

THE POST OFFICE GROUP LITIGATION

Claim No. HQ16X01238

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

ALAN BATES & OTHERS

Claimants

-v-

POST OFFICE LIMITED

Defendant

CLAIMANTS' RESPONSE TO THE DEFENDANT'S REQUEST FOR FURTHER
INFORMATION UNDER CPR PART 18 DATED 27 APRIL 2017

The pleading as to which the Defendant has made its Requests is the Claimants' Generic Particulars of Claim, in proceedings managed under a Group Litigation Order ("GLO"), which provides for the service of Schedules of Information ("SOIs"), from which the parties will be able identify classes of Claimants, and test Claimants, in respect of which Individual Particulars of Claim will be completed. Where the Defendant has made Requests which, against that background, it is not reasonably necessary or not proportionate for the Claimants to respond in order for the Defendant to prepare its case or to understand the case that it has to meet (PD18.1, para 1.2), the Claimants respond "Not necessary", as shorthand for the matters in this paragraph.

Request 1

Of each of paragraphs 10.3, 10.4 and 11.1, please state whether the Claimants contend that none of them (i) has or (ii) ever had a copy of the pleaded documents.

Answer 1

1. No, it is not the Claimants' case that none of them has or ever had a copy of the pleaded documents.

Request 2

Of paragraph 19.3, please state whether (i) all the Claimants or (ii) some of them contend that they were not aware of the ability to:

- (a) dispute shortfalls by contacting the Helpline;
- (b) settle centrally shortfalls in their branches.

Answer 2

- 2. Some.

Request 3

Of paragraph 30.6, for each of the pleaded difficulties, please identify the words used and/or any other matters by which the Claimants were led by Helpline operators to believe that they were the only ones experiencing those difficulties.

Answer 3

- 3. Not necessary and not entitled. Further:
 - 3.1. The gist of the words used is already pleaded.
 - 3.2. Paragraphs 30.5 (in particular, sub-paragraphs 30.5.a. and 30.5.b.) and 30.7 already plead to this issue.
 - 3.3. Without prejudice to the above, the following are illustrative (but not necessarily representative) examples of what was said:
 - a. Mr Peter Holloway requested assistance from the Helpline and his contracts manager, and he was told by both that: (i) the Defendant *"had not had this problem before"*; and (ii) *"no one else was experiencing the same issues"*.

- b. Ms Isabella Armstrong-Wall was told by the Helpline that: (i) the fault reported was hers alone; (ii) it was nothing to do with Horizon; and (iii) she was the only one to have reported that issue.
- c. Ms Marion Drydale attempted to investigate the matter herself by firstly calling the Helpline. She was told by the Helpline that no other branch in the area was experiencing issues with GIROs. Subsequently, she contacted her National Federation Representative, who informed her that others were experiencing problems with GIROs. Ms Drydale contacted the Helpline to relay this, and was told that they knew nothing about other branches having issues with GIROs. Chesterfield Cash Centre then told her the same; it contended that it was her problem and she would need to make good the loss. On a separate occasion, Ms Drydale had told the Helpline that she had spoken to a fellow Subpostmaster about the issues she was experiencing. The Helpline told Ms Drydale that she was only permitted to speak to the Helpline, and that she should not be discussing the branch's issues with anyone else.

Request 4

Of paragraph 31, do the Claimants assert the facts pleaded in this paragraph (a) as inferences that they will contend should be drawn or (b) as primary facts of which they intend to lead evidence? If (a), please identify the facts relied upon in support of such inferences. If (b), please give proper particulars specifying when, how and to whom such instructions are alleged to have been given.

Answer 4

- 4. Not entitled: the allegations are clear and the information lies largely with the Defendant. This request seeks to take advantage of that prior to disclosure.¹ Without prejudice to the foregoing:

¹ The Defendant well knows that Second Sight raised clearly related concerns in their *Briefing Report – Part Two* (9 April 2015) at §25, and, in particular, §25.16 which stated:

- 4.1. As to sub-paragraphs 31.1 to 31.4, (b): primary facts. But the averment is that no instructions were given, so there are no particulars (of when, how and to whom such instructions were given) to provide.
- 4.2. As to sub-paragraph 31.5, (b): primary facts in so far as they become available on disclosure. Otherwise (a): inference from sub-paragraphs 31.1 to 31.4 (in the context of such other inferences that the court may draw) and such other facts as the Claimants may hereafter provide by way of further voluntary particulars, following disclosure.

Request 5

Of paragraph 35.6, please:

- (a) identify the type or types of discrepancy referred to in this paragraph;
- (b) identify the words and/or conduct by which it is alleged the Claimants were encouraged to believe that each such discrepancy would be resolved in the manner alleged.

