or is incapable, a partnership is dissolved, or there is no longer property in the premises, or a conviction for a criminal offence (except road traffic), or he fails to account for post office cash or stock, or he does not provide a manager or assistant who meets the required standard. Other than the doubling of the notice time, in practice this seems little different from the SPSO term.
58. Remuneration is by reference to a fees booklet. Payment is made within three months. There is provision for paying average fees as an assurance payment over the first three years; if the contract is terminated within three years, the operator must refund part of the setup costs and the post office can reclaim an “investment amount”.
59. If HMRC designate an individual an officeholder, the Post Office will deduct tax and national insurance from remuneration. There is an arrangement for VAT invoices for registered businesses.
60. There is provision for the Post Office to fund works to install post office branch equipment, which must be maintained by its own suppliers. Post Office owns its equipment, such as the Horizon terminal, additional terminals, printers signage and scales. There must be space in the shop layout for the counter and displays, and access for wheelchairs. The Post Office retains intellectual property and trademark rights.
61. Advertising of illegal business, controversial matters, political parties or other causes, matters likely to cause offence to a substantial part of the general public or offend ethnic religious or other groups, or which might bring post office into disrepute, and for services of a kind offered by the Post Office, are prohibited. This is similar to the SPSO restriction on advertising.
62. As before staff must sign an undertaking relating to official information. Operators and assistants must not comment publicly on Post Office matters and “untrue, ill-informed or reckless comment will be challenged”. There

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must be no political activity or material on the premises, and there is a similar provision about Parliamentary candidates.

63. If there is a persistent breach of the contract the Post Office could send a representative to discuss remedial training. The performance standards in the manual should be met. The manuals cover Horizon (the computer system), standards, accounting, cash and secure stock, and mail work. The operator could be required to suspend assistants on commission of offences, civil proceedings, insolvency or other irregularities.
64. If the agreement is terminated by the Post Office because of the operator's default, the Post Office had a right for 12 months to step in to provide continuity of services, and to occupy the branch premises, for which they would pay a daily fee.
65. The operator must arrange employers liability insurance, public liability insurance and insure his premises and their contents. Operators might want to consider critical illness cover for certain staff. This is new – insurance does not feature in the SPSO contract.
66. There is an entire agreement clause, and provision for the post office to vary the terms on notice, in which case the operator may give six months notice to terminate on receipt of the notice to amend.
67. The agreement could not be transferred to others. The purchaser of the business could apply to be postmaster, but should not expect preferential treatment.
68. Essential terms are common to Mains and Local contracts. The difference is that Mains post offices have a wider range of services, some more complex products, and generally have two "fortress" counters. They are more likely to be in higher cost premises, and have higher payment rates for post office services. In Local branches the product is simpler, commission rates may be lower, there is less back-office work, and one till ("Combi counter") for both post office and other retail business, so one member of staff can run both. The Local model is considered appropriate where there are under 1,500 customer visits per week.

Transition from SPSO to NT Contracts

69. There was some pressure from the Post Office to get existing subpostmasters to move from the SPSO contract to a Mains or Local NT contract. As an inducement, a postmaster could retire with a leaving payment of 18 months, later 26 months, remuneration. If no successor was available, the postmaster could give a conditional resignation and stay on until a successor was found. More recently a penalty has been introduced by which those who choose to stay on SPSO terms lose the fixed remuneration element; about 200 have chosen this.
70. There was an exception if there were no other retailers in the vicinity suitable to house a branch and the postmaster did not want to switch. The branch

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then acquired “community” status, by which the postmaster could choose to stay on the SPSO terms, and if the business was sold, the incoming postmaster could continue on those terms.

Outreach Services

71. From 2007 there is contractual provision for outreach services. These could be hosted in a set place for set hours, or on a mobile van with an agreed timetable, or provided by a partner, who subcontracted with the postmaster, with the postmaster was responsible for those services, or a home service, where the postmaster delivers orders placed by telephone. One of the claimants, Edward Rigg, had two such services which opened part-time, where the premises had been a sub-office branch, and the assistants there were formerly the subpostmasters there.

Guarantees

72. At the time of signing an NT agreement, the postmaster director and the Post Office signed a deed of guarantee and indemnity in respect of the main post office agreement. The guarantor agrees to guarantee the due performance of the agreement by the operator “should the operator fail to do so in accordance with its obligations owed to Post Office Ltd”. There might be more than one guarantor.

73. Individual postmasters under SPSO are liable for losses by reason of the contract.

A Postmaster’s Tasks

74. The postmasters described their duties, whether undertaken by themselves or by assistants. Before opening they had to get out and check the stock. There are particular security procedures involving the safe and alarms. Any post office transaction has to be carried out using the Horizon terminal. Once a fortnight they call the cash centre to order enough cash to top up the float. This is delivered fortnightly to the branch. During the day the postmaster has to sort the mail and parcels into different sacks for collection by Royal Mail personnel. The growth of home shopping has increased the weight and volume of parcels handled. To cut down the administrative work the Post Office introduced barcoding for prepaid returns, though with a corresponding decrease in the amount paid. Postmasters have to check for updates and notices and inform their staff of changes. They have to see the staff (and themselves) are up to date with training in regulated products and services.
75. Postmasters are allowed to use the Post Office safe for their own takings, but must not use Post Office supplied cash in their own business. Some smaller branches do not organise cash supplies for their retail business, and ask customers to use the ATM on the premises for non-post office cash purchases.
76. Just about all transactions have to be recorded through Horizon, the only exceptions being use of the Paystation, telephone orders of cash and stock, and the recent introduction of stock ordering through a computer

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programme. However, some of the back-office work may take a lot of time, but only be reflected in one or two Horizon entries. So a stock list will be printed off Horizon, but the physical check of stock takes longer. The daily, weekly and monthly cash balances require printing off material from Horizon, then working on it, and then inputting the result. It was clear from the evidence that some postmasters use Horizon rarely or not at all (judging by the codes entered) and asked others to print material for them from Horizon to work on. It was likely, having heard the evidence, that some postmasters left it to their staff or spouses to do the daily or weekly balances from time to time (Ms Rodgers had attempted this, Mr Vakaria must have done so on occasions) but many considered this foolish when they were personally liable for shortages.

77. Horizon has three levels of access, the top level being manager. The postmasters can have manager level, if they access Horizon themselves, and they decide who among the assistants has what level. Most but not all of the sample claimants' assistants had manager level access. Horizon users are told not to share their ID cards or disclose their passwords, but it is clear that many do: a January 2020 audit showed that 11% of all branches were using old or shared IDs. Robert Wilson confirmed that his staff share logins. There was no evidence of people being disciplined for this.

78. The Post Office had, by way of Dr Goodwin's evidence, analysed the Horizon data for 2018 and 2019 to get a figure for the percentage of Horizon entries in each branch made by the sample claimants. There are limitations to this as an accurate measure of input, because some of the back-office work done by postmasters can occupy a lot of time with few or (if he had someone else to print off reports) no Horizon entries, and because of sharing of smart IDs, but it has some use as an indicator of how much time was devoted to post office work and how much a postmaster relied on assistants.

79. Data generated by the computer system belongs to the post office.

The Sample Claimants

80. According to Tracey Marshall, the respondent's Postmaster Effectiveness Director, of the total claimant group of 120 postmasters, 25 of them run a single Local branch, and 41 have a Mains contract, with 45 branches between them. We assume, though it is not explicitly stated, that the remaining 55 claimants are on SPSO terms running one or more branches. There can of course be multiple contracts. One claimant (not in the sample group) runs eight branches: five of them operated by a business of which he is a 50% shareholder, a mains branch in partnership with his wife, a local branch in partnership with his wife, and another where his wife is the postmaster and he is a registered assistant. Outside the claimant group there is one man who is a director of two companies which between them run 61 post office branches, 35 on NT terms and 26 on temporary sub-postmaster terms, filling in where there is a vacancy in a branch.

