

Claim No. HQ16X01238

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
IN GROUP LITIGATION BETWEEN:

ALAN BATES & OTHERS

Claimants

-v-

POST OFFICE LIMITED

Defendant

draft/ GENERIC DEFENCE

A. GPoC INTRODUCTION & KEY FACTS

A.1 The Parties

Defendant

11. As to paragraph 4, it is admitted and averred (1) that Post Office operates its business through a network of around 11,600 branches in the UK, (2) that it offers products and services to the public via this network, including the services referred to, and (3) that it specifies procedures and standards governing how branches are to operate its business on its behalf. Where those branches are managed by Post Office itself ("**Crown Office branches**"), they are directly managed by Post Office and so are under its control. However, where those branches are operated by Subpostmasters or Franchisees ("**agency branches**" and "**franchise branches**" respectively), they are under the control of the relevant Subpostmasters or Franchisees.
12. As to paragraph 5:
- (1) Post Office's products and services include products and services provided by other business and organisations (known as "**Post Office clients**"). For example, Post Office provides the physical location at which a person may deposit cash into a bank account but it does not provide the underlying banking service (this would be provided by a bank).
 - (2) As one would expect, Post Office determines the products and services which it offers to the public though this is sometimes driven by other factors, such as regulatory changes and the requirements of Post Office clients. Post Office requires

some minimum products and services to be offered by its branches. However, it does not require or indeed permit all Post Office branches to offer all its products and services.

- (3) Some new products or services, such as ATMs and National Lottery terminals, were introduced in agency and franchise branches only where the relevant Subpostmasters and Franchisees specifically consented to their introduction.
- (4) No admissions are made as to the “increased ... complexity” of any particular product or service. Post Office notes that the GPoC does not allege that any such increased complexity is material to any Claimant’s case. Post Office reserves the right to address these matters further in the event that the Claimants plead that they are material in some way, which would involve the Claimants identifying the product or service concerned, the nature of the complexity relied on, the claims affected and how they are affected.
- (5) Save as aforesaid, paragraph 5 is admitted.

Types of branch

- 13. Paragraph 6 is admitted. These branches are also called agency branches and Subpostmasters invariably operate their own retail businesses from the same premises. In their conduct of Post Office’s business, Subpostmasters act as Post Office’s agent, which involves doing the following things on its behalf:
 - (1) entering into transactions with Post Office customers;
 - (2) effecting and/or processing transactions with Post Office clients such as Royal Mail (postal services), various UK government departments (various services such as benefit payments and passports), and various financial institutions (banking services and insurance products;
 - (3) operating equipment belonging to Post Office, ranging from IT equipment (e.g. a Lottery terminal used to sell Camelot lottery products) to basic equipment such as scales for weighing mail and safes in which cash is stored;
 - (4) holding and dealing [as bailees?] with stock (including cheques, vouchers and other items) belonging to Post Office; and

- (5) holding and dealing [as trustees?] with cash belonging to Post Office.

14. As to paragraph 7:

- (1) Franchisees are not always (and are not required to be) limited companies.
- (2) Post Office is unable to admit or deny whether most of the limited companies that are parties to Franchise Agreements were set up for the purpose of contracting with Post Office. Many were not (e.g. WH Smith, McColls, the Co-operative Group, and Lakemore).
- (3) Not all individuals working in Crown Office branches are employed by Post Office: for example, some are agency staff.
- (4) Save as aforesaid, paragraph 7 is admitted.

Subpostmaster Claimants and Contracts

15. Paragraph 8 is admitted as regards the Claimants (i.e. the claimants in action No. HQ16X01238).

16. As to paragraph 9:

- (1) Post Office contracts with Subpostmasters on standard form contracts.
- (2) As well as being expressed not to be contracts of employment, these contracts are not contracts of employment, as the Claimants themselves admit.
- (3) The contracts are contracts of agency. As one would expect with contracts governing the conduct by an agent of the principal's business, they reserve to Post Office the right to control certain aspects of its business (e.g. the products and services Subpostmasters may offer on Post Office's behalf and the procedures and standards in accordance with which Subpostmasters are to conduct Post Office's business and to account to Post Office for the transactions and for the cash and stock they have dealt with on its behalf). In relation to matters such as these, Post Office has the power to give instructions that Subpostmasters are obliged to follow.
- (4) However, Post Office would not characterise its contracts with Subpostmasters as "reserve[ing] to the Defendant a high degree of power, discretion and control". Post

Office is unsure what is meant by this vague expression, and it does not know what particular powers, discretions and controls the Claimants have in mind.

- (5) Save as aforesaid, paragraph 9 is admitted.