Answer 5

5. As to request 5, the Claimants' pleaded case is not a prisoner to the definition of the term 'discrepancy' and the Claimants have pleaded their case accordingly throughout the Generic Particulars of Claim, and (against that background) the Claimants respond as follows:
 - 5.1. As to request 5(a): 'discrepancy' bears the meaning in prior paragraphs, as to which the Defendant has not made any requests, namely paragraphs 19.2², 19.3, 21.3, 22, 24.3, 30.5.c. and d., 31, and consistent with later references also.

"It has been pointed out to us that Post Office's instructions to (and its training of) its investigators seems to have disregarded the possibility that the Horizon system could ever be in any way relevant to their investigations."

² By way of example, at §19.2: "When there were discrepancies between trial balances generated by Horizon and the physical cash and stock in hand which appeared to show less cash or stock in hand than shown on Horizon ("an apparent shortfall" or an "alleged shortfall") ..."

5.2. In answer to request 5(b), Not necessary and not entitled. In particular, see: (i) paragraph 2.4 of the SOI which addresses instances where a Claimant has contacted the Helpline regarding alleged shortfalls and the advice that was provided; and (ii) paragraph 3.1(d) of the SOI as to how a Claimant treated alleged shortfalls in the accounts and why. Without prejudice to the generality of the foregoing:

- a. Ms Janet Skinner, Mr Phil Cowan, Ms Grumit Gill, Ms Katherine McAlerney, Ms Sharon Brown, Mr Lee Phelps and Ms Susan Knight were all advised by the Helpline not to worry, and to simply wait for an error notice, instead of taking any further action in relation to alleged shortfalls.
- b. Mr Stephen Leslie was told by the Helpline that the alleged losses would correct themselves following a reboot or rollover of the alleged loss.
- c. Mr Guy Vinall was told by the Helpline: *"don't worry, it will sort itself out when you come to do your final balance"*. Consequently, Mr Vinall kept his money in the suspense account, awaiting a resolution, which did not come. At this point, Mr Vinall called the Helpline back and was told: *"you must have made a mistake, you will have to put the money back in yourself"*.

Request 6

Of paragraph 35.8, please identify the facts relied upon as establishing an *"acute relational imbalance between the parties"*.

Answer 6

6. For the avoidance of any real doubt, those pleaded in the immediately preceding sub-paragraphs, namely, 35.1 to 35.7, in the context of the contractual and practical relationship between the parties (pleaded to particularly at paragraphs 41 to 46) and the written contractual terms set out in section B.2.

Request 7

Of paragraph 37:

- (a) please state whether (i) all the Claimants or (ii) some of them acted as described in the first sentence of paragraph 37;
- (b) please identify the pressure alleged to have been applied by the Defendant and the means by which such pressure was exerted on the Claimants (or some of them);
- (c) please confirm that the actions of the Claimants in this paragraph are those described in paragraph 34 or, if not, please state what actions are being referred to.

Answer 7

7. Sufficiently pleaded. Furthermore, Not necessary. In particular: (i) paragraph 2.4 of the SOI addresses instances where a Claimant has contacted the Helpline regarding alleged shortfalls and the advice that was provided; and (ii) paragraph 3.1(d) of the SOI addresses how a Claimant treated alleged shortfalls in the accounts and why. Without prejudice to the foregoing:

- 7.1. Request 7(a) is answered by Request 7(c), by reference back to paragraph 34. All Claimants who reasonably felt that they had no effective choice as pleaded at paragraph 34 acted as alleged at paragraph 37. Should the Defendant contend (or prove) that one or more of them did not, then the Claimants' case, in the alternative, will be that some of them did.
- 7.2. As to (b), additional individual details will be provided by way of SOIs and/or Individual Particulars of Claim in test cases, of which a list of illustrative examples is already pleaded at sub-paragraphs 35.1 to 35.7.
- 7.3. As to (c), yes, as already indicated above.

Request 8

Of paragraph 46, please:

- (a) identify (by paragraph number) which parts of the factual matrix referred to elsewhere in the GPoC will be relied on by the Claimants for the purpose of construing the pleaded agreements;
- (b) state what other facts and matters the Claimants will rely on as "*other aspects of the factual matrix*".

Answer 8

8. Not entitled, since the Claimants' case overall is sufficiently pleaded. Without prejudice to that:

- 8.1. As to (a), all facts pleaded, including those at paragraphs 9, 12-39, 41-45 and 81.
- 8.2. As to (b), as pleaded, namely, all facts as may further be established as relevant in individual cases (following SOIs, disclosure and individual Particulars of Claim in test cases). The Defendant is reminded that these proceedings are managed under a GLO.