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81. Taking the circumstances of the individual sample claimants in turn, we start with the two on SPSO terms.
82. **Shann Rogers (Mrs Brede)** runs the post office in Goldsithney, a village near Penzance. She took on the branch on SPSO terms in 2002, after taking redundancy from the Crown post office where she had worked as an assistant for 25 years. At interview she proposed running a greetings card business, and a consultant suggested she take a wider range of retail, such as food and household supplies, to increase profit, there being an opportunity as the village store was failing. In fact the only retail operation she undertakes is an arrangement offering items made by local artists for sale for cash, from which she takes a 20% cut. This commission was £3,000. Her post office earnings in 2018 and 2019 only amounted to £19,000 and 20,000 per annum respectively. She made ends meet by letting a room in the premises (she lives upstairs) to a hairdresser, which has closed down because of Covid, and otherwise subsidises her assistant's wages from her post office pension. She did not increase the retail business as planned in the first 2 to 3 years, and now she does not want to compete with the new owner of the village shop, explaining that it was a small village and she did not want to upset people. She employs one assistant, GRO and each works Thursday to Wednesday, so that they can take alternate weekends off. The claimant had trained her in operations, and she has undertaken the compliance training. She has supervisor level access to Horizon (which was manager access before the introduction of smart ID) for GRO who had attempted to do the weekly balance but found it too hard. The Horizon sample bears out the picture of the work being split between the two of them, and of course may understate the time spent by the claimant on a monthly balances. The Post Office supplied equipment and paid her phone and broadband and have put up a screen. She has received holiday substitution allowance, and once closed to attend a wedding in 2015. She had also been closed for 10 days refurbishment, following an armed robbery.
83. **Vanessa Braithwaite** bought a village stores with a post office counter in 2001, jointly with her husband. They run a shop in Stretton-on-Dunsmore in Warwickshire as "Brookside Stores". This was incorporated as Brookside Stores Ltd in July 2001, Mr and Mrs Braithwaite are the directors. She is the postmaster on SPSO terms. In addition to the main branch she has three outreach services. Two are sub-offices, one in Ryton-on-Dunsmore, the other in Long Itchington, and there is a home service in Ullenhall. Attending the outreaches means taking a box of portable equipment with her. On one occasion the outreach service was out of action for three weeks because of a defect in the equipment which only a post office engineer could repair and there was delay before one was available.
84. The retail shop is branded Londis, under a supplier agreement, and sells greeting cards, convenience products, tobacco and newspapers. Part of the premises is let to a hairdresser behind the shop, with a separate entrance. Her post office income in 2018 amounted to £35,000 and in 2019, £36,000. She owns 5% of the premises, and her husband 95%, though when sold in

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2021 ownership was designated 50% each. The business paid rent to her husband; she received the post office income. Mrs Braithwaite was responsible for 13% of Horizon entries at the main branch, and just over 50% when the outreaches were added to that, so 18% taken as a whole. If the outreaches are ill attended of course there may be relatively few entries for the time she spends there. They employ a number of assistants, 2 to 3 full-time, and several working part-time in the early evening or to cover holidays, there is one who works term-time only. All bar one assistant had manager level access to Horizon. The assistants were paid out of the Brookside Stores account, which seems to have resulted in a loss to that business over the year of £13,000, despite turnover in the order of £330,000. She had used holiday substitution allowances on two occasions. Otherwise she would have to pay a relief £90 per day. She is one of those on call for the post office alarm, even if she is away. On taking over, she was told that a collage in the shop window had to be removed, but it turned out that this in fact meant a large number of notices on the counter screen. She had wanted to close on Wednesday afternoons, but was required to keep the post office branch open then. Other than that, she was lightly managed, had only seen a manager twice year, and was not aware who the most recent manager was.

85. Moving onto the NT contracts, and starting with the two sample claimants on Local contracts, **Mark Baker** runs the branch in Larkhill in Wiltshire. He is also branch secretary of the postmaster's branch of the Communication Workers Union and takes time out on occasion to accompany postmaster members to meetings about allegations of breaches leading to termination of contract; on these occasions the union pays a substitution fee for his wife running the post office branch while he is away. He used to run the branch on an SPSO contract, from 1988. In 2016 he moved onto the NT contract, describing himself as "strong-armed" into it, receiving a transition payment of 26 weeks fees in two tranches. The internal emails show there was a dispute about fitting out, and managers decided to make a "Models Exception", for him, as "if Mark converts any further CWU opposition falls away". On another occasion there was a dispute about a change in how cash was delivered to the branch, as he did not want the delivery person admitted to the back room. He trades as an individual. His post office income is £16,000 per annum, and the Post Office deducts tax and national insurance. He is not registered for VAT. In addition to the post office counter he runs a cattery and pet supplies shop, and sells greeting cards and stationery. He has a website for the sale of pet foods. There is a collection point for Amazon (under an agreement with the Post Office). His retail turnover was £35,000 in 2018 and £42,000 in 2019, pre-tax profit was £5,497 in 2018. He does not employ any staff; his wife substitutes for him as necessary. The extent to which she does this was disputed. In the past she had written describing herself as the "officer in charge," of the branch, and local managers understood it was her they should ask for, and Mr Baker himself had never used Horizon except for compliance training, despite there being two terminals. The 2017/18 sample shows his wife made 99.6% of all Horizon entries. He explained that his wife did the front of house counter transactions, while he focused on the back office, doing the daily summary and trial balance; he said he would watch as his wife

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inputted the accounting entries for him. During the day he packed up the mail, and in the evening cleaned out and fed the cats in the cattery at the back. His opening hours were 8:30 am to 5 pm Monday to Friday and 8:30am to 12 on Saturday, and in fact he closes for lunch. He had engaged in negotiations over hours, resulting in a reduction. He also negotiated a concession so he could have an ATM, and when the post office wanted to upgrade the printer and he did not, there was a tussle, resulting in him keeping the old printer, even though it would no longer be supported.

86. **Robert Wilson** runs Kyle of Lochalsh branch on the west coast of Scotland. He had worked there as assistant from 2001, when his aunt was the postmaster, and in effect operated it from 2009. In 2012 he took over as postmaster on a modified SPSO contract. In 2016 he moved onto the NT Local contract. In March 2018 he resigned on sale of his business, but during the six-month lead-in period the sale collapsed and he withdrew the resignation. He has three employees, and had used the vetting pack for them, with the Post Office during the security checks. They have to be approved to get a Horizon login; there was a temporary problem with one who had formerly been a post office employee where records had to be checked. Mr Wilson himself was responsible for 25% of Horizon entries in the two-year sample. He is paid commission on sales, and from April 2020 gets remote support payments in addition. His tax used to be deducted at source when on SPSO terms. Now on the Local contract he is paid gross, and deals with tax itself. His post office income was £23,000 in 2018, and in 2019 £21,000. In his retail business he operates a Mace grocery (a brand of Costcutter Ltd) and he also sells cards and stationery. His 2019 accounts show pre-tax profit of £24,574 in the retail business, on a turnover of £280,000. He once had critical feedback from the Post Office, in that insufficient postage had been taken for the size of parcel, and he was asked to speak to staff about it. He agreed that this was addressed in a pleasant tone. In respect of the contractual restrictions on supporting political parties and speaking to or about the Post Office, he said he had not been allowed to promote membership of the CWU on a Post Office managers' WhatsApp group.
87. Of the two postmasters operating a Mains contract, **Glynn Ballman** was employed by the Post Office from 1993 to 2004, before taking voluntary redundancy. In 2005 he took on Shaldon post office in Devon, previously run by his mother-in-law for 32 years - the postmastership had been in the family for 75 years. He started in January 2006 on SPSO terms. He registered an assistant from the start. Initially his mother-in-law carried on substituting in his absence, though as time went by she was less able to keep on top of the weekly balancing. He was not obliged to have an ATM in the branch but he had applied for one as it could be used when he was closed and provided a direct income stream in rental and fees per transaction. For a time he also worked as temporary postmaster at Moretonhampstead, 45 minutes away, leaving his assistant in charge at Shaldon, and from time to time he also did holiday relief work for other postmasters. Then in November 2015 he took on a Mains NT contract to run Lower Wear branch. His business plan there provided for three

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employees during 36 hours a week, and shows he intended to take on the existing staff under TUPE.

