

**CONFIDENTIAL AND LEGALLY PRIVILEGED  
POST OFFICE GROUP LITIGATION**

**Steering Group Meeting: 3 November 2017**



**NOTING PAPER: UPDATE ON CMC AND FUTURE WORK STREAMS**

This Paper provides an update on the CMC held on 19 October 2017, the directions ordered by the Court and future work streams. This paper is for noting only.

**1. SUMMARY**

At the CMC on 19 October 2017, Post Office obtained most of the orders that it was seeking. It secured its preferred issues for trial and avoided (for now) the Claimants requests for massive disclosure of documents from Post Office.

The two areas where we were unsuccessful were that (i) the Court re-opened the litigation to new Claimants and (ii) it refused to order the Claimants to give further information on limitation and settlement issues.

The full Directions Order is attached. The general thrust of the directions is as follows:

- There will be a Trial in November 2018 regarding the enforceability and fairness of Post Office's standard contracts. To provide a structure for the evidence to be heard at trial, the parties will select 6 Lead Claimants. A limited amount of documents will be disclosed in relation to the Lead Claimants and in relation to certain discrete "generic issues". The Lead Claimants will then present their claims and Post Office will submit defences to them. The parties will then attempt to agree a Statement of Agreed Facts for use at trial, failing which each party shall submit its own evidence by way of witness statements. There will be a further procedural hearing in September 2018 to check on the preparations for Trial 1.
- There will be a second Trial in March 2019. The parties will submit proposals for the scope of Trial 2 at the end of July 2018 and the Court will decide on that scope at the procedural hearing in September 2018. Further directions will then be made for the preparation for Trial 2 through the period October 2018 to March 2019.
- In parallel with the above, the parties will continue to discuss whether further documents should be disclosed. There will be disclosure hearings in January / February 2018. These may indirectly shape and change the scope and preparations for Trials 1 and 2.
- Various other incidental orders were made that were generally advantageous to Post Office.

Overall, the Court has set an intense timetable of actions and given a clear instruction that deadlines cannot be missed. Although this is manageable, it will require prompt engagement from the business and may require more PLSG meetings than previously.

**2. COMMENTARY ON KEY DIRECTIONS**

- **Cut-off date:** The Claimants asked the Court to re-open the window in which Claimants may join the Group Action until 21 December 2017. The Judge decided that the Group should remain open until 24 November 2017 and we expect that at least 70 more Claimants will join the litigation (in addition to the current 510). During this period we would expect Freeeths to carry out further advertising.

Post Office's Counsel argued that the Group remaining open was disruptive to the litigation process and Post Office's business and placed a marker that further extensions of the window would be inappropriate. The Judge however believed that it is in the interests of justice to allow as many Claimants into the litigation at an early stage as possible.

- **Trial 1:** A 20 day trial of the Common Issues (see Schedule 1 of the Order) has been scheduled for 5 November 2018.

The Judge agreed that "Common Issues" should be tried and substantively agreed with the list of issues proposed by Post Office, which all relate to Post Office's standard contracts.

Prior to the CMC, Freeths conceded that NT Contracts should be considered alongside the 1994 Subpostmaster Contract and at the CMC the parties only had substantively differing views on 6 of the 26 Common Issues. The Judge reached a compromise position on the majority of these and agreed that the third parties rights claim being brought by those Claimants who are assistants should be included (an issue which was opposed by the Claimants).

- **Pool of Lead Claimants:** Going into the CMC, the Claimants were seeking a pool of 10 Potential Lead Claimants from which 6 Lead Claimants would be selected. Post Office sought a pool of 20 from which to select 10 Lead Claimants. The Judge ordered a pool of 12 Potential Lead Claimants and 6 Lead Claimants.

We remain concerned that 6 Lead Claimants may be insufficient to cover the Common Issues and this has been raised in correspondence with Freeths. Please see the separate paper on Lead Claimant selection process and criteria for further details on this matter.

For the sake of clarity, the Court will not be making decisions on the merits of the claims of the Lead Claimants. These Lead Claimants are simply vehicles for testing factual propositions to be determined in relation to Post Office's factual contracts (eg. whether Post Office provided a full copy of the terms to postmasters before the contracts were signed, etc.)

- **Disclosure:** The Judge agreed with the disclosure proposed by Post Office, namely disclosing limited categories of information relating to the Lead Claimants, the documents returned by Second Sight at the conclusion of the Mediation Scheme and access for the Claimants' expert to inspect the technical documents held by FJ.