17. As to the contracts pleaded in paragraph 10 (“**the Subpostmaster Contracts**”):

- (1) **SPMC:** Paragraph 10.1 is admitted. Like the GPoC, this Generic Defence refers only to the version of the SPMC served with the GPoC. Post Office believes that 130 Claimants were engaged on the terms of the SPMC.
- (2) **Temporary SPMC:** Save that the word “purported” is inapposite, paragraph 10.2 is admitted.
- (3) **Community Subpostmaster Agreement:**
 - (a) The first sentence of paragraph 10.3 is admitted. Post Office believes that 6 Claimants were engaged on the terms of Community Subpostmaster Agreement.
 - (b) As to the second sentence, Post Office believes that all or at least some of the Claimants who were engaged on the terms of these agreements have retained a copy of their contracts. Further, in their Response to a Request for Further Information dated 16 May 2017 (“**Part 18 Response**”), the Claimants state that it is not their case that none of them (i) has or (ii) has ever had a copy of the Community Sub-Postmaster Agreement, from which Post Office infers that at least some of these Claimants in fact have a copy of that agreement. In any event, Post Office provided a copy to the Claimants on 10 April 2017.
 - (c) As to the third sentence, the Claimants should not proceed on an assumption as to the material content of any contract on which they intend to rely but must plead a positive case.
- (4) **NTC:**
 - (a) The first sentence of paragraph 10.4 is admitted. Post Office believes that 32 Claimants were engaged on the terms of main branch NTC, and that 19 Claimants were engaged on the terms of the local branch NTC.

- (b) The second sentence is noted.
 - (c) As to the third sentence, Post Office believes that all or at least some of the Claimants who were engaged on the terms of these agreements have retained a copy of their contracts. Further, in their Part 18 Response, Post Office infers that at least some of these Claimants in fact have a copy of that contract. In any event, Post Office provided a copy to the Claimants on 10 April 2017.
 - (d) As to the fourth sentence, the Claimants should not proceed on an assumption as to the material content of any contract on which they intend to rely but must plead a positive case.
- (5) Paragraph 10.5 is noted. Post Office will respond to any claim based on any other contract if and when such a claim is properly pleaded.
18. For the avoidance of doubt, Post Office pleads back in relation to the SPMC, the Temporary SPMC, the NTC and the Franchise Agreement attached to the GPoC without prejudice to its right to rely in individual cases on the terms of such agreements as they stood at the time(s) relevant to the particular claims made by particular Claimants.
19. As to paragraph 11:
- (1) Regarding paragraph 11.1, Post Office believes that 2 Claimants were employed in Crown Office branches and that both or one of them will have retained a copy of their employment contract. Further, from their Part 18 Response, Post Office infers that at least one of these Claimants in fact has a copy of that contract.
 - (2) Regarding paragraph 11.2, Post Office believes that 5 Claimants assert that they were employed by Subpostmasters as their Assistants (a term which in this Generic Defence includes persons whom Subpostmasters employed to manage their branches). Post Office notes that it had no contractual or other relationship with these individuals and that the Claimants have not disclosed the basis or terms upon which they were employed by the relevant Subpostmasters.
 - (3) Regarding paragraph 11.3, Post Office believes that Claimants assert that they were directors of Franchisees and that were guarantors of Franchisees. The relevant Franchisees contracted with Post Office on the terms of the Franchise Agreements. Post Office notes that Post Office had no contractual or other relationship with the

Claimants who are merely alleged to have been directors and that the Claimants have not disclosed the basis or terms upon which they acted as directors of the relevant Franchisees.

- (4) Save as aforesaid, Post Office is unable to admit or deny paragraph 11.

A.2 Horizon

20. Paragraph 12 is admitted. Until 2010, Horizon was a distributed system in which transactions were undertaken within branches, whose terminals transmitted transaction data to a central Post Office data centre and also to Post Office clients. Once Horizon Online was introduced in 2010, transactions were effected through real time exchanges of data from branches to a central Post Office data centre, and transaction data was also transmitted to Post Office clients. Save where otherwise indicated, Post Office uses the term “**Horizon**” to refer both to the pre-2010 version of Horizon and to Horizon Online as the context may require, without prejudice to its ability to plead more fully as to Horizon’s features and operations as may be relevant to any individual claim (should such a claim raise any specific issues in that regard).
21. As to paragraph 13, the vast majority of Subpostmasters and their Assistants who have worked in agency branches since the introduction of Horizon in those branches would have been users of Horizon. Save as aforesaid, paragraph 13 is not admitted.
22. As to paragraph 14 (which appears to relate simply to Claimants who were Subpostmasters):
- (1) It is admitted that, if and to the extent that any Claimant Subpostmasters worked in a Post Office branch prior to the introduction of Horizon to that branch and continued working in that branch thereafter, the introduction significantly changed how they were required to work in that branch. Save as aforesaid, paragraph 14.1 is denied.
- (2) Paragraphs 14.2 and 14.3 fail to identify any of the limitations apparently relied on. However, the introduction of Horizon increased, rather than limited, the ability of Subpostmasters to access, identify, obtain and reconcile transaction records and to investigate shortfalls. [Before the introduction of Horizon, Subpostmasters had access to several separate hand-written ledgers to particular products or services. These ledgers had various limitations, including that it was not possible to know how