88. Having run the two branches in parallel for four years, in October 2019 he sold Shaldon to his daughter's partner, **GRO** is now the postmaster, starting October 2019. Glynn Ballman got a 26 month leaver's payment for giving up an SPSO contract. **GRO**, however, has since taking over only once logged in to Horizon, and Mr Ballman agreed that **GRO** has never engaged in personal service at Shaldon. It had always been intended, he said, that Mr Ballman's daughter, **GRO** previously an assistant at Lower Wear branch, would run it, but that plan went awry. **GRO** Mr Ballman continues to run it as assistant together with an employee, **GRO**. Because of Covid, he had remained in a bubble at Shaldon rather than work at Lower Wear. The weekly cash reports at Shaldon show they are done by both Tracey Hubbard and Glynn Ballman, more or less equally, working from the Horizon codes entered, and he confirmed that often he delegated the account balances and the cash delivery reports to assistants. His post office income at Lower Wear was £39,000 for the year ending March 2018 and £43,000 for March 2019. In Shaldon his post office income for those years was £28,000 and £27,000 respectively. His retail business at Lower Wear was selling stationary cards and gifts, and profit before tax was £15,784, on a turnover of £30,000. He had no separate till, asking customers to draw cash from the ATM for non-post office purchases. As for assistants, in the last two years a total of five were employed at Lower Wear, and four at Shaldon, but he explained that in practice there was usually one at Shaldon and two at Lower Wear. The Horizon entries show him responsible for 27% of entries at Shaldon and 16% at Lower Wear in 2017 to 18, and in 2020 is responsible for 50% of entries at Shaldon and 5% at Lower Wear. This tends to confirm the other evidence about his working pattern. He had a Facebook page for Lower Wear to advertise his business.
89. The last of the individual claimants is **Suzanne Selley**. In July 2014 she took on Heavitree branch near Exeter under a Mains contract, but she had previously worked for her parents' post office in Lower Wear and at Whipton, and had remained in the branch when it was run by a series of Costcutter Ltd nominees (under the SPSO arrangements for large retail operators), so that when she took over as postmaster at Heavitree she had been 15 years at Whipton as branch manager, with five staff. The branch at Heavitree was new, the former post office there having further away from the main shops. She received 50% of the costs of works (subject to a grant from the Post Office of half the cost, with a cap of £27,400) to relocate the branch, and £3,000 (if matched) as for supplying career wear and for cosmetic work in the branch. In June 2015 and again in June 2016 she applied to reduce her Saturday hours, which was granted with a compensatory earlier opening on weekdays, on the basis of local shopping patterns - total hours overall were the same.
90. She complained in cross examination that recently her Google for Business page had been taken over by the Post Office which had started posting its

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own notices there. The Tribunal comments that it was not possible to get to the bottom of this, but it appeared the Post Office had become concerned that postmasters had not updated their opening hours when these were reduced during Covid, and it seems it may claimed the pages for itself. She also complained that her initial interview about the business plan had lasted four hours without refreshment, and she had become very upset at what seemed hostile treatment. Gary Addersley remembered her being upset. Pamela Heap, a more recently recruited manager, said this was not how the interviews were generally conducted now, but more in the nature of conversations.

91. In 2018 and 2019 she had employed up to 6 assistants, and the Horizon records for the corresponding period show her making 28% of total entries. One or more of the assistants covered annual leave; she confirmed she did not have to inform the Post Office if she was away on holiday. The post office income was £49,000 in 2018 and £52,000 in 2019. The retail profit was in the order of £30,000 on a turnover of 97,593 (her turnover figure includes the post office earnings).

The Director Claimants

92. **William Hogg** is the first of the two who are on an NT Local contract. He is the director of Lovats Ltd, the operator of two branches: Carnan, on Benbecula, in the Outer Hebrides, from April 2014, and Balivanich, on North Uist, with a hosted outreach at Paible. Before this, as an individual he was general manager at Carnan, then a crofters store, doing panel beating and selling building materials, from 1984-7. He bought Carnan in 1987, and Balivanich in 2006, which is when Lovats Ltd was incorporated. His wife and daughter are the other directors.
93. The Paible outreach is open from 10 till 1 on Monday and Thursday. Balivanich is open from 8 am to 9 pm Monday to Friday, 9 am to 9 pm Saturdays, and 11am to 6pm Sundays.
94. Mr Hogg has never registered for Horizon, nor attended post office training, nor done compliance training, although his witness statement said "I have been in receipt of this training". He explained that his daughter **GRO** went to Manchester for a week to be trained, at their expense, and his assistant **GRO** was already trained when she joined them. It was explained that although he does not serve the counter, he checks that the daily, weekly and month-end balances are done correctly. Challenged that he was not doing work personally he replied: "I checked, and am responsible". He locks up cash and stock daily, sorts the mail into sacks for the daily 2.15pm collection, and books money out of Balivanich to take in a case to Paible. Sorting the mail can be onerous: he has had up to 30 boxes of fish despatched from the local smokehouse. He has nine employees, three at Carnan, four at Balivanich and two at Paible. He signs for cash at Balivanich, his wife **GRO** signs at Carnan; his daughter **GRO** works at Paible. The records suggest that one assistant **GRO** carries out most post office duties at Balivanich; she was the manager of the

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branch under the previous proprietor, who was an absentee living in Edinburgh. His post office income for Balivanich was £39,000 in 2018 and £40,000 in 2019. In Carnan it was £10,000 in 2018 and £9,000 in 2019.

95. His general retail business is a supermarket; he get supplies from Costcutter and the Coop. The premises at Balivanich are enormous, as it was formerly the NAAFI on the military base, and he sells a wide range of goods, from food and alcohol to hardware and electrical goods, including washing machines and dishwashers. At Carnan they are not the main shop; as well as food and alcohol they have a bakery there, and sell cold meats, adult and children's clothing, biscuits, toys crockery and cutlery and domestic electrical goods. The turnover of the retail business for both branches was £960,000 in March 2018. In 2011 to 2013 turnover was over £2 million, with a £180,000 wage bill, and pre-tax profit of £59,639 (2013, later figures not available). His view at initial interview was that if the business "cleans its feet we will be happy"; he did not consider the post office side cleaned its feet (meaning, covered its costs) but he saw it as a service to the community.
96. The other director postmaster on a Local NT contract is **Sandeep Gill**. His father was a postmaster at Aylmer Road in Leicester; he worked from 2002 as his assistant. He described the post office branch in its early days as "a bit of a benefits factory", as it serves a nearby social housing estate. His father's illness led to him spending less time in the shop and in 2007 Mr Gill took over as postmaster on SPSO terms. At the time the retail business consisted of gifts and novelties bought on sale and return. He developed the range, using the cash-and-carry, to increase the profit margins, and now sells milk, groceries, pet supplies, hardware, stationery and gifts, alcohol, toys and fireworks. In November 2013 he incorporated the business as A.D. Gill Trading Ltd. He is the owner and sole director. He won an award in 2014, at a time when 21 other branches in the area had closed. When state pensions were paid to bank accounts rather than at a post office, he introduced post office banking to the branch.
97. In April 2016 he ceased to be postmaster under SPSO, and A.D. Gill Trading Ltd became the operator under an NT Local contract. He received a transition payment, but described herself as "coerced" to make the change. As part of the change the fortress till was taken out and the Horizon counter moved to the front, which meant the branch could be run with one member of staff on duty if necessary. From 2006 to 2007 his two sisters have worked in the business, but he has not had an assistant since 2014 and he is now helped by his wife, with one of his sisters substituting if they want to go on holiday. The 2017/18 sample of Horizon records shows Mr Gill was responsible for 85% of Horizon entries, the highest in fact for any of the sample claimants. The shop was open from 8.30 to 5.30 and on Saturdays, but it is now from 8 a.m. to 8 pm. His post office income was £27,000 in 2018 and £28,000 in 2019. It is paid to the company without deductions. He pays himself on PAYE as an employee of the company, and the company pays corporation tax. In 2018 retail turnover was £207,000 and pre-tax profit £9,435. In 2019 turnover was £206,000 and

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pre-tax profit £4,195.