The Judge did not order disclosure of the massive volumes of documents sought by Freeths. However, the Judge did order that the parties complete an Electronic Disclosure Questionnaire which will set out in detail the potentially disclosable documents which Post Office holds, the locations of these and proposals for further disclosure.

Further hearings will be held in January / February 2018 to consider these proposals.

There is therefore still a live risk that Post Office may need to give large volumes of disclosure in the future.

- **Evidence:** The Court has ordered that the parties attempt to agree a Statement of Facts to be used at trial. These are the facts that will set out the background context against which the Common Issues will be determined.

We are doubtful that the parties will agree this statement given Freeths difficult behaviour to date. Full witness statements will therefore be needed for trial.

A major point of dispute is the breadth of evidence that is admissible at Trial 1. When interpreting contracts, there are rules on what types of evidence a Court may take into account. Broadly speaking, this is limited to evidence of facts that existed before a contract is signed. However, Freeths are relying on post-contractual issues such as breach of contract by Post Office and termination of contracts.

Post Office's Counsel set down several markers at the CMC about the importance of this point. If all of Freeths' evidence is admitted, this would significantly increase the amount of evidence needed for Trial and may delay the trial date.

- **Further Information:** The Judge ordered that the Claimants were required to provide further information on the value of their claims.

They were also ordered obtain their medical records to substantiate claims for personal injury. Whilst the Claimants are not required to disclose these records, it is hoped that obtaining the records will bring to Freeths' attention that the personal injury claims may well be unsustainable.

The Judge was not willing to order further information to be provided in respect of false accounting, limitation or settlement agreements. We had hoped to secure this information in order to setup a basis for striking out claims. He did however make clear that these were important issues, but that he did not want to deal with them at this stage. There may be an opportunity to revisit these matters at Trial 2.

### 3. CHRONOLOGY AND KEY DATES

A full chronological list of the actions ordered by the Court is set out at Schedule 1 to this paper. The key dates are:

Date	Action
23 November 2017	Select 12 potential Lead Claimants for Trial 1 (POL get 6 and Freeths get 6)
24 November 2017	Group is closed
19 January 2018	Parties to provide limited disclosure relating to Lead Claimants
January / February 2018	Further Court hearings regarding disclosing more documents for Trial 1 and/or Trial 2
23 February 2018	Reduce pool of Lead Claimants to 6 (POL get 3 and Freeths get 3)
29 March 2018	Lead Claimants to file Particulars of Individual Claims
4 May 2018	Post Office to file Defences to Lead Claimants
27 July 2018	Parties to lodge proposals for scope of Trial 2
11 August 2018	Witness Statements for Trial 1 to be filed
19 September 2018	Further Court hearing to (i) finalise matters for Trial 1 and (ii) agree scope and timetable of actions for Trial 2
5 November 2018	Start of Trial 1 for 4 weeks
11 March 2019	Start of Trial 2 for 4 weeks

### 4. ADDITIONAL WORK STREAMS

In addition to the above, there are a number of additional pieces of work to be undertaken outside the scope of the Court ordered actions.

**Live Postmaster Claimants.** There will be continuing correspondence with Freeths in relation to Claimants who are live postmasters (i.e. recovery of shortfalls, suspensions, terminations, access to branches, etc). Please see the separate paper on this matter for further details.

**Preparation of evidence.** In order to be ready for pleadings in May 2018 and witness statements in August 2018, we recommend that we begin preparing that evidence now. This will involve interviewing

witnesses across the business and potentially some who have left (e.g. Lin Norbury). We anticipate that this may require interviews with between 30-50 Post Office staff. We will be preparing a list of witnesses and a timetable of interviews, but would welcome support from across the business in making sure that Post Office staff are available when needed.

**Strike out of claims.** Post Office needs to decide whether to strike out the claims of conspiracy and contravention of human rights – please see the separate paper on this matter for further detail.

**Strike out of Claimants.** Under the GLO, Post Office has a right to object to any Claimant who does not fall within the scope of the GLO. Post Office objected to approximately 50 Claimants on the basis that Post Office was unable to identify them and verify they had a claim which falls within the parameters of the Group Action. Further information on these Claimants is being sought from Freeths but if this information is not forthcoming then consideration will need to be given as to whether to strike out these Claimants. Updates will be provided on this topic as it progresses.

**Horizon.** Deloitte's work is nearing completion and they have generally reached positive conclusions that Horizon is robust. However, Deloitte have not reviewed the whole of Horizon and during their work it was suggested that there is a separate part of Horizon that is not under the control of Fujitsu. Further work is ongoing to scope this area and then a plan will be presented to the PLSG for further investigations if needed.