Request 9

Relating to the use of the word "*purported*" in the relevant paragraphs:

- (a) of paragraph 51, (i) is it the Claimants' case that the terms of the pleaded agreements would, as a matter of construction of the express terms, require Subpostmasters to comply with the rules, instructions and standards to which this paragraph refers and, if not (ii) what is the Claimants' case in this regard?
- (b) of paragraph 51, (i) is it the Claimants' case that the terms of the pleaded agreements would, as a matter of construction of the express terms, require Subpostmasters to procure compliance by Assistants with the rules, instructions and standards to which this paragraph refers and, if not (ii) what is the Claimants' case in this regard?

- (c) of paragraph 52, is it the Claimants' case that the terms of the pleaded agreements would, as a matter of construction of the express terms, provide for the pleaded discretion?
- (d) of paragraph 53, please state whether it is the Claimants' case that Subpostmasters were agents of the Defendant.
- (e) of paragraph 56, (i) is it the Claimants' case that Subpostmasters were contractually liable to the Defendant for the acts of their assistants and, if not (ii) what is the Claimants' case in this regard?
- (f) of paragraph 60, (i) is it the Claimants' case that the pleaded agreements would, in the absence of the pleaded implied terms, provide for the pleaded right to suspend and, if not (ii) what is the Claimants' case in this regard?
- (g) of paragraph 61, (i) is it the Claimants' case that the pleaded agreements would, in the absence of the pleaded implied terms, permit the Defendant to terminate without notice and, if not (ii) what is the Claimants' case in this regard?
- (h) of paragraph 62, is it the Claimants' case that the pleaded agreements would, in the absence of the pleaded implied terms, provide that Subpostmasters had no right to any compensation for loss of office as pleaded?

Answer 9

9. Not entitled. The word "*purported*" was obviously a preface to simply reciting the express terms which the Claimants contend fall to be considered as thereafter pleaded. The Claimants will not re-plead all those contentions here, including (as applicable to (a) to (h) of the Defendant's Request):

- (a) Paragraphs 41-50, 56, and 63-65, and 66-68;
- (b) Paragraphs 41-50, 56, and 63-65, and 66-68;
- (c) Paragraphs 41-50, 56, and 63-65, and 66-68;
- (d) Paragraphs 82 to 83;

- (e) Paragraphs 41-50, 56, and 63-65, and 66-68;
- (f) Paragraphs 41-50, 56, and 63-65, and 66-68;
- (g) Paragraphs 41-50, 56, and 63-65, and 66-68; and
- (h) Paragraphs 41-50, 56, and 63-65, and 66-68.

Request 10

Of paragraph 63:

- (a) is this paragraph intended to set out a term that it is contended should be implied into the relevant agreements?
- (b) if so, please set out the words of the alleged implied term;
- (c) if so, please state the facts and matters relied upon in support of the contention that such term is (i) necessary for the business efficacy of the agreement and/or (ii) so obvious as to go without saying.

Answer 10

10. Sufficiently pleaded. Without prejudice to that:

- 10.1. As to Request 10(a), yes;
- 10.2. As to Request 10(b), but for the avoidance of doubt, a duty of good faith (for example) obliges the Defendant to act in good faith. Further, these duties would separately or in combination have the effect of imposing the obligations set out at paragraph 64, hence paragraph 64 being introduced with the words *"Further or alternatively"*;
- 10.3. As to Request 10(c), as Yam Seng makes clear, the term contended for is implied and/or arises by reason of the nature of the contractual relationship, pleaded extensively, including at paragraphs 12-19, 24-25, 34-35 and 43-44.

Request 11

Of paragraph 66, please state whether it is the Claimants' case that (i) all the Claimants or (ii) some of the Claimants were not, at the time of contracting with the Defendant:

- (a) provided with a copy of the written terms of agreement;
- (b) otherwise provided by the Defendant with access to such written terms of agreement;
- (c) aware of the terms that the Claimants allege to have been onerous and unusual.

Answer 11

11. In answer to Request 11:

- 11.1. As to (a), some.
- 11.2. As to (b), some.
- 11.3. As to (c), some.

Request 12

Of paragraph 107:

- (a) please state whether each of the representations under the heading "*H.1 Representations*" is, on the Claimants' case, a representation made to (i) the public, (ii) all the Claimants or (iii) some of the Claimants (and, if so, state which Claimants);
- (b) if the answer to (a) above is (i) and/or (ii), please provide full particulars of the representation, including without limitation the words used, when it was made and how it was made.

Answer 12

12. Sufficiently pleaded and Not necessary. Without prejudice to that:

- (a) The answer is (i) and (iii). As pleaded, the representations under the heading "*H.1 Representations*" were made: (i) to the public (such as, and by way of example, the Defendant's representations as pleaded at paragraph 26 that there was no ability to remotely alter transactions in branch accounts, clearly in the knowledge that the said representations would be likely to (or would) come to the knowledge of the Claimants); and/or (iii) to some Claimants (as will appear in SOIs and/or Individual Particulars of Claim in test cases).
- (b) In the case of (i), this is already pleaded at paragraph 26.

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16 May 2017