98. Finally we come to the director claimants on Mains contracts. **Edward Rigg** trades as Ertrad Ltd at Tisbury in Wiltshire. His parents used to run a post office, and when he relocated from Stratford-upon-Avon he set out to buy a branch of his own to run. He incorporated a company as sole director and shareholder in May 2014, and then signed a Mains contract for the company to operate the branch in August 2014. Operations started in October 2014. He and his mother signed the required guarantees for the post office – his wife was too upset by the Horizon scandal to agree to this, but she works in the branch. As well as the main branch in Tisbury, he operates outreach branches in Heytesbury, Wylde and Broadchalk, with a fixed payment for two of them, otherwise commission. He remits some of this to the people running them, but we are unclear on the contractual and financial arrangements there. He has also operated Dinton and Tilshead outreaches, which are now closed, and Combe Bissett which is now operated by another as a Local branch. The outreach contracts are in his own name, rather than the company; this appears to be oversight rather than deliberate. At the outreaches the former postmasters (having closed as separate branches) now operate the outreach on a part-time basis under Ertrad's management. He receives a fixed payment for running the outreaches and 30% of the transactions commission. He does the cash accounts and stock ordering. The Horizon records show that he used it 27% of the time in 2018 and 33% of the time in 2019. The company has engaged two people to run the partner outreaches, and there is another assistant at one outreach and two at another. In all there are 10 individuals engaged in the post office side of the business. The Post Office income was £63,000 in 2018 and £73,000 in 2019. His retail business consists of cards and stationary, small gifts and a dry cleaning agency. He also rents out an office on the first floor, runs an eBay business, and has an advertising window. Discussing remuneration from the branch and outreaches he commented: "I do not know how some postmasters make any money from running the post offices in their shops".
99. The final director claimant on the Mains contract is **Nirav Vakaria**, who trades as Ridhi Sidhi Ltd, incorporated in 2013. He and **GRO** are the directors. He was employed at a Crown post office from 2008 to 2013. In 2013 he took on Oaktree branch in Marlow on SPSO terms (that is, as an individual). He was then asked to move on to an NT contract as a Mains branch, with the company as operator, and has been operating this way from June 2014. He explained that his wife is an accountant and advised on the finances, but he was "under the impression" he had to have a company now to operate a post office. His post office remuneration was £49,000 in 2018 and £45,000 in 2019. His retail business is a convenience store with "Best One" branding initially, though now he gets most of his stock from the cash-and-carry. Under the agreement with Best One, he followed their layout and they assisted with promotions to maximise sales. He was not tied to their lines exclusively. During the contract he has negotiated to get Sunday post office hours reduced, and while under the old arrangement the post office had a 60 hour week with 72 hours retail,

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under the new one it is 51 post office hours and 86 retail. He says he covered 30 hours a week and other staff 21 hours a week on the post office side. He had also requested removal of a second counter to increase the retail floor space, one of the PayStation terminals being redundant.

100. Whereas in 2017 he was responsible for about 40% of the Horizon entries, indicating he was doing at least half the work in the branch, (though he disputes the Horizon data adequately reflect the work he does sorting cash, bagging mail, and counting stock), he found a fall in post office income made it more economic for him to work elsewhere two days a week, and from June 2018 he worked for Brook Street Ltd full-time (albeit on a zero hours contract), as an IT contractor; these earnings for the year ending April 2019 were £21,738. The Horizon records show that his entries fell in that year to 4.41% of the total, despite a slight increase in total entries, confirming he was spending much less time on post office work. An assistant called Fernando, who has manager level Horizon access, did most of the work. He confirmed that he had not sought Post Office permission to work at Brook Street, and did not think he had to. Despite the IT contractor work, he explained, he goes into the branch "several times a week" to see that it is running well, as he was "in charge of seeing it was done right", and is liable personally for any losses incurred by the business which it cannot meet. There are two assistants for the post office work, and three other staff in the retail business. He checks their work and the accounts, and arranged their vetting and training when he moved to the Mains contract.

Operation of the Contract Terms

101. We summarise here our findings on some of the specific areas which the claimants say show the character of the relationship and how the contracts were in fact operated.
102. There is a network of area and regional managers. They had to visit their branches twice a year, but if no one in the branch responded to a request for a meeting, no meeting took place, and if the manager called in and found only an assistant, that would do, and there was no follow up with the postmaster.
103. Area managers were given targets for sales in their areas, but the bonus they received did not relate to these targets but to the performance of the organisation as a whole. One postmaster recalled there once being targets, but there was no evidence others had been told of any, and there was nothing in the documents disclosed by either side about branch performance figures. In fact, than payment of commission, postmasters knew very little about the performance of their own branch, let alone comparison with other branches. They could ask for a report on their branch or some aspect of its work, which would be provided from the Horizon data, but it was only issued on request, and usually to check payments, rather than make business plans.

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104. Area managers were encouraged to increase profitability in branches, for example by highlighting that certain types of postal delivery paid them more commission, or, if they sold foreign exchange as a post office service, by upselling travel insurance as a post office product, or siting a stand of sun cream and sunglasses near the post office counter. How much they did this depended on the reception they got from their postmasters. For the large retail partner branches in their patch, they focused only on customer service, not retail sales. Our conclusion was that management was very light touch, and in some branches none at all, responding only to queries. Some postmasters used the helpline rather than speak to a manager, or called a manager they knew, rather than the one assigned to them, if there was a problem.
105. Despite the emphasis on the need for training, none of it seems to be have been compulsory, rather than necessary - for example, where someone without post office experience was to run or assist in a branch it is hard to see how they would not want to be trained, nevertheless, Mr Hogg managed without, no doubt by learning from his daughter. **GRO** **GRO** Glyn Ballman's son-in-law, has never attended training. The exception was the training, including refreshers, required for regulatory compliance, as Horizon users could not log on unless they had done it. It was distance learning, quite brief. Optional training was available on DVLA work, passports, use of ATMs and back-office work and was free on request, and area managers sometimes attend on request to coach assistants. Tony Sanghera recalled attending one branch to explain moneygram procedures to a Romanian-speaking assistant, because of high demand from Romanians working locally wanting to remit funds home.
106. There was repeated emphasis on scripted conversations, but this seems to have been about the dispatch of packets and parcels, where the assistant must ask the five W's - what was in the parcel, where was it going, when should it arrive, and so on. It seemed there had also been a direction as to the content of the conversation when selling insurance.
107. On opening hours, although some postmasters said the post office had to be open as long as their shop hours, in fact they had to be open the agreed hours on the post office contract, but could then close the post office counter and continue ordinary business if they wished. Taking evidence as a whole, it was difficult for postmasters to reduce the contracted hours, with the recent exception of Covid. There were some examples of postmasters being allowed to close the branch, but they were few and far between, and only when the shop too closed.
108. Customer complaints to the Post Office were handled by area managers and usually resolved informally. Postmasters could not ban any customer from their post office counters without going through a formal procedure with the Post Office, with evidence of the abusive conduct. This seems to follow general policy that post office counters should be readily accessible to the public.

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109. Postmasters were from time to time monitored by mystery shoppers. Royal Mail Group engaged a third-party firm to check the questions counter assistants were required to ask about items forbidden by the carriage by air act being included in postal packets. Occasional mystery shoppers have been engaged to check whether financial products were being mis-sold. A Financial Crimes team would monitor large or frequent foreign exchange transactions with a view to anti-money-laundering requirements.
110. Given the difficult economic viability of post office business, the post office emphasised the advantage of increased footfall for the retail business. Some postmasters did not agree that having a post office counter on the premises was enough of an advantage to be worth the trouble, others thought it did. Few thought that increased sales in their own business would drive up Post Office transactions.
111. If postmaster wanted to be considered for an NT contract, or if he was a new postmaster, he had, as mentioned, to supply a business plan. Mr Rigg had engaged the services of a specialist to draft his business plan, using someone who had done quite a number of postmasters' business plans, which suggested that in many cases the post office was being told what it wanted to hear about retail profitability.
112. These interviews involved managers working through a checklist, which in its preliminary material involved informing prospective postmaster that he was not required to provide personal service and that this was not a contract of service, but a contract for services. There was no explanation to prospective postmasters in the script of what these words meant, and in the case of one of the manager witnesses who conducted these interviews, it was clear that he did not know the difference between a contract of service and contract for service, as he used the terms interchangeably. The transcript of the interview between Brian Trotter and Robert Wilson reads: "I'll take you through the main terms of this postmaster's contract. It says here, it's a contract for service. You are not an employee of the post office. For that contract of service we pay an annual remuneration. However, the contract does not require you to put in personal service. That's up to you. However, it does not discharge have many responsibilities, it makes that very clear in the contract". He then goes on to mention employing assistants and managers, and payment of the holiday substitution as if he carried out more than 18 hours in the post office (Mr Wilson having started on an SPSO contract).
113. In the context of control by the Post Office in how their business was administered by postmasters, we found it instructive to compare the terms imposed by Mace and Londis in supplying groceries to village stores, as their agreements with Vanessa Braithwaite and Robert Wilson featured in the hearing bundles.
114. Mace, a trading name of Costcutter Supermarkets Group Limited, provided support for the alteration of fixtures and fittings; they require

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maintenance of their corporate image and brand; the retailers must spend 75% of their actual spend on Mace goods. Mace set prices, and from time to time, discounts. Goodwill remained with Costcutter, as did use of the trademark. The agreement can be terminated on failure to pay, or if the branch did not meet the minimum spend obligation, or had given false or misleading information, or acted such as to denigrate Costcutter's reputation, or became insolvent and so on.