much cash should be in the branch without first reconciling all the ledgers together, was a time-consuming process. After the introduction of Horizon, Subpostmasters had the ability at any time to obtain a "Balance Snapshot" that showed them how much cash should be in a branch, making it much easier to identify any shortfalls. Subpostmasters also had the ability to obtain an extensive range of other reports and information from Horizon, as pleaded further in paragraph [XX] below].

23. Paragraph 15 is embarrassing for lack of particularity. In the absence of any indication as to the actual changes the Claimants intend to rely on and as to the effect(s) each such change is alleged to have had, Post Office cannot plead to this paragraph.
24. Post Office notes that, on the Claimants' pleaded case, any changes in the Claimants' ability to access records and investigate shortfalls caused by the introduction of Horizon or by subsequent changes to Horizon or to products and services offered has no apparent relevance to any of the breach of contract or other claims advanced in the GPoC. As regards such changes, paragraph [XX](3) above is repeated, *mutatis mutandis*.
25. The first sentence of paragraph 16 is admitted. As to the second sentence, Post Office's use of the terms "Horizon" and "Horizon Online" similarly does not include training.

The operation of Horizon

26. As to paragraph 17:
 - (1) Save for the "others" referred to, whom the Claimants do not identify, the first sentence is admitted. The process for transferring transaction data from branch to Post Office's central data centre, and the controls that ensure the accuracy of that data transfer, are described at paragraph [XX-40] below.
 - (2) Regarding the second sentence:
 - (a) [WOULD IT HELP TO GIVE AN INDICATION OF THE SORTS OF HARD COPY DOCUMENTS AVAILABLE IN BRANCHES?]
 - (b) On the introduction of Horizon, transaction data was freely available to Subpostmasters for 42 days from the date of the relevant transaction. Since the introduction of Horizon Online, such data has been freely available for 62 days.

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- (c) While such transaction data is available, Subpostmasters can search for, identify, organise and analyse data by means of wide range of reports, including a transaction log report which identifies each and every transaction undertaken in the relevant branch in the entire period. This report can be focused in a variety of ways if desired, including by reference to date ranges, transaction types, stock items, value ranges and even particular users or terminals
- (d) Thus, [in addition to the paper records available in branches] [SEE COMMENT ON SUB-PARA (1) ABOVE], Horizon provides Subpostmasters with powerful tools for searching, checking and reviewing all aspects of the transactions undertaken in the branches for which they were responsible.

Transaction Corrections

27. Paragraph 18 refers to transaction corrections. One of the safeguards against errors by Subpostmasters (or their staff) is a process by which Post Office proposes corrections to a branch's accounts ("Transaction Corrections"). These are typically generated in the following way:
- (1) Post Office checks Horizon transaction data (i.e. data as keyed into branch terminals) against data taken from separate sources. For example, Post Office client banks provide their own records of transactions carried out in Post Office branches (transmitted directly from the chip and pin devices used in branches), allowing Post Office to compare these to the transaction data on Horizon.
 - (2) Where there is a discrepancy between the two sets of data, Post Office reviews the available data with a view to determining whether the branch staff have probably made an error that requires correction (and it may contact the Subpostmaster for further information to assist in that determination). Where this is the case, Post Office will generate a Transaction Correction notification which is sent to the relevant branch via Horizon. For example, where a cheque deposit into a bank account is keyed in on Horizon as a £100 credit but the true amount of the cheque is £90, a Transaction Correction with a value of £10 debit is generated.
 - (3) A Transaction Correction notification includes (i) a description of the transaction to be corrected, (ii) the contact details of an employee of Post Office who will provide

further detail if required, (iii) typically, the outline reason for or nature of the correction, and (iv) sometimes, evidence justifying the proposed correction.

