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Dear Sirs

The Post Office Group Litigation
Disclosure and future case management

1.1 We have been reviewing your client's EDQs and giving thought to the disclosure and general case management orders that might be made in the future. We write to set out our client's views in advance of our meeting on 22 December 2017. Please do not feel obliged to respond to this letter before our meeting but we thought it might help if you had chance to consider the points below in advance.

2. Underlying principles

2.1 Before addressing the detail of disclosure, we believe it would be helpful to try to agree some underlying principles and our suggested ones are below. These can of course be discussed at our meeting.

2.2 First, the CMC Order envisages the possibility of further disclosure being given but does not mandate further disclosure nor set out the nature or shape of that disclosure. The parties therefore have freedom to agree any reasonable proposal, subject to the approval of the Managing Judge.

2.3 Second, as we explained in Parsons 4, the wide nature of the issues in the generic pleadings could lead to vast amounts of disclosure being given by Post Office, at very high cost but potentially for little benefit. Efforts should therefore be made to control the breadth of disclosure, and hence disclosure costs, wherever possible.

2.4 Moreover, the breadth of documents held by Post Office and the complexity of accessing them means that it is difficult to predict at the outset the volume of responsive documents that may be returned by any search. This may require the parties to adopt an iterative approach, where the scope of disclosure is kept under review, discussed frequently between the parties and adjusted as needed to keep it reasonable and proportionate.

2.5 Third, in contrast with the above, the EDQs of the Potential Lead Claimants indicate that your clients are unlikely to hold as many documents as Post Office. The need for, and consequences of, disclosure from and for both sides will be very different, and therefore each needs addressing separately. What might be suitable for one party, may not be suitable for the other. Please note

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this is not an admission that there is an asymmetry of information between the parties as you have previously suggested; it is the practical consequence of our client being a large corporate and having retained more documents.

2.6 Fourth, we have in mind the recent proposals on a new approach to disclosure set out by a Working Group chaired Lady Justice Gloster. Although not part of the CPR yet, the Working Group's Briefing Note (and its draft replacement for CPR 31) is based on the acceptance that disclosure needs to be more limited than that which is currently undertaken. It concludes that standard disclosure is no longer the default option (paragraph 11(ii)). Instead it provides that disclosure should be issue led, wherever possible targeting narrow classes of documents relating to a specific issues.

2.7 Fifth, to assist with the preparations for the November 2018 trial, we believe that any extra documents will need to be disclosed by the end of February 2018 so that you have time to review them before pleading at the end of March 2018 and / or by the end of May 2018 to assist with the preparation of evidence. If further disclosure is agreed, our client is prepared to volunteer this without a formal Court order so to speed up the process. Likewise, a realistic assessment will be needed of what is possible in the limited time available.

2.8 Taken together, we believe that these points weigh against ordinary standard disclosure and the proportionality problems that come with it, and towards disclosure targeted at defined issues. We set out below for your consideration how we believe that might be achieved in practice.

3. Disclosure process

3.1 If the above principles can be agreed then the process for disclosure could be as follows:

3.1.1 Identify issues for disclosure.

3.1.2 Identify the sources of documents and / or custodians that might hold documents relevant to each issue for disclosure.

3.1.3 Agree the keywords and other search criteria that might be applied to each source / custodian.

3.1.4 Agree a protocol for providing documents (as per our letter of 14 November 2017).

3.2 We would suggest that there are two immediate groups of issues for which further disclosure needs to be considered: documents that are needed for trial in November 2018 (**Common Issues Trial**) and documents that might be needed for a further trial thereafter.

4. Common Issues Trial

4.1 For the Common Issues Trial, we believe the focus should be on further disclosure around the 12 Potential Lead Claimants. You will have seen in our EDQ that we are content with quite broad keyword search terms (eg. Claimant's name, branch, etc.) so long as between us we can agree to narrow the scope of sources of documents and custodians against which to apply those search terms. This will turn materially on the approach adopted to factual matrix. If your client's very broad approach is adopted, then a much larger number of custodians and sources will be needed and that makes giving further disclosure very difficult (perhaps impossible) in the time available. If your client were to adopt a more disciplined approach, limited to only admissible evidence, then only a narrower list of sources and custodians are needed and further disclosure in a reasonable timeframe should be achievable.

4.2 You have refused to provide a draft Statement of Facts (as per your letter of 1 December 2017) which we sought with a view to clarifying paragraph 46 of the GPOC in relation to the facts on which you intend to rely at the Common Issues Trial. You say that this should be addressed in individual pleadings and of course that is very important, but that will be too late to help scope disclosure. Your approach is unfortunate as it deprives the parties of an early draft of the Statement of Facts which would have been a very useful document at our upcoming meeting. In

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particular, it would have helped identify the factual disputes to be addressed at the Common Issue Trial and where further disclosure could have been useful in determining them.