115. In the Londis agreement, the retailer must not belong to or promote the activity of another wholesaler or buying group, was to promote the good reputation of Londis supplied stores, and use Londis for "most" of its purchases, and stock a wide range of their goods. There was a weekly minimum spend, outlets must be approved, and the agreement ended with the change of ownership or status of the owners. Londis were not bound to accept a successor. Prices were set by Londis. The retailer must give security, in the case of an individual by first charge or mortgage on the premises, and otherwise by third party guarantee. The agreement could be terminated for breach.

Relevant Law

116. Regulation 2 of the Working Time Regulations 1998 says:

"worker" means an individual who has entered into or works under (or, where the employment has ceased, worked under) —
(a) a contract of employment or
(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly

117. It is not suggested that the claimants worked under a contract of employment. The issue is whether they were "limb (b)" workers.
118. It is common ground that this duplicates the definitions of worker set out in the Employment Rights Act 1996 and in the Equality Act 2010, so the case law on those statutes applies equally to the Regulations.
119. As analysed by Lord Leggatt in **Uber BV v Aslam (2021) UKSC 5**, limb (b) comprises three requirements: there must be a contract for an individual to perform work or services, an undertaking to do the work personally, finally, the other party must not be a client or customer of the individual's business. In **Uber** the issue was whether there was a contract. In many cases the focus is on whether personal service was required. In some the issue was who was the client or customer.
120. In **Clyde and co LLP v Bates van Winkelhof (2014) ICR 730**, Lady Hale explained: "our law draws a clear distinction between those who are

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..employed (under a contract of service) and those who are self-employed but enter into contracts to perform work or services for others... Within the latter class, the law now draws a distinction between two different kinds of self-employed people. One kind are people who carry on a profession or a business undertaking on their own account and enter into contracts with clients or customers to provide worker services for them... The other kind are self-employed people who provide the services as part of the profession or business undertaking carried on by someone else”.

121. She added that when deciding, there can be no there can be “no substitute for applying the words of the statute to the facts of the individual case”.
122. Perhaps because facts can be so complex and each case is fact specific, there is a wealth of case law when deciding whether someone is a worker. “The process of determination (is like) a painter painting a picture, rather than an accountant adding up a balance sheet” - **Lorimer v Hall (1984) ICR 218**, quoted in **Soni v Post Office Counters Ltd UKEAT/425/96**.
123. If the terms of the contract allow someone to send a substitute to do the work, arguably, his personal service is not required – anyone can do it. In **Pimlico Plumbers**, the Court of Appeal extracted five principles from the case law, the first being that an unfettered right to substitute is inconsistent with personal service, and the second that a conditional right to substitute may not be inconsistent, depending on the conditionality. The remaining three principles were examples of different conditions attached to rights to substitute, said Lewis LJ in **Stuart Delivery v Augustine (2022)**.
124. As to what the contract itself says, while English law generally emphasises that the text of the contract reflects the agreement made between the parties, allowing for some context to understand its meaning, **Autoclenz v Belcher (2011) ICR 1157** warns tribunals where one party defines the terms of the contract, there is a risk that it may not reflect the real agreement. Discussing this, in **Uber**, it was explained that courts and tribunals depart from normal common law and contract construction in the employment field because “the rights asserted by the claimants were not contractual rights, but were created by the legislation”. The fact that the employer dictates terms... “gives rise to the need for statutory protection in the first place”. The purpose of the legislation was to protect the vulnerable, who are “subordinate and dependent”. So while the contract should not be ignored, the tribunal should examine how the relationship was conducted. “The true agreement may have to be gleaned from all the circumstances”, to discern the parties actual understanding of their rights and responsibilities. The features of such relationships, requiring purposive interpretation, could be subordination, or integration into the other party’s organisation. Tribunals should be careful to understand whether clauses declaring there was self-employment, or no requirement to provide personal service, or provide a substitute, or an entire agreement clause, were written with a view to contracting out of the rights afforded to workers, and distorted the real nature of the bargain. As the Court of Appeal put it in their decision in **Pimlico Plumbers v Smith (2017) ICR**

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657, on how to recognise a worker relationship, “the tribunal carries out an evaluative exercise, with an intense focus on all the relevant facts... There is no single touchstone... for resolving the issue”.

125. Some substitution can be contemplated in an employment relationship, for example in **Ready Mixed Concrete v MPNI (1968) 2 QB 497**, where an owner driver could supply a substitute if he was competent, and when the regular driver took holidays or was sick. It was held that “freedom to do a job either by one’s own hands or by another’s is inconsistent with the contract of service, though a limited or occasional power of delegation may not be”. This case was not concerned with whether the driver was a worker, as it preceded the relevant statutes, but what class of national insurance contribution was payable. It was held there was sufficient freedom in the conditions of the contract, despite company control of major repairs and some special powers to ensure he ran the business efficiently, to make him self-employed, as “a man does not cease to run the business on his own account because he agrees to run it efficiently or accept another’s superintendence”. On the other hand, supplying his own lorry did not of itself mean he could not be an employee.

126. Where conditions are imposed on the right to substitute (“fettters”) the tribunal must ask itself whether the fettters are inconsistent in practice with personal performance (**Stuart Delivery**). Different factual scenarios were considered: in **Rainford v Dorset Aquatics EA – 2020 – 000123**, where a right to substitute had never been exercised, but was held not a sham; in **Deliveroo**, where a substitute was permitted even mid-ride, the ability to substitute was genuine, and the agreement did not require personal service; in **Express and Star v Tanton 1999 ICR 693**, a driver who was unable or *unwilling* to do the work could send a substitute, and this was not a sham; in **McFarlane v Glasgow City Council 2001 IRLR 7**, where a substitute gym instructor could be sent only if the party was unable to do it and the substitute came from a register, the requirement was to provide personal service; in **Byrne Bros v Baird (2002) ICR 667**, where a substitute could only be sent if the party was unable, it was held that a “qualified and exceptional” right to substitute, was compatible with the requirement of personal service; there was however no personal service in **Redrow Homes v Buckborough (2009) IRLR 34**, where a bricklayer had to supply both labour and a competent foreman on site if not there himself. It was not personal service in **Premier Groundworks v Josza EAT/494/08**, when there was no need to give a reason for not doing the work himself, but that substitute had to be competent and notice had to be given. In **UK Mail v Creasey EAT/0195/12**, a van driver could send another if approved by the respondent, and where the substitute had to provide a form and some documents to show he was qualified, this meant there was no requirement of personal service because “if it is a choice, it is no fetter”, the conditions being only the driver must be insured have a driving licence, could operate the scanner and not have a criminal record; in **Stojisavljevic v DPD Group, UKEAT/0118/20**, reviewing many substitution cases, it was relevant that no reason had to be given for sending a substitute, and no further work conditions attached to who might substitute The substitute under contract in question had however to be shown to be qualified and

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familiar with procedures.

127. In **B v Yodel Delivery Network, (2020) IRLR 550**, a decision of the European Court of Justice, the claimant was not a worker if he had discretion to subcontract, to decide whether to take on tasks or limit the number he did, could fix his own hours within parameters, and decide when the work is done, provided the independence was not fictitious and there was no relationship of subordination.
128. At one extreme is **Deliveroo**, where in refusing permission for judicial review, Simler J said: “a general right of substitution in which the employer party is uninterested in the identity of the substitute provided, only that the work gets done, will negate an obligation of personal service”. In that case substitution could take place even after a job had begun, provided the customers informed of the change of vehicle, and the rider was allowed to work for competitors; it was held there was no personal service. But where the substitute must be another person registered and “bound by the same suite of duties and heavy obligations”, as in **Pimlico Plumbers**, that was a condition showing that personal service was required. In that case, there was no express right of substitution in the contract; the manual said the claimant must work 40 hours per week, but could pass a job onto a colleague or engage an assistant if he needed help. It was doubted that passing work to a colleague was substitution – personal service as required.
129. The question whether postmasters are workers has been considered before in a sequence of cases before the punch pipe bill tribunal from 1980 to 2003, the latest being the decision on a group of three claims in **Wolstenholme v Post Office Ltd 2003 ICR 546**. It was the respondent’s case that issue had been decided in this tribunal was bound by that decision. We discuss this later in a separate section