- (4) A Transaction Correction notification sent by Post Office to a branch is a proposal, not an instruction, and it does not take effect unless and until accepted by the Subpostmaster concerned. On receiving a Transaction Correction notification, the Subpostmaster can either accept the correction or dispute it.
- (5) On the Horizon screen, there are two ways for a Subpostmaster to accept a Transaction Correction. He or she may “accept” the Transaction Correction: this immediately increases or decreases the cash or stock position (as appropriate) in the branch’s accounts as recorded on Horizon. Alternatively, he or she may “settle centrally” the Transaction Correction: this causes the value of the Transaction Correction to be transferred to his or her personal account with Post Office. Unless a dispute is lodged with Post Office (see below), Post Office assumes that the Subpostmaster accepts the validity of the Transaction Correction that has been settled centrally and will in due course pay or collect any money due to or from the Subpostmaster. This process is addressed in [page ref] of the operating manual entitled “Branch Trading: balancing and dispatch of documents” (“**The Branch Trading Manual**”).
- (6) If the Subpostmaster wishes to query or dispute the Transaction Correction, he or she should contact the person identified in the Transaction Correction notification. This process is identified in [page ref] of the Branch Trading Manual. If, having discussed the matter and reviewed any further information provided by the person identified, the Subpostmaster wishes to dispute the proposed Transaction Correction, he or she will settle it centrally and lodge a dispute with the Post Office by contacting the Helpline. This process transfers the value of the Transaction Correction to the Subpostmaster’s personal account with Post Office and causes a block to be placed of the value transferred to the personal account whilst the dispute is resolved (see paragraph [XX - 34(4)] below).

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28. As to paragraph 18:

- (1) The first sentence is denied. Post Office does not require that the Transaction Correction be accepted unless proven by the Subpostmaster not to be correct.

- (2) Save for the reference to “limited” reports (as to which see paragraph [XX] above), the second sentence is admitted. However:
- (a) every Transaction Correction comes with contact details for a person at Post Office who can provide more information and a Subpostmaster can in any event contact the Helpline referred to below to obtain more information;
 - (b) depending on the subject matter of the Transaction Correction, the Subpostmaster may hold corresponding paper records in his or her branch which he or she can and should check; and
 - (c) not all Transaction Corrections require further information (for example, a Transaction Correction could be generated for a missing cheque and the cheque might be found in the branch).
29. In paragraph 19, the Claimants combine many allegations together. Post Office separates out and addresses those allegations in paragraphs [XX] below. In the interests of clarity and consistency, in this Generic Defence Post Office uses the following defined terms:
- (1) A “**discrepancy**” refers to any difference between (i) the actual cash and stock position of a branch and (ii) the cash and stock position shown on Horizon as derived from transactions input via the branch’s terminals.
 - (2) A “**gain**” refers to an event that causes a positive discrepancy (i.e. the situation where the branch has more cash and/or stock than the derived figures for cash and/or stock on Horizon). For example, a Subpostmaster carrying out a bank account withdrawal of £100 for a customer, entering that withdrawal into Horizon but providing only £90 in cash to the customer would generate a gain of £10.
 - (3) A “**loss**” refers to an event that causes a negative discrepancy (i.e. the situation where the branch has less cash and/or stock than the derived figures for cash and/or stock on Horizon). For example, a Subpostmaster carrying out a bank account withdrawal of £100 for a customer, entering that withdrawal into Horizon but providing £110 in cash to the customer would generate a loss of £10.
 - (4) A “**shortfall**” refers to negative net discrepancy at the end of a trading period (i.e. the amount by which losses (if any) exceed gains (if any) in the period).

- (5) A “**net gain**” refers to positive net discrepancy at the end of a trading period (i.e. the amount by which gains (if any) exceed losses (if any) in the period).
- (6) A “**Horizon-generated shortfall**” refers to a shortfall that is attributable to errors and/or bugs in Horizon.