4.3 We would like this topic to be high on the agenda at our meeting and would also like to hear from you as to how the parties might identify now the factual points of disputes at the Common Issues Trial about which further disclosure is needed.

4.4 In terms of the timing of disclosure for the Common Issues, we believe this could be given in two tranches. In the CMC Order our client has already agreed to provide some preliminary disclosure on the Potential Lead Claimants by mid-January. We think it should be possible to expand the scope of this preliminary disclosure in a controlled way so that more disclosure could be given by the end of February to assist with the pleading process. That would involve us agreeing a short list of sources and custodians from our client's EDQ, pulling that data from our client's systems into an e-disclosure platform and then keyword searching them for a Potential Lead Claimant's name and branch. We have done some test runs on this and would estimate that this might generate around 200 – 500 relevant documents per Claimant. This will be easier to discuss in person and so we have not set out further details in this letter.

4.5 After this preliminary disclosure, there could be a further tranche of disclosure given by the end of May 2018 ie. before the Agreed Statement of Facts is filed at the end of June 2018. We believe that this disclosure should be for specific classes of documents that go to the Common Issues (in the same way that we identified for the CMC that the technical documents held by Fujitsu were a class of documents that could be readily disclosed). Again, this is something that could be usefully discussed at our meeting.

5. Future of this litigation

5.1 We appreciate that the CMC Order does not require the parties to submit proposals until July 2018 for the future of this litigation beyond November 2018. However, we believe that the scope of the disclosure to be agreed now should, with a view to maximising efficiency, be tied into the future course of this litigation and that there may be advantages to setting that in motion earlier than July 2018. We therefore set out below our client's views on the possible future of this litigation so that we might then explore whether there are any issues on which appropriate disclosure could be given during 2018 in order to prepare for hearings in 2019 and beyond.

5.2 The Court will at some stage need to address questions of breach, causation and loss in order to determine the claims put forward by the Claimants. We have explained previously that the Claimants' claims are diverse. Their heterogeneity means that finding "Common Issues" around breach, causation and loss will be challenging. A plan will therefore be needed to address the fact that there are 562 claims each proceeding on subtly, but materially, different factual bases.

5.3 One way to tackle this would be the selection of "Lead Cases" for a "**Lead Cases Trial**" which would determine all issues of liability and quantum in a selection of Lead Cases. This would use the Group Litigation model to the greatest effect and build upon the results of the Common Issues Trial in November 2018. A GLO was recently used in this manner in "the Construction Blacklisting Group Litigation" presided over by Mr Justice Supperstone in this Division where there were some 3,000 claims and a trial of 20 Lead Cases was ordered.[1] All the issues in such cases would be determined, and in doing so they may also help determine the following issues which are relevant to many of the claims:

5.3.1 Whether any defect in Horizon was the cause of a loss in a Claimant's branch?

5.3.2 Whether a Claimant or Post Office was at fault for the loss in a branch?

5.3.3 Whether a Claimant was inadequately trained or supported?

[1] We have now retained David Cavender QC onto our Counsel team who was the lead silk for the consortium of construction companies involved in that litigation and who has broad experience of Group Litigation more generally.

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5.3.4 Whether a Claimant's claim is time-barred or settled?

5.3.5 Whether the termination of a Claimant's contract was unlawful?

5.3.6 Whether a Claimant's losses were caused by an unlawful act of Post Office?

5.4 To be clear, we do not see these as true "Test Cases" as might be the case in a more classic Group Litigation scenario such as a major accident or product liability claim. As each Claimant's case is so factually sensitive, it is unlikely that any Test Case would be sufficiently analogous to other cases in the Group such that it could create a binding precedent or automatically determine some key issue in a large number of those other cases. However, many of the Claimants' claims appear to follow similar patterns of events, so a clear decision on a Lead Case (or group of Lead Cases) will give a strong indication to the parties of the likely outcome of other similar cases, thus creating more common ground between the parties on which this litigation might be resolved without the need for 562 mini-trials or some other equally time-consuming process.

5.5 For example, following the Lead Cases Trial, we would hope that it would be possible to put most of the claims into sub-groups, with each sub-group being reflective of a particular Lead Case or issue that was decided at the Lead Cases Trial. That would then allow the parties to see which claims could be discontinued, conceded, settled or subject to further litigation, depending on their status and prospects of success.

5.6 The above list of issues is of course only the tip of iceberg when it comes to the breadth of the issues that might be addressed. To be of maximum utility, the parties would need to agree on a list of issues that are the most likely to advance the widest number of cases towards resolution and then carefully select Lead Claimants that are, as far as possible, representative of the wider Group on these issues. This, we believe, will require more and different Lead Claimants to the Lead Claimants selected for the Common Issues Trial. We would envisage needing an initial pool of perhaps 30 Lead Claimants, with that being reduced to around 16 Lead Cases which would be determined at a single trial. We also suggest that 4 Lead Claimants are selected as "reserves" in case any of the chosen 16 suffer from unforeseen difficulties.