Submissions

Claimants

130. Summarising the opening and closing submission, it was the claimants’ submission that although the contracts stipulate that personal service is not required, this was not a reality. Any assistant employed must be approved by the Post Office, and in practice only other postmasters could satisfy the post office’s requirements if the postmaster was away. There was a complete veto over assistants. The claimants remained responsible at all times for the activities of their branches, so must supervise their assistants. The Post Office had to approve their assistants to the same high standard as the postmasters themselves if they were to have manager access. If an individual, the SPSO terms made the postmaster responsible for losses, and if a company, the personal guarantee ensured personal responsibility. The nature of the contract indicated a relationship of dependency.
131. The terms, in particular the stipulation that personal service was not required, were dictated by the Post Office, and rarely explained, or indeed understood by their own managers. In transferring postmasters to the NT

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contracts, the Post Office had adopted coercive steps, such as alterations to remuneration. There was close control by means of Horizon and the network managers, backed up by mystery shopping surveys. They had to follow the respondent's detailed system, which the respondent could update at will, and there were extensive and weighty security requirements. There was strict micromanagement of their premises, and there were targets. They had no scope for altering their hours; changes were always subject to Post Office approval and rarely granted. There were network managers with power to suspend and discipline. The products and services they supplied must be Post Office branded, and prices were pre-set. They required training. They could not subcontract, nor sell on the goodwill, as would be expected of a self-employed person. They were required to report the balance daily on Horizon and shortfalls were deductible from their payments. On SPSO, the respondent paid statutory sick pay. The claimants could not refuse to supply services at any point. They could not sell products that were in competition with Royal Mail and Parcel Force, for example Hermes or DHL, and they could not make payments through Western Union in competition with the Post Office money gram. The respondent monitored the customer experience. They had to wear badges, and in Mains branches, uniform. There were restrictions on advertising on the premises. Their conduct outside post office duties was also monitored if it brought Post Office into disrepute. The tribunal was therefore invited to find that this was a relationship of subordination, and that a purposive approach should be adopted to the wording of the contract.

132. Further, unlike a franchise contract, they did not pay to play, but were paid to play. In reality the service had to be subsidised. The requirement of a personal undertaking, even for directors of companies, meant that "the reality of their engagement is that they are required to provide work for the respondent in a manner that is properly recognised as involving an undertaking to provide work and services personally". The nature of their responsibilities *required* personal performance. It was a fiction that the claimant was a commercial actor, conducting business with the respondent.
133. In answer to the respondent's assertion that the tribunal was bound by the decision in earlier post office cases culminating in **Wolstenholme v Post Office Ltd (2003) ICR 546**, it was argued in general terms that the facts have changed in the last 20 years and should be re-examined, and with respect the legal argument, that those cases were decided by reference to the "dominant purpose" of the contract, rather than the new approach, modifying dominant purpose to "dominant feature", suggested in **James v Redcats (2007) ICR1006**. There was a detailed critique of the sequence of cases. The changed facts were that there was now much stricter vetting of assistants; that income had fallen to the point where many postmasters could not afford to pay an assistant, such that substitution was no longer economic reality; under the new contract there was more extensive supervision, the Post Office could ask for remedial steps to be taken to terminate the contract; they could step in and control the branch premises in certain circumstances, and that while in **Wolstenholme** it had been relevant that a postmaster could choose to provide 18 hours service and claim a holiday substitution payment, he no longer had the choice in reality. There was insufficient emphasis in

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Wolstenholme and back office duties, and there was now increased regulatory compliance required.

134. The claimants also argued that their residual duty to see the contract was carried by competent staff was itself a matter of personal performance required by the contract. The claimants rely on **Redrow Homes v Buckborough (2009) IRLR 34**, in which a clause requiring a contractor to provide another labourer if it was necessary to carry out works to maintain the progress stipulated by the company, had been held by the employment tribunal not to reflect the true relationship. The EAT held that the tribunal's finding was justified on the facts, but also that an express obligation to provide a substitute, while not an undertaking personally to perform *work*, was an obligation personally to perform *services*, and that Parliament must have intended something by using the term "services" as well as "work". But the claimants acknowledged the difficulty for the tribunal shown by **Community Dental Centres v Sultan-Darmon (2010) IRLR 1024**. In that case an obligation to supply a locum at the dentist's own expense if she was unable to take patients for over five days had been found by the employment tribunal to be an example of a requirement to provide services personally, rather than work. On appeal to the EAT, it was found the dentist was not obliged to provide any dental services at all, and that the observation in **Redrow** about providing services personally had contradicted the Court of Appeal decision in **Tanton**. It had been held that in the case where the claimant had to provide a suitable person to perform the services if he was unable or unwilling to perform personally, that could not be a contract of service. (There seemed to be no issue in **Tanton** whether he was a worker, as it concerned a decision by Inland Revenue on whether he was to be taxed as an employee or self-employed contractor but it concerns the requirement for personal service).
135. Finally, the claimants argue that as well as providing personal service under the agreement, the Post Office is not their client or customer.

Respondent's Submission

136. The respondent argues that there is no contractual requirement for postmasters to do the work. In practice some did very little and others, such as Mr Ballman's son-in-law, did none. The fact that they are responsible for losses did not mean that actually they were liable to perform the work or services. Responsibility did not equate to personal service. The declaration that personal service on the part of the postmaster was not required was not a fiction, and the tribunal should consider **Josza** and **Creasey**. Extensive regulation of the product did not make the claimant a worker, as in **Stojsavljevic v DPD Group UK Ltd UKEAT/ 0118/20** and **Johnson v Transopco (2022) EAT/6**, which referred to **Hospital Medical Group v Westwood**, and whether the work was done in the course of a business, or a distinct activity. The Tribunal must consider the "essential nature and character of the claimant's business activities". In the case of the postmasters, the evidence showed that assistants were routinely used to perform the work. All the claimants had used assistants except Mr Baker, and there his wife performed services regularly. A number of postmasters

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were entirely absent. The fact that no one was required to provide services personally was fatal in all cases, whether SPSO or NT, and however much they did or did not perform services personally.

137. In the light of **James v Redcats (2007) ICR 106**, it was denied that the move from dominant purpose to considering the dominant feature of the contract being personal service was significant; **Wolstenholme** would not be decided differently now. The conditions attached to who could be an assistant was not a sufficient factor to mean that performing post office duties by means of an assistant was a sham: the postmaster was not required to carry out any personal work himself. A postmaster could not convert his contract to one of personal service by choosing to carry out the contractual duties that in that way.
138. The right to veto an assistant was not absolute and unqualified but required good reason, and evidently related to whether the assistant was likely to be honest. The restriction that the assistant must have some basic training was in line with authority that this was not a fetter sufficient to show that personal service was in fact required. If there was no personal service, it did not matter to what extent the way the work was done was controlled. In **Transopco**, the right of substitution was never exercised but was held to be genuine.
139. The respondent argues that in any case **Wolstenholme** decided the point; if there have been practical or contractual changes since then, they have moved in the respondent's favour.
140. Finally, even if personal service was required, the Post Office was the postmaster's client or customer by virtue of the contract, as held in **Wolstenholme**. Apart from that, on the facts shown, the postmasters were conducting one business on the premises, where income and staff costs were intermingled, such that it is difficult to sever the post office work, and clearly the post office was the client of the claimant's retail business.

Discussion and conclusion**Purposive construction**

141. There are several features of the operation suggesting that postmasters were in a position of dependence, and that the post office branch network which relied on them was integrated into the Post Office business as a whole. The terms of the contract were dictated by the Post Office, and varied by them with little consultation and no requirement of agreement. Postmasters were only able to agree minor changes, which they had to justify. There were some elements suggesting dominance, for example the very limited freedom to negotiate terms, and the unilateral changes to the commission structure, but we bear in mind that these can be features of other contracts too, where for example, garment manufacturers complain of the market dominance of Marks & Spencer imposing changes, or dairy farmers complain of the pricing policies of large supermarket chains. There was a complaint

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that foreign exchange was often available more cheaply from the post office online (when it was delivered to branch the collection) than over-the-counter; the reason was customers who could shop online might otherwise not choose to use the post office at all, and the more expensive foreign exchange was available to those who chose to use a branch.