Branch Trading Statements, making good and disputing shortfalls

- 30. As to the first sentence of paragraph 19, it is denied that the matters addressed in paragraphs 19.1 to 19.3 “accentuated the importance of the accuracy of Horizon”. Paragraph 19 addresses requirements whose purpose is to ensure the proper discharge of the Subpostmaster’s contractual and common law duties to account to Post Office for the transactions they entered into on its behalf and for the cash and stock it has entrusted to their care. Such requirements are to the mutual benefit of Subpostmasters and Post Office in that (amongst other things) they ensure the early identification and correction of any errors and defaults relating to the transactions carried out and/or to the cash and stock held in the branches for which the Subpostmasters are responsible.
- 31. These requirements are as follows:
 - (1) Subpostmasters are required to perform a regular “**balancing process**”, which involves counting all stock and cash at their branches, comparing it with the cash and stock indicated on Horizon and producing (and confirming) an account of the transactions undertaken since the last balancing process and of the cash and stock held. Initially, Subpostmasters were required to do this weekly, but since 2005, they have been required to do so at the end of each “**Branch Trading Period**” (Post Office-specified periods of 4 or 5 weeks, of which there are 12 in the year and which, for convenience, are referred to herein as “**trading periods**”).
 - (2) Where this process discloses a shortfall and the Subpostmaster accepts liability for the shortfall, he or she is required to make it good (1) by adding cash or a cheque from his or her own personal funds to the branch or (2) by settling it centrally. This election is made on the Horizon terminal in branch. By “settling centrally”, an entry is added to the branch accounts which offsets the value of the shortfall, thereby bringing the derived cash figure on Horizon in line with the actual cash on hand figure. The value of the shortfall is transferred to the Subpostmaster’s personal account with Post Office. Arrangements can then be made to pay off the shortfall.

- (3) Where the Subpostmaster disputes liability for the shortfall, he or she is required to settle the shortfall centrally (thereby bringing the branch accounts into balance) and to raise a dispute by calling the Helpline. Raising a dispute causes a block to be placed on the value of the shortfall that has been transferred to the Subpostmaster's personal account with Post Office. The blocked value is not (and is not treated as) a debt due to Post Office.
- (4) These processes are addressed in [page ref] of the Branch Trading Manual [CHECK MANUAL – DEPENDING ON WHAT IT SAYS, WE MAY NEED TO AMEND THIS WORDING]. Equivalent processes are followed where the Subpostmaster accepts or disputes a net gain, with the relevant transactions being the removal of cash from the branch or the creation of a credit on the Subpostmaster's personal account with Post Office.
- (5) Having followed these processes, Subpostmasters are required to produce and sign a statement setting out the quantities and values of the various receipt and payment transactions that have been carried out in the branch during the relevant period and the cash and stock held in the branch at the end of the trading period (called a “**Cash Account**” until 2005 and a “**Branch Trading Statement**” from 2005). Branch Trading Statements contain the following statement by the Subpostmaster: “*I confirm that the content of this balancing and trading statement is an accurate reflection of the cash and stock on hand at this branch*”.
- (6) A branch cannot enter (or “**roll over**” into) a new Branch Trading Period without the Subpostmaster declaring to Post Office the completion of the Branch Trading Statement as aforesaid. However, although Subpostmasters are required to produce Branch Trading Statements at the end of each trading period, if they do not do this, their branches can continue to trade within the previous trading period. However, Post Office does not allow branches to do this indefinitely.

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Branch Trading Statements

32. As to paragraph 19.1, subject as set out in paragraphs [XX] above:

- (1) The first and second sentences are admitted.
- (2) The third and fourth sentences are denied. Paragraphs [XX] above are repeated as regards the comparison between the derived figures for cash and stock shown on

Horizon and the actual cash and stock as counted by the Subpostmaster; paragraph [XX] above is repeated as regards bringing Horizon's figures into balance with the cash and stock as counted; and paragraph [XX] above is repeated as regards the ability to continue trading without entering a new trading period.

Making good

33. Paragraph 19.2 appears to be intended to allege that, whenever there is a shortfall between Horizon's figures and the cash and stock counted by the Subpostmaster: (1) unless some special arrangement is made, the Subpostmaster is required to make good the difference; and (2) if he or she does so by settling centrally, the amount of the shortfall is treated as a debt due to Post Office. These allegations are specifically denied. As explained in paragraph [XX] above (and in particular paragraph [XX]), Post Office's procedures provide Subpostmasters with the opportunity to dispute liability for shortfalls.

Disputing shortfalls

34. As to paragraph 19.3:
- (1) It is admitted that there is no "option within Horizon" to dispute a shortfall, in the sense that the process of raising and resolving a dispute does not take place through the Horizon system. The process for disputing a shortfall requires the dispute to be lodged by calling the Helpline.
 - (2) It is specifically denied that Subpostmasters are unable to carry out effective investigations into the disputed amounts. So is the allegation that there were unspecified "limitations" on Subpostmasters' ability to access, identify and reconcile transactions in Horizon and that Horizon had no "adequate report-writing feature", as to which paragraph [XX] above is repeated. As indicated in that paragraph, Horizon provides Subpostmasters with powerful tools for searching, checking and reviewing the transactions undertaken in the branches for which they are responsible.
 - (3) There are provisions in Post Office's Operating Manual as to the process for disputing discrepancies (see, for example, [page ref] of the Branch Trading Manual) and it is denied that these provisions give insufficient guidance regarding that process. In any event, the process involves calling the Helpline and, if further guidance is needed, it is available directly from the Helpline.