5.7 A Lead Cases Trial would require individual pleadings for each of the 20 Lead Claimants (the 16 chosen cases and 4 reserves) covering all aspects of breach, causation and loss. Those pleadings will be particularly important as each of those 16 would, in effect, be seeking to represent (in a broad sense) some 35 claims. It would also require further disclosure, witness evidence and expert evidence. These would need to build on the findings from the Common Issues Trial. Indeed, it should be easier to plead out issues of breach, causation and loss once the contractual duties between the parties have been established.

5.8 A Lead Cases Trial of the type we have described above would be a significant undertaking but we believe something like this will be the ultimate path for this litigation. We would therefore like to try to accelerate the preparation for a Lead Cases Trial (or some suitable alternative) where possible.

5.9 In our view, it should be possible to do some of the preparatory work for it during 2018, namely the selection of Lead Cases and some preliminary disclosure on those Lead Cases. It may also be possible to agree some discrete classes of documents that could be disclosed on obviously relevant issues that can be sufficiently defined, like has been done with the technical documents for Horizon.

5.10 It would also be beneficial to prepare for the Lead Cases Trial without waiting for any hearing that might take place in March 2019 (being the hearing window currently being held by the Court). We would suggest that the parties immediately start pleading the Lead Cases once judgment was given in the Common Issues Trial (ie. from around January 2019).

5.11 This would mean that the Lead Cases Trial would likely be run in parallel with a hearing in March 2019. As things stand, it is difficult to find a discrete "common issue" that can be quickly prepared (from September 2018 onwards) and usefully determined at a hearing in March 2019 – but we would very much welcome any ideas you might have in that regard. Our current thinking

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is that the most viable topic for a hearing in March 2019 (although it still faces some difficulties) would be limitation issues and perhaps determining whether those Claimants who have settled may continue with their claims. We would welcome your thoughts on possible topics for March 2019 so we can try and find some common ground well in advance of July 2018.

5.12 As can be seen from the above, we believe that it is important to start thinking about the long term strategy for this litigation now because it may have short-term implications on the Court's orders for disclosure at the hearing on 2 February 2018. We are also keen to make progress in finding a route to conclude this litigation, rather than dealing with it piecemeal. If the parties were to wait until the CMC in September 2018 or until after the March 2019 hearing before turning their minds to questions of liability and quantum, this would add at least 12 months to the overall timetable for this litigation. We would therefore welcome the opportunity to discuss the long term plan for this litigation with you. This could then be discussed with the Court at the 2 February 2019 hearing and a long term strategy agreed upon.

6. Possible plan

6.1 Drawing all the above strands together, we tentatively suggest that a further case management order could be drawn up along the following lines:

A. Additional preliminary disclosure on the Potential Lead Claimants for the Common Issues Trial (scope to be agreed): End of February 2018

B. Disclosure of agreed classes of documents for the Common Issues Trial (scope to be agreed): End of May 2018

C. Parties to select pool of 30 Lead Claimants for an Lead Cases Trial (process for doing this to be agreed): May 2018

D. Preliminary disclosure to be given on Lead Claimants for an Lead Cases Trial (scope to be agreed): July 2018

E. Parties to select 20 Lead Claims for the Lead Cases Trial from the pool: September 2018

F. Statements of Case:

Individual Particulars of Claim: March 2019

Defences: June 2019

Replies: July 2019

G. Selection of 16 Lead Claimants for trial from 20 cases: August 2019

H. Disclosure: October 2019 (to begin following submission of the individual Particulars so to maximise the time available)

I. Witness statements: February 2020

J. Expert evidence:

Reports: April 2020

Reply reports: June 2020

Joint statement: July 2020

K. Trial (10-12 weeks) starting first week in October 2020

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6.2 We recognise and acknowledge that a trial in October 2020 looks like a long time away and is far from ideal. We say this both generally and having regard to the indications given by the Managing Judge at the CMC. The main reason for this date being so far off is that it cannot be expected that the parties start pleading out the Lead Claims until the result of the Common Issues Trial is known and that will be December 2018/January 2019 at the earliest. It will then take some 18 months from then to properly prepare a complex trial of some 16 claims which (if carefully selected) will raise a multitude of issues. That said we are very open minded about this – and about whether the time periods set out in parts of this indicative timetable can be reduced to have a trial in, say, May – July 2020 which we recognise would be preferable.

7. Our meeting

7.1 We are prepared to discuss all of the above at our meeting on 22 December 2017 but appreciate that there is a lot to consider in this letter. We would therefore propose the following outline agenda for our meeting on 22 December:

7.1.1 Underlying principles of disclosure

7.1.2 Your suggestions for disclosure

7.1.3 Disclosure needed for the Common Issues Trial

7.1.4 Protocol for giving disclosure

7.2 Our client is not wedded to the proposals in this letter: they are just initial ideas to hopefully encourage a constructive dialogue. We would welcome other ideas from your clients.

Yours faithfully

WBD (UK) LLP

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