142. There are features of relationship which suggest control. Procedure had to be followed to bar an abusive customer. There are detailed prescriptive rules on how and where a post office product can be sold. The scripted conversation when accepting a letter or parcel in the mail however is in part designed for regulatory reasons, and in part to prompt take-up of more expensive delivery options. Scripted conversations about sale of insurance or foreign exchange which may have been required in the past seem designed to ensure regulatory compliance (money laundering and suitability of product). Other than that, postmasters and their assistants were free to discuss with the public as they wished, provided they kept off politics and were not offensive. There were restrictions on selling products competing directly with post office and Royal Mail products, but these were commercially necessary because of the agreements with the suppliers of those products, whether the Bank of Ireland supplying ATMs, Royal Mail on parcels, or the post office itself on money transfer. They bear comparison with the restrictions on supplying other goods in the grocery supply agreements entered into by some. There were requirements for badges, uniform, branding and signage, but such requirements also found in franchise contracts and in the grocery supply agreements entered into by some of the claimants, and do not of themselves suggest subordination or even integration into the respondent's business.
143. On the complaints about tight security requirements, postmasters were well aware that their cash holdings can make them a target for robbery and burglary, and the requirement to protect the Post Office's own cash and stock holdings is reasonable where not held on their own premises. The alternative would be for postmasters to insure the cash and stock held; such insurance might be unaffordable without this level of security.
144. Other than the prescriptions about the product and how it should be sold, the respondent managed branches lightly. Contact with managers seems to have been regarded as entirely voluntary by the Post Office and by some postmasters; some complained that they saw a manager rarely, not too often. The incentive to perform was the payment structure, commission only except for the special cases of small communities, rather than targets or management. Horizon has been presented as a sort of spy in the cab, but Post Office feedback to postmasters related only to balance discrepancies, of which they or their managers, is doing the balance, were aware. The data seems not to have been used to monitor them otherwise, or to feedback on how they could do better, and reports were provided on request, but not otherwise. The analysis of Horizon data to establish the extent to which postmasters performed post office services was only done for the purpose of this hearing. It was not a means of control of how and by whom services were performed.

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145. We did consider carefully the authoritarian tone that seemed to have been adopted from time to time, and whether it suggested that in reality the post office attitude to postmasters was that of employer and worker rather than a contracting arrangement. On reflection, we concluded this could be put down to the fact that so many managers- and several postmasters – had worked in the business for a very long time, and had worked as employer and employee in the Crown post offices, and attitudes of some had not adjusted to the radical reduction in employed staff. There were equally many managers who seem to have conducted relations in terms of equality. We noted that the interviews of incoming postmasters -and we were taken to the detailed scripts of several of them – could read as applicants for a job, but equally they can be likened to a competitive bid for a contract; many postmasters were very anxious to take on a post office branch though whether this was for financial reasons or because they saw it as a way of life was not always clear.

146. Close control of the product and the way it was to be provided to the public was also a feature indicating close integration into the branch network and the business of the Post Office as a whole, and the social policy objectives of the Post Office, in providing an extensive and stable network of branches accessible to all members of the public, also suggested a significant degree of integration.

147. Taken as a whole, we considered these features enough to require us to examine how the contract operated in practice, and in the understanding of the parties, as well as the letter of its terms, so as to assess whether the real agreement did involve an undertaking of personal performance.

Personal service

148. The tribunal accepts the evidence that back-office work and parcel sorting meant that the level of Horizon entries was not the whole story. We also accept that in practice many, perhaps most, postmasters wanted to retain the back-office work for themselves, given the personal liability they might incur if there were losses, whether because they contracted as individuals, and were responsible for losses caused by assistants, or were liable as guarantor of the company. Their awareness of these responsibilities was no doubt heightened by past events – convictions for alleged dishonesty between 2000 and 2014, known as the Horizon scandal, and currently the subject of a public enquiry.

149. It was not however required that they do this work. It was always contemplated by both parties that assistants would be employed to do it, or that it would be performed by family members. The respondent has never objected that any work is carried out by assistants, rather than by an individual postmaster, or the director of a company contracted as postmaster-operator. We were mindful of the comment in **Mirror Group v Gunning (1986) ICR 145**, reading with caution of course because it examined the dominant purpose of the contract, that although the respondent to the

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contract for distributing newspapers preferred to contract with an individual, that individual's "absence from the scene of operations could (not) have been categorised as a breach of contract", and that the newspaper supplier preferred named individuals because it was easier to get money out of them. This observation is borne out by commercial practice, as shown in the grocery supplier agreement. Responsibility by guaranteeing contract debts did not require that guarantors had to supply services themselves.

150. The postmasters argue that in practice they cannot afford to hire assistants, meaning that they are in practice being obliged to provide personal service, but this constraint is already in the contemplation of the Post Office, with its acute concern only to take on postmasters with realistic business plans for non-post office retail in the premises where the branch will be sited, so that they are able to make a reasonable profit, including staff costs, when providing post office branch services. Incoming postmasters will have recognized from the close scrutiny of their business plans that employment of assistants and staffing costs had to be considered. It was not contemplated by both parties to the agreement that personal service would in reality have to be provided by the postmaster, rather than assistants.
151. The tribunal does not accept that the Post Office had an absolute right of veto over assistants. Their checks on assistants were confined to ascertaining if they had a history of dishonesty, or through adverse financial history might be so tempted. The only exception was checking that the assistant had the right to work in the United Kingdom, but that applies to any employer. There were a tiny number of rejections, checks are generally conducted within a week, and even an assistant barred from post office work was permitted to carry on working on the retail business side. Further, the Post Office had to provide a good reason why an assistant was barred, and what is a good reason is construed by reference to the requirements for checking. We were offered no evidence of arbitrary refusal. This was not an absolute, but strictly qualified right of veto. There was a sound business reason for it, given the large quantities of Post Office cash and stock at risk. The requirement for training was limited to that required for compliance with statutory regulation of particular activities (money laundering, dangerous substances in the mail, some financial services) to ensure that they were carried out in a lawful way, and only required of those operating Horizon, so did not extend to postmasters as a group. Other training was voluntary, although as a matter of practice basic training on how to use Horizon or proceed to balance the cash daily would be wanted by postmaster. It was not a fetter on a postmaster's right to provide services by way of his employed assistants. It was a way to check that the assistants were fit and able to do the job, akin to checking that a delivery driver had a current driving licence, and could operate a scanner.
152. Nor were postmasters themselves required to undergo training. Most did, because they wanted to know how to do the job. Mr Hogg, setting up as postmaster without previous experience, was free to send his daughter to be trained instead, and Mr Jones not to have training at all.

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153. The restriction on hours, is something we have considered carefully. In effect it requires service by somebody, and limits the freedom on delivering the service. Opening six days a week, to 48 hours a week, was required in the initial contract. Apparently this was because DVLA imposes that requirement; it also seems to reflect the public service requirement of universal accessibility. Successful changes were unusual (Baker, Braithwaite, Selley and Vakaria achieved changes) and had to be justified and approved. Any reductions were small, and it was more usually a case of adjusting when in the week the hours were provided. We thought this is better viewed as part of the nature of the service being provided on behalf of the Post Office, especially when taken with the fact that it never seems to have been required that the postmaster himself provide all those hours, nor did they. It does not seem to have been required that the post office counter open for as long as the retail hours (as asserted by some claimants), provided the minimum was met, but when there was a combi till (serving both retail and post office) there was no reason not to close the post office counter until the shop closed, unless the some reason a registered assistant was not available.
154. What are called disciplinary arrangements are limited to compliance with the terms of the contract, and other than financial shortages, were on the evidence treated as matters for discussion rather than discipline. The only effective discipline was to terminate the contract for breach, whether the other party was a company or an individual.
155. The fact that performing the contract by means of assistants, rather than personally, was so widespread and so recognised on both sides means that it is difficult to say that substitution was not a reality, on the contract both as written and as performed.
156. We were invited to hold, as an alternative, that some postmasters, or groups of postmasters were workers, while others were not. We were not able to make a distinction between some contracts and others. Some postmasters chose to perform most of the services themselves, but that did not mean that they had undertaken, as a feature of the agreement, to provide those services themselves. Under the same agreements, other postmasters performed little or no personal service.
157. This is why we do not find the holiday substitution allowance an indication of a requirement for personal service. It was available to those who chose to provide a significant amount of personal service, but that does not mean personal service was required of anybody. As for statutory sick pay under the SPSO, that related to the class of national insurance contribution paid. The provision for some sick pay under SPSO was again related to having volunteered to offer a certain level of personal service, rather than a requirement.
158. On the argument that even though they did not put in the hours on the counter, and sometimes not even in the back office, they were still responsible for seeing that the service was provided, in light of the authorities

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binding on us (**Tanna** and **Sultan-Darmon**), we cannot find that supplying assistants or seeing that someone else was doing it was doing or performing personally any work or services, as required by regulation 2.