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- (4) As to the last sentence of paragraph 19.3, it is denied that Post Office fails to carry out any, or any fair or adequate investigations into disputed amounts. Where a shortfall is disputed then the Claimants' first point of contact would be with the Helpline. In the case of a Transaction Correction, the dispute would first be raised with the individual within Post Office who issued the Transaction Correction and then (if necessary) with the Helpline. Disputes are generally resolved at this stage, by Post Office and Subpostmaster reaching a common understanding of the position. However, if this does not happen, the dispute can be escalated. The steps in the escalation process, and the Post Office teams involved, have changed over time and the specific escalation route can differ depending on the nature of each issue raised. However, in broad terms.
- (a) After it is raised with the Helpline, the issue is generally escalated to more experienced and senior personnel within the Helpline staff (or the team issuing the disputed Transaction Correction) for further investigation.
 - (b) Following this, the matter would be referred to a senior person responsible for investigating branch matters, a member of what is currently called the Support Service Resolution Team. This team undertakes a further investigation into the disputed amount, seeks to identify the reason for it arising and communicates with the Subpostmaster concerned.
 - (c) If following the above investigation Post Office believes that the Subpostmaster is liable for the shortfall or Transaction Correction but the Subpostmaster does not accept that liability, the matter would be raised with his or her line manager. This would then be dealt with as a contractual management issue, and discussions would be held with the Subpostmaster about why he or she was not meeting what Post Office believes to be his or her contractual obligations to make good a shortfall (or accept the Transaction Correction). This role is currently undertaken by Post Office staff known as Contract Advisors.
 - (d) Following these discussions, Post Office can sometimes decide to terminate the Subpostmaster's contract in accordance with its terms. In such cases, the Subpostmaster is provided with the opportunity to seek further investigations into the disputed amount via an appeal mechanism (for example, see section 18

of the SPMC [WHAT ABOUT THE NTC AND THE TEMPORARY
SPMC?]).

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- (e) If the appeal mechanism is not followed or if the Subpostmaster is dissatisfied with the outcome of their appeal, he or she is able to raise any concerns with Post Office's senior management team.

A.4 Helpline

49. Paragraph 29 is admitted. Calls to the Helpline are handled in accordance with the following processes:
- (1) Helpline operators categorise the caller's query using an online system (now called "Dynamics", previously called "Remedy") and then provide advice by reference to the Post Office "Knowledge Base", an online resource which contains numerous articles and other guidance documents on various matters (but is not scripted).
 - (2) If the Knowledge Base does not contain sufficient information to allow the operator to address the query, the next step is for the query to be escalated to a second tier of more experienced staff.
 - (3) If the second-tier adviser cannot respond in a satisfactory way to the query, he or she will seek assistance from the relevant Post Office product team. For example, if an issue relates to a lottery product, assistance would be sought from the team at Post Office who manage the operational processes for that product. For issues relating to the technical operation of Horizon (e.g. a broken printer), the matter could be referred to Post Office's IT support partner, which was originally Fujitsu and is now a company called Atos.
 - (4) If, after these steps, a satisfactory response has not been given, Post Office will consider whether to organise a visit to the branch and/or further training for the Subpostmaster and/or Assistant(s) concerned.
 - (5) Post Office is willing and able to provide further assistance to Subpostmasters whose problems are not addressed adequately through the Helpline. It is for any Claimant who asserts that inadequate assistance was provided to identify, amongst other things, the steps that he or she took to obtain further advice, assistance and/or training.
50. Paragraph 30 makes allegations to which Post Office cannot meaningfully respond at the pleaded level of generality. Post Office will respond to properly particularised claims if and when they are made by particular Claimants, but the general thrust of the allegations is denied. Further:

- (1) The Helpline's hours of operation have changed over time to meet demand and there have been periods where the Helpline was more difficult to contact than in other periods. It currently operates from 8am to 8pm on weekdays other than Wednesdays (the usual day for branch balancing processes), 8am to 9pm on Wednesdays, 8am to 6pm on Saturdays and 9am to 5pm on Sundays and most bank holidays.
- (2) Helpline operators do not give script-based responses.
- (3) Helpline operators are not instructed to provide misleading information or advice and they would have had no reason to do so.
- (4) Whether it is appropriate to advise a Subpostmaster that a discrepancy should sort itself out depends on the context. For example, the branch could be awaiting a Transaction Correction that should correct an issue.
- (5) Helpline operators are not instructed to encourage a Subpostmaster to produce and confirm a Branch Trading Statement which the Subpostmaster did not believe to be true and Post Office cannot conceive of a situation in which they would do so.
- (6) Helpline operators are not instructed (and are not in a position) to review and advise callers as to the experience of and the incidence of particular problems suffered by all users of Horizon or of the Helpline or as to the incidence of such problems suffered by all such users. Post Office cannot conceive of a situation in which Helpline operators would do these things, or would have the knowledge to be able to make such statements.
- (7) Post Office notes that, in the GPoC, the Claimants have not indicated whether and, if so, how each of the matters alleged in paragraphs 30.1 to 30.7 is alleged to have caused any Claimants any loss.

