

Claim No. HQ16X01238, HQ17X02637 & HQ17X04248

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE POST OFFICE GROUP LITIGATION

BEFORE: The Hon. Mr Justice Fraser

BETWEEN:-

ALAN BATES & OTHERS

Claimants

- and -

POST OFFICE LIMITED

Defendant

FOURTH CMC ORDER

UPON the making of an order following a Case Management Conference on 22 February 2018 (the "Third CMC Order"), as varied by further order dated 22 March 2018

AND UPON the parties reaching agreement as to the matters set out in paragraph 11 of the Third CMC Order

AND UPON HEARING Leading Counsel for the Claimants and Leading Counsel for the Defendant at the adjourned Costs and Case Management Conference held on 5 June 2018

IT IS ORDERED THAT:

Adjournment of Costs Management Conference

1. The Costs Management Conference be adjourned to 19 June 2018, at a time to be appointed, with a time estimate of 1 hour.

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2. The parties are to continue to seek to agree their costs budgets in advance of the Costs Management Conference listed in paragraph 1 above. Insofar as estimated phases of the costs budgets of either party remain to be agreed, by 4pm on 15 June 2018 each party shall file and serve a document setting out:
 - (a) a summary of any points of principle upon which they disagree;
 - (b) the estimated sums in their costs budgets that are not agreed; and
 - (c) any further points of disagreement that are not captured by (a) and (b) above.

Stage 3 Disclosure: Horizon Issues Trial – further disclosure

3. By 4pm on 17 July 2018, the Defendant shall disclose and make available for inspection the electronic documents set out in Schedule 1 to this Order for the purposes of the Horizon Issues Trial. The Defendant shall, as a preliminary tranche of the same, disclose and make available for inspection such of those documents as it is able to, using reasonable endeavours, by 4:00pm on 29 June 2018.
4. The above disclosure shall be provided following a reasonable and proportionate search for the said documents in Schedule 1. The Defendant shall, where necessary, use reasonable endeavours to obtain these documents from Fujitsu or ATOS where appropriate.
5. By 17 July 2018, the Claimants shall disclose and make available for inspection the documents upon which they intend to rely at Horizon Issues trial.

Inspection of Fujitsu systems

6. By 15 June 2018 the Defendant shall use reasonable endeavours to arrange for both parties' appointed IT experts to jointly be given 2 days access to inspect at the offices of Fujitsu in Bracknell the systems known as (i) Peak and (ii) TFS. The Defendant

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shall use its reasonable endeavours to accommodate any reasonable requests for further days of joint access to inspect those systems.

7. The parties shall seek to agree arrangements for such further joint access to Horizon and Fujitsu's systems as the parties' IT experts may reasonably require in order to prepare their reports and joint statements.

IT Experts' Information Requests

8. The parties' appointed IT experts are to jointly compile a list of error codes used by Horizon or Horizon support staff, as used in the Known Error Log and/or in the Peak System or equivalent, for the purposes of a request to be made to Fujitsu for descriptions to be provided of what those error codes mean (the "Error Codes List"). The Error Codes List is to be jointly provided to Fujitsu by the parties' solicitors by 4pm on 26 June 2018.
9. By 4pm on 26 June 2018 the parties' appointed IT experts are jointly to compile a list of information which either or both such expert(s) considers that he/she requires in order properly to opine on the Horizon Issues, identifying:
 - (a) which information both experts agree is required for that purpose; and/or
 - (b) which information only one expert contends is required for that purpose and the identity of that expert.

Witness statements

10. By 4pm on 14 September 2018, each party shall file and serve witness statements of any witness of fact whose generic evidence (in distinction to Claimant-specific evidence) they wish to rely upon for the purposes of determining the Horizon Issues.
11. The parties have permission, if so advised, to file and serve supplemental witness statements in response to factual matters that are referred to and relied upon by either

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parties' IT expert in their expert reports. Any such supplemental witness statements shall be filed and served:

- (a) By the Defendant, by 4pm on 16 October 2018; and
- (b) By the Claimants, by 4pm on 14 December 2018.

Further CMC

- 12. There shall be a further CMC on a date to be agreed and set by the Court to consider any further directions needed for the Common Issues or Horizon Issues Trial, with a time estimate of 2.5 hours.