Wostenholme and its Predecessors

159. Whether are workers or employees is appointed have been considered a number of earlier cases, all of them under the SPSO contract or its predecessors. None concern the NT contracts. **Hitchcock v Post Office (1980) ICR 100** considered whether a postmaster was an employee of the Post Office, and in particular whether he had *responsibility* for the performance of post office duties across two branches. It was held that despite an element of control by the post office, the control was connected with protection of the Post Office's own property and public interest, and was not a managerial nature, further, he was not an employee because he could and did delegate to others. **Tanna v Post Office (1981) ICR 374** considered whether postmaster was a worker, and focused on the significance of "may he" carry out the duties, not "must he", and concluded he was not a worker because the word "personally" had been deliberately inserted into the statute, says it's not just the stipulation that work or labour should be done. Even if some could be delegated, the person making the contract should himself undertake to do some of the work or labour. In **Goraya v Post Office UKEAT 409/89**, another employee case, it was held that it made no difference whether the postmaster had one branch or more than one (where of course he could not provide all the services personally), and held **Hitchcock** was binding. It was stressed that the case had proceeded on the basis that there was no personal obligation, and was only about whether the residual liability was significant. In **Soni v Post Office Counters Ltd UKEAT/45/96**, the EAT rejected an argument that the real issue was whether postmaster was actually present and working in the branch, as the claimant had in fact done for 11 years, emphasising that the dominant purpose of the contract was important, and that was only to see that it was done, not how it was done. In **Sheehan v Post Office Counters (1999) ICR 734**, both sides had agreed that there provision of personal service must be the "dominant purpose" of the contract, while now "dominant feature" is what is considered important. The claimant rejects the suggestion by the respondent that these phrases which are indistinguishable. In **Chohan v Logan EAT(S) 284/02**, the focus of the case was on whether it mattered that the contract contemplated work but did not require it. These cases culminated in the group decided in **Wolstenholme** (in which Mark Baker represented one of the claimants). The claimants argues that again this the case featured whether the performance of duties personally the dominant purpose of the contract, whatever happened in practice. Further, there was no full argument on personal service issue, which was limited to the significance of the holiday substitution allowance.

160. Having reviewed these, we can see that there was a focus on the terms of the contract, and that in the light of later case law, there could have been consideration of whether the elements of control identified, for example in **Hitchcock**, indicated that less significance should be attached to the letter of

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the contract and its dominant purpose, and more to whether the way the contract were performed indicated that there was an undertaking for personal performance. As has been seen, when we have examined practice and performance of the contract by the sample claimants, rather than the letter of the agreement, we have reached a similar conclusion, that personal performance was not required. We have done so even though some of the facts have changed. As in the event we have found, changes, for example increased checks on who could be employed as an assistant have made no essential change to what is required of the postmaster by way of personal service.

The Director Claimants

161. In this group, the Post Office made a contract with the company of which the claimants were directors, not with the directors themselves, so the question arises whether the claimant is “an individual who has entered into works under” a contract.
162. In a request for further information, the director claimants were asked: “to specify the facts and matters on the basis of which it is contended that the claimant (and not the limited company the name of which has entered into the contract concluded) is party to the contract and has the relevant rights and responsibilities in relation to the respondent”. The answer was: “it is accepted that in respect of the claimants listed under the respondents request at point 3, it is their respective limited company which is entered into the relevant contract and which has rights and responsibilities in relation to the respondent.” The respondent points out that they made this request in case it was to be argued that a contract should be inferred between individual directors and the respondent, and that the claimants have made it clear that this is not the case.
163. In oral submission the claimants confirmed they had not sought to amend to plead an implied contract with an individual. Without specific reference to directors, it is stated that “on the proper interpretation of the statutory provisions in the legislative context, the reality of each of the sample claimant’s engagement is that they are a limb (b)worker engaged by the respondent to provide worker services personally as a postmaster”. Orally it was pointed out that the respondent could have applied to strike out these claims before the first hearing day, and that the practical experience of the director claimants assisted in making findings.
164. As we have decided there was no requirement to provide personal service, even where an individual was the party to the contract, strictly this point is redundant. But had we concluded that individual postmasters generally had undertaken under the contract to provide personal work or services, we would have decided this point against the directors. In **Halawi v World Duty Free (2015) 3 All ER 543**, the claimant worked as a beauty consultant, through her service company, with a management services company, which in turn supplied people to sell products in the duty free shop run by the respondent. The respondent withdrew approval of her and she

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brought a claim of discrimination because of religion. There was no contract between the claimant and World Duty Free, which controlled the outlet where she worked. In their handbook they set out some rules, one of which was that a consultant could provide a substitute if the substitute had an airside pass and their approval. The respondent points to this as showing that a worker must as a minimum contract as an individual. The Court of Appeal decision shows that there was a chain of intermediaries between the claimant and respondent, many without any written contract; the employment tribunal had however rejected the suggestion that the 'web of relationships' was intended to disguise the true relationship, and the claimant had chosen to provide her services through a company. In comment on this case in **Pimlico Plumbers**, it was considered relevant that she had no contract with World Duty Free of any sort, and the right to substitute was not a contractual right, but reflected the respondent's lack of interest in personal performance on her part under her contract with the service company, or its contract with the management services company. Their only interest was that someone sufficiently presentable and competent to have secured approval to work in an outlet, in possession of an airside pass, should attend each day.

165. We were also taken to **Hurstwood Properties v Rossendale Borough Council (2021) 2 WLR 1125**, in which the Supreme Court considers whether the veil of incorporation could be pierced; it was held that an owner or controller of the company could not be held liable for a breach of obligation that had only ever been undertaken by the company.
166. Even if these claimants had argued they were liable under a contract to be constructed, when we consider the four sample claimants who are directors of their companies, which contract with the respondent, and consider the reality of the arrangement as a purposive construction, we cannot hold that there was any requirement on the part of the Post Office that the company must be party to the contract rather than an individual, such as to suggest this was a device to avoid liability. There were tax advantages to incorporation, and some chose to incorporate and some not. In any event, unless there was a sole director, it was not obvious that one particular director was the individual who had undertaken to provide services personally. The Post Office would not have complained if none of the directors took part in Post Office activity under the contract. A guarantee had to be given by a director or shareholder, but in the case of Mr Rigg, his mother also gave the guarantee, and it was not clear that she provided any personal service to the Post Office at all. Requiring security is common in commercial arrangements. Londis had a similar requirement. Those who gave guarantees were only personally liable if the company could not meet the financial responsibility. Although sometimes the guarantor worked in the post office branch, it was not a requirement.
167. In any case, there was nothing in the contract requiring any director of the company to perform personal services for the Post Office. They could have left everything, including overseeing assistants, to a manager.

Who is the Client or Customer?

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168. Having found there was no undertaking to do or perform work or services personally, there is no need to consider whether the Post Office was a customer of the claimants' business running retail shops, or whether the post office counter business could be carved out from it in a different relationship.

Employment Judge Goodman

Dated: 11th March 2022

JUDGMENT and REASONS SENT to the PARTIES ON

14th March 2022

FOR THE TRIBUNAL OFFICE

Case No: 1402149/18 and 119 others

SCHEDULE

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

B E T W E E N:

MR M BAKER & 119 OTHERS

Claimants

AND

POST OFFICE LIMITED

Respondent

LIST OF CLAIMANTS
AS OF 4 FEBRUARY 2022

No.	Surname	Forename(s)	Case number
1.	GRO		1402150/2018
2.			1402519/2018
3.			1402151/2018
4.			1402152/2018
5.			1402153/2018
6.			1402154/2018
7.			1402155/2018
8.			1402156/2018
9.			1402149/2018
10.			1402159/2018
11.			1402160/2018
12.			1402161/2018
13.			1402520/2018
14.			1402162/2018
15.			1402163/2018
16.			1402164/2018
17.			1402165/2018
18.			1402166/2018
19.			1402167/2018
20.			1402168/2018
21.			1402169/2018

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22.		1402170/2018
23.		1402171/2018
24.		1402172/2018
25.		1402173/2018
26.		1402174/2018
27.		1402348/2018
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72.		1402469/2018
73.		1402470/2018

GRO

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74.	GRO	1402471/2018
75.		1402472/2018
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105.		1402503/2018
106.		1402504/2018
107.		1402505/2018
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110.		1402508/2018
111.		1402509/2018
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113.		1402511/2018
114.		1402512/2018
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119.		1402517/2018
120.		1402518/2018