A.5 Investigations

51. Post Office cannot meaningfully respond to the allegations in paragraph 31 for the following reasons:
 - (1) The paragraph makes allegations said to apply generally across "investigations, audits or similar enquiry" in circumstances where investigations are fundamentally different processes (involving different Post Office personnel, procedures and guidance) from

audits and where the use of the term “similar enquiry” is embarrassing for vagueness and (depending on what it is intended to mean) may be misleading.

- (2) The reference to “investigators” is misplaced and/or so ambiguous as to make the allegations incapable of meaningful response.
- (3) The information and instructions that are alleged to have been provided to “investigators” are expressed at such a high a level of generality that it is impossible to assert a generic case as to what “investigators” were told and/or otherwise knew in any potentially relevant period.
- (4) Post Office will, as appropriate, respond to any particularised allegations as to specific enquiries, audits and investigations if and when such allegations are made by particular Claimants.

52. Without prejudice to the foregoing:

- (1) The people undertaking Post Office’s various audits, enquiries and investigations are experienced individuals with a good knowledge of the operation of Horizon and of the experience of Horizon users.
- (2) The nature of their instructions varies depending on whether they are undertaking an audit, enquiry or investigation and the reasons why they are doing so. For example:
 - (a) An audit is a process conducted by the field support team within Post Office. The people undertaking audits are not called investigators. An audit is typically ordered where Post Office is concerned that a branch is failing properly to account to Post Office. The purpose of an audit is principally to check the level of cash and stock in a branch; it is generally not to determine the root cause of any shortfalls.
 - (b) For a wide variety of purposes (including the purposes referred to in paragraph [XX - 34] above, Post Office can make a wide variety of enquiries into a branch’s operations without undertaking an audit. The people undertaking such enquiries are not called investigators.
 - (c) Post Office has a security team whose main role is to investigate (and/or to assist the police to investigate) suspected criminal offences. Persons in the security team sent to branches to carry out such investigations are often called

investigators. In many instances, their enquiries focus on suspected criminal offences by Subpostmasters and Assistants (such as rendering false accounts), which may or may not require them to determine the root cause of a shortfall.

- (3) None of these "investigators" were instructed to disregard possible problems with Horizon as a possible cause of shortfalls, nor was information withheld from them about bugs or errors in Horizon or the alleged remote alteration of data.
- (4) The alleged "organisational culture or practice" is specifically denied.
- (5) Save as aforesaid, the general thrust of paragraph 31 is denied.

A.6 Terminations

53. Paragraph 32 makes allegations to which Post Office cannot meaningfully respond at the pleaded level of generality. For example, the paragraph overlooks the critical distinctions between summary termination of appointments, termination of appointments on notice and suspension of appointments. However:
- (1) Post Office has terminated Subpostmasters' appointments summarily where it was of the view that they have acted dishonestly in relation to their functions (e.g. by falsely accounting to Post Office with a view to concealing a shortfall from it) and where it was of the view that they were otherwise in material, irremediable and/or repudiatory breach of their obligations;
 - (2) Post Office has suspended Subpostmasters when it has suspected them of acting as set out in sub-paragraph [\(1\)](#) above; and
 - (3) Post Office has terminated Subpostmasters on notice where it did not wish continue its relationship of principal and agent with them; but
 - (4) Post Office has not terminated Subpostmasters summarily or suspended them merely because they have challenged shortfalls or have alleged inadequacies in the Horizon system or difficulties in interrogating data.
54. Regarding the importance of dishonesty in the conduct of its business, Post Office notes that:

- (1) Clause 19.1 of the SPMC provides that dishonesty is viewed most seriously and any Subpostmaster involved in an act of dishonesty against Post Office Ltd renders himself liable to summary termination of his contract.
 - (2) Clause 3.1.2 of the NTC provides that: *“The Operator shall ... act honestly at all times in the operation of the Branch. Any failure by the Operator to comply with this clause 3.1.2 shall be deemed to be a material breach of the Agreement which cannot be remedied”*.
55. As to paragraph 33, Post Office will respond to properly particularised claims of wrongful termination or suspension if and when they are made.

