

From: Anthony de Garr Robinson [GRO]
To: Owain Draper [GRO] Andrew Parsons
[GRO]
Cc: Amy Prime [GRO]
Subject: RE: Defence
Date: Fri, 14 Jul 2017 10:27:31 +0000
Importance: High
Attachments: 113_Bates_Defence_suspense_account_rider.docx

Dear all,

Thanks to Owain for making the time to do final review, I am happy with almost all of his suggestions and have only a few additional thoughts, indicated in red below.

I enclose an amended rider for the suspense account paras. You will see that I have gone very short indeed, saying as little as possible (for example, I have deleted the references to ledgers in Andy's draft since this immediately provoke requests for documents pursuant to the CPR). I have tried to offer up as few hostages to fortune as possible, but some hostages are still there. I feel uneasy about the first part of para 1(2)(c) and I suspect (**and hope**) that Andy could improve upon it. Are we sure that that Post Office tries in every case to determine whether an overpayment is attributable to a branch and if we are sure, is it right to single out branches like this or should wider wording be used to cover other people/part of the business? Even if it is right, is this wording dangerous because it implicitly admits that such overpayments could at least in theory be attributable to branches?

Finally, as discussed with Andy a short while ago, I have looked again at the implied terms we plead in para 105 and my feeling is that we should change the necessary cooperation term slightly by qualifying our obligation so that we only have to do what is reasonable. I would add one word, as follows: Each party would provide the other with such reasonable cooperation as was necessary to the performance of that other's obligations under or by virtue of the contract. **Does anyone else have a view on this?**

Best wishes,

Tony

From: Owain Draper
Sent: 14 July 2017 10:08
To: 'Andrew Parsons' [GRO]
Cc: Amy Prime [GRO] Anthony de Garr Robinson
[GRO]
Subject: Defence

Dear Andy,

I had a read through the Defence last night and this morning in order to consider our approach on a few of the issues. In doing so, I came across some minor drafting points and/or typos and thought it would be worth identifying these.

Para No. Point

9 Penultimate sentence – I don't like the reference to Cs having not proven any other cause of loss. Of course they have not yet proven it! I would use instead the words "let alone properly particularised".

16 "excessively unlikely" should read "extremely unlikely". **There is also a typo in the second sentence – "s" should be "is".**

16 Cs have not, I don't think, accepted that there is no systemic error. They have confirmed that they are not alleging such an error (and this is how it is pleaded later in the draft).

19 New sentence for "They are unfounded....".

32(2) A stray "that" before "the Claimants".

44 The first sentence has gone wrong. **Suggest we replace "as set out in" with "to"?**

69(2)(b) I think the reference should be to how the "losses", rather than shortfall arose.

69(3) I think the words "may be bound" are a little too vague. I do not have an alternative to propose other than to dump the passive voice and say "Post Office may hold SPMs to the accounts that they signed off".

95(4) Missing "to" before "assist". **Also, in the last sentence, replace "to cease" with "cease".**

139(1) I think the words "possible reasons for this" set the bar a bit low. Cs have always said it is possible that a shortfall was caused by Horizon. Perhaps we could say "for the relevant Subpostmaster to identify the likely cause or causes"

139(3) We should settle on a form of words for the concept of "impossible or impractical" and use it every time the point arises. I prefer "impossible or excessively difficult". **I agree that we**

should use the same phrase consistently throughout the pleading. I introduced the term “impractical” in the last draft and so quite like it, but “excessively difficult” works perfectly well – what would Bond Dickinson/the client prefer?

147 We usually refer to PO in the singular, so “Post Office is said to have taken....”. The verb is in the plural because its subject is steps, not Post Office, so I would leave this para as it is.

151 Missing “in” before 2015.

163 Insert the words “of the relevant” before “Claimants seek to claim”.

176 Check for consistency in how we refer in shorthand to Transfield. I prefer “Transfield Shipping v Mercator” for all references after the first full citation. Me too.

Best,

Owain

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