Timing variations and other matters

- 13. Paragraphs 15 and 16 of the Third CMC Order shall be varied, as follows: -
 - a. The date in paragraph 15 (service by the Claimants of a provisional / outline document in relation to Horizon Issues), shall be varied to 4pm on 27 July 2018;
 - b. The date in paragraph 16 (parties' IT experts to produce first joint statement) shall be varied to 4pm on 17 August 2018;
 - c. The date in paragraph 17 (service of Claimants' IT expert's report) shall be varied to 28 September 2018; and
 - d. The date in paragraph 18 (service of Defendant's IT expert's report) shall be varied to 16 November 2018.
- 14. The threshold for reporting costs to each other and the Court required by paragraph 25 of the First CMC Order shall be increased from £250,000 to £500,000.
- 15. Defined terms in previous orders shall have the same meaning in this Order.

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16. The parties shall have liberty to apply in respect of any provision in this Order.
17. The costs of this Order shall be Common Costs in the case.

Dated:

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Schedule 1

Defined Terms

Terms used in this Schedule shall have the following meanings as further described in the Defendant's document entitled 'Management Structure' served pursuant to paragraph 3 of the Third CMC Order (the "Management Structure"):

"Category 1 Custodians" shall mean the Post Office Board of Directors and Group Executive (including Post Office's Group Executive) as defined in the Management Structure, or their historic equivalent.

"Category 2 Custodians" shall mean: (a) the Group Chief Information Officer and all Senior Leaders reporting to the Group Chief Information Officer identified at paragraph 4.6 of the Management Structure (or historic equivalent insofar as the name of the role has changed); and (b) the persons at Post Office named as being in attendance in the document entitled 'Payments / Receipts Mismatch Issue notes' (undated, disclosed to the Claimants by letter dated 31 August 2016) and their predecessors and successors in the same or substantially the same role during the period 1 April 2010 to 1 April 2011.

"Category 3 Custodians" shall mean the Counters Risk Management Committee and its historic equivalent insofar as the name of the committee has changed over time (the "Committee") and 5 members of the Committee across the period 1 April 1998 to 31 March 2017. The search of the repositories of the members of the Committee shall be limited by reference to the search terms in Part 2 to this Schedule.

The requirement to give disclosure of the following categories of document remains without prejudice to (a) compliance with any request that the parties' IT experts either have themselves made or may later make for information, documentation or access to the Horizon IT system, and (b) the rights of the parties' IT experts, as recorded in the Third CMC Order, to seek directions pursuant to CPR r.35.14.

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Part 1 – Categories of document

Horizon Issue	Document / Class of document
<u>BUGS, ERRORS, AND DEFECTS IN HORIZON</u>	
Accuracy and integrity of data	1. Reports and briefings (excluding emails) produced by Fujitsu and submitted to Category 1 or 2 Custodians regarding the nature and extent of bugs, errors or defects (not limited to software) in Horizon that had the potential to cause branch accounts to be inaccurate.
	2. Reports and briefings (excluding emails) produced by Post Office and submitted to Category 1, 2 or 3 Custodians regarding the nature and extent of bugs, errors or defects (not limited to software) in Horizon that had the potential to cause branch accounts to be inaccurate.
	3. Reports and briefings (excluding emails) produced by ATOS and any other third party IT suppliers (excluding individual contractors) who was engaged by Post Office to work primarily on the Horizon system, Bank of Ireland and Camelot and submitted to Category 1 or 2 Custodians regarding the nature and extent of bugs, errors or defects (not limited to software) in the Horizon system that had the potential to cause branch accounts to be inaccurate between: (i) 1 January 1999 to 31 December 2000; (ii) 1 January 2005 to 30 April 2006; and (iii) 1 January 2010 to 31 July 2013.
	4. Documents or records recording all data sources outside of Horizon which provide financial or transactional data into Horizon.