A.7 Context and Effect on Claimants

56. In Section A.7 of the GPoC, the Claimants set out what they contend to be relevant contextual matters, and these are addressed in paragraphs [XX] below. However, they overlook the importance of false accounting to and its effect on Post Office. Subpostmasters are obliged (a) each working day to count the cash in their branches and make “cash declarations” to Post Office and (b) at the end of each trading period to make Branch Trading Statements to Post Office confirming the transactions undertaken and cash and stock held in their branches. Unless it undertakes an audit, these accounts are Post Office's only information about the amount of cash and stock actually held in the branch. In all cases in which a Claimant Subpostmaster makes a false cash declaration or a false Branch Trading Statement (i.e. a cash declaration or Branch Trading Statement he or she does not believe to be true):
- (1) Where a shortfall is subsequently uncovered at a branch, the fact of this false accounting invariably makes it impossible or alternatively excessively difficult for Post Office to identify or assist in the identification of the likely cause(s) of the shortfall. Post Office is unable to place reliance on the declarations and the branch's accounts in seeking to identify the date(s) on which the discrepancy (or discrepancies) giving rise to the shortfall are likely to have arisen or the cause(s) of the shortfall.
 - (2) As regards any enquiries it might make into the cause(s) of a shortfall, Post Office cannot reasonably be expected and is not obliged to devote significant resources to investigating factual circumstances that were, as a result of false accounting, impossible or excessively difficult properly to investigate.

- (3) As is noted above, false accounting or other similar conduct by a Subpostmaster represents a material, irremediable and repudiatory breach of his or her contractual obligations entitling Post Office to terminate the Subpostmaster's appointment summarily. Further, where Post Office suspects that a Subpostmaster is guilty of such conduct, it is contractually entitled to suspend the Subpostmaster's appointment.
 - (4) In relation to any issue arising in these proceedings as to the true state of account in the relevant branch, the Court should make all presumptions of fact against that Subpostmaster as are consistent with the other facts as proven or admitted.
57. Paragraph 34 appears to address a situation where a balancing process has been undertaken at the end of a trading period and this process has disclosed a shortfall in the cash or stock held at the branch which is disputed by the relevant Subpostmaster. It appears to be the Claimants' case that, in this situation, some Claimants felt that they had no choice but (a) to sign off Branch Trading Statements disclosing the shortfall, to accept liability for the shortfall and to make it good by paying or crediting the relevant amount to Post Office or (b) to sign off incorrect Branch Trading Statements which misrepresented the cash and stock held at the branch and thereby concealed the shortfall from Post Office. Post Office will respond to properly particularised allegations of that sort if and when they are made by particular Claimants. However:
- (1) It is denied that Subpostmasters had no choice but to proceed by in this way or that it was reasonable for them to feel that they had no such choice. As indicated in paragraphs [XX] above, Post Office's procedures provided Subpostmasters with the opportunity to dispute liability for shortfalls and render accurate accounts whilst any disputed shortfall was resolved.
 - (2) It would never have been reasonable for a Subpostmaster sign off a Branch Trading Statement – and thus to confirm to Post Office that the cash and stock recorded by Horizon as being held at his or her branch it was correct – in circumstances where he or she did not believe that it was true. Amongst other things, in that situation the Subpostmaster would have:
 - (a) deceived Post Office as to the true level of cash and/or stock at his or her branch, as to the true transactions undertaken at the branch in the relevant trading period, and to the true state of his or her branch account;

- (b) made it impossible or at least extremely difficult for anyone to identify when or how the shortfall arose; and
 - (c) committed (i) a material, irremediable and repudiatory breach of the contract pursuant to which the Subpostmaster was appointed (including, amongst other things, section 12.3 of the SPMC and/or clause 3.6 of the NTC and/or clause 12 of the Franchise Agreement), and (ii) a fundamental breach of the fiduciary duties the Subpostmaster owed Post Office as its agent.
- (3) As is pleaded further in paragraphs [XX] below, all Subpostmasters who signed Branch Trading Statements in that situation may not reopen the accounts that they signed off. Alternatively, they may not now challenge, seek to avoid or seek any relief in relation to the payment(s) made to Post Office in accordance with those accounts (including in making good shortfalls), without pleading and proving such accounts to be mistaken.
- (4) The principles referred to in sub-paragraphs [XX] applies to false cash declarations made by the Subpostmaster to Post Office, *mutatis mutandis*.