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Horizon Issue	Document / Class of document
Controls and measures for preventing/fixing bugs and developing the system	5. Reports and briefings (excluding emails) produced by Fujitsu and submitted to Category 1 or 2 Custodians regarding necessary or recommended measures for preventing/fixing bugs in Horizon that might cause branch accounts to be inaccurate.
	6. Reports and briefings (excluding emails) produced by Fujitsu and submitted to Category 1 or 2 Custodians regarding necessary or recommended measures for developing Horizon so to mitigate the risk that Horizon might cause branch accounts to be inaccurate.
	7. Reports and briefings (excluding emails) produced by Post Office and submitted to Category 1, 2 or 3 Custodians regarding necessary or recommended measures for preventing/fixing bugs in Horizon that might cause branch accounts to be inaccurate.
	8. Reports and briefings (excluding emails) produced by Post Office and submitted to Category 1, 2 or 3 Custodians regarding necessary or recommended measures for developing Horizon so to mitigate the risk that Horizon might cause branch accounts to be inaccurate.
	9. Reports and briefings (excluding emails) produced by ATOS and any other third party IT suppliers excluding individual contractors) who was engaged by Post Office to work primarily on the Horizon system, Bank of Ireland and Camelot and submitted to Category 1 or 2 Custodians regarding necessary or recommended measures for preventing/fixing bugs and developing the Horizon system, to mitigate or prevent impact on branch accounts or transactions between: (i) 1 January 1999 to 31 December 2000; (ii) 1 January 2005 to 30 April 2006; and (iii) 1 January 2010 to 31 July 2013.
	10. Reports and briefings (excluding emails) submitted to Category 1, 2 or 3 Custodians regarding the nature and extent of postmaster complaints, reports or notifications regarding bugs, errors or defects in Horizon that had the potential to cause a branch accounts to be inaccurate.

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Horizon Issue	Document / Class of document
	11. Written policies and processes regarding how the Horizon Service Desk is operated (by both Fujitsu historically and ATOS now).
<u>OPERATION OF HORIZON</u>	
Remote Access	12. Written policies and processes regarding database administrator access to Horizon, including relating to the implementation of fixes that had the ability to impact upon branch accounts or transactions.
	13. Any logs in Horizon of when database administrator access has been used and how it was used.
	14. Documents containing lists of individuals who had or have database administrator access to the Horizon Audit Store and the BRDB (Branch Database), from 1999 to date, which allows them to implement fixes in branch accounts or transactions.
Transaction Corrections	15. Reports and briefings (excluding emails) submitted to Category 1 or 2 Custodians regarding aggregated (not branch specific) information on the underlying causes of, or circumstances leading to, transaction corrections issued to the branch network via Horizon.

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Part 2 – Boolean Search Terms for Members of the Committee within Custodian Category 3

1. (Committee Member's first and last name; OR initial and last name)

AND one or more of the following: -

2. ("Counters Risk Management Committee", "Counters Risk Committee", "Counters Committee" "Risk Committee" OR "Risk Management Committee") OR
3. (like combinations in respect of any prior or subsequent name of that Committee)

AND "Horizon"

AND one or more of the following: -

4. "bug*" OR
5. "peak*" OR
6. "error*" OR
7. "defect*" OR
8. "work" w/2 "*"round" OR
9. "shortfall" OR
10. "loss*" OR
11. "discrepanc*" OR
12. "problem*" OR
13. "mismatch*" OR
14. "inaccura*" OR
15. "transaction data"

Searches that are not case-sensitive shall be used for all such keywords.



DATED the 5th day of June 2018
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THE POST OFFICE GROUP LITIGATION
BEFORE: THE HON. JUSTICE FRASER

BETWEEN:

ALAN BATES& OTHERS

Claimants

-And-

POST OFFICE LIMITED

Defendant

ORDER
TLQ17/0455
COURT 18 (RB)

FREETHS LLP
DX: 37209 PICCADILLY

REF: JXH/VN/1684/2113618/1

SOLICITOR FOR THE CLAIMANTS

WOMBLE BOND DICKINSON
DX: 38517 SOUTHAMPTON 3

REF: AP6/364065.1369

SOLICITOR FOR THE DEFENDANT

C.c. Clerk of the Lists

If you have a query with this Order please contact Kola Okanlawon on telephone no. **GRO** outside the usual court sitting times of 10.30am to 1.00pm and 2.00pm to 4.30pm. Please address any correspondence to the Queen's Bench Associates' Department, E.104, The Royal Courts of Justice, Strand, London WC2A 2LL DX 44450 Strand. 1 4 3