**Merits Advice.** Womble Bond Dickinson will be instructing Counsel to prepare a Written Advice on Post Office's prospects of success at Trial 1. This will be produced in March 2018 once Lead Cases are known and documents disclosed. It will be updated in September 2018 before Trial 1 but after all evidence has been filed. This will allow commercial, legal and operational mitigations to be built around any risk areas.

**Settlement.** Post Office should consider again whether there is merit in trying to settle this litigation. In particular, there is an obvious window for a mediation in September / October 2018 to explore the possibility of settlement before Trial 1 and in light of any risks flagged by Counsel's advice. We will return to this point in a separate paper at a later PLSG meeting.

**General resource planning.** Following this PLSG meeting and the decisions on the papers presented, a resource planning exercise needs to be undertaken, both in terms of internal staff resource at Post Office and external legal costs. This will be brought back to the PLSG at a later meeting.



**SCHEDULE 1**

<b>Date</b>	<b>Event</b>	<b>By Whom</b>
27 October 2017	Amendments to Claim Forms HQ16X01238 & HQ17X02637 to remove misfeasance in public office by 4pm.	Claimants
3 November 2017	Defendant's to identify the names of Claimants who have not provided an approximate value to points 8.1, 8.3, 8.4 and/or 8.5 in their SOI to Claimants' Solicitors by 4pm.	Defendant
10 November 2017	Generic Rejoinder and Reply to Defence to Counterclaim to be filed by 4pm	Defendant
10 November 2017	Application to strike out the claims of conspiracy and contravention of the ECHR to be issued.  Date to be heard by Managing Judge to be fixed.	Defendant
23 November 2017	Potential Lead Claimants (6 each) to be chosen for the trial of the Common Issues by 4pm.	Both parties
24 November 2017	Cut-off date for service of claim form extended until 4pm.	Defendant
6 December 2017	Exchange E-Disclosure Questionnaires	Both parties
8 December 2017	Claimants who have not provided an approximate value to points 8.1, 8.3, 8.4 and/or 8.5 in their SOI to provide amended form of SOI by 4pm.	Claimants
8 December 2017	Deadline for entry on Group Register by 4pm.	Claimants
14 December 2017	Bankrupt or Deceased Claimants to serve on Defendant the evidence which they intend to rely to show they have standing to bring claim.	Claimants
15 December 2017	Service of completed Schedule of Information by 4pm.	Claimants
20 December 2017	Deadline to notify the Managing Judge whether a date for a disclosure CMC is required and if so suggesting 5 dates in January and February 2018	Both parties
22 December 2017	Electronic copy of updated Group Register to be served on Defendant by 4pm.	Claimants
19 January 2018	Individual Disclosure by 4pm.	Both parties
25 January 2018	Disclose and make available Horizon architecture documents (Schedule 2) by 4pm .	Defendant
25 January 2018	Arrange for Claimant's IT expert to be given access to inspect KEL and Schedule 3 documents by 4pm .	Defendant
25 January 2018	Disclosure and inspection of all documents delivered to Defendant by Second Sight by 4pm.	Defendant
26 January 2018	Provide inspection of Individual Disclosure documents by	Both parties

Date	Event	By Whom
	4pm	
2 February 2018	Claimants claiming PI damages in SOI must take necessary steps to request their existing relevant personal medical records.	Claimants
23 February 2018	Agreement of 6 Lead Claimants from Potential Lead Claimants by 4pm	Both parties
29 March 2018	Lead Claimants to file and serve Particulars of Claim by 4pm.	Claimants
4 May 2018	File and serve individual Defences in respect of Lead Claimants by 4pm.	Defendant
1 June 2018	Lead Claimants to file and serve Replies to Defences by 4pm.	Claimants
29 June 2018	File an agreed Statement of Facts in respect of Common Issues by 4pm.	Both parties
20 July 2018	Before this date, parties to seek to agree proposal for issues to be heard at trial in March 2019	Both parties
27 July 2018	Deadline to lodge either a single set of proposed issues, or a set of proposed issues on behalf of the Claimants and the Defendant, at the Court by 4pm.	Both parties
11 August 2018	File and serve Witness Statements in respect of each Lead Claimant and Common Issues by 4pm.	Both parties
14 September 2018	Lodge Skeleton Arguments and draft Order(s) by 12pm	Both parties
14 September 2018	Agree documents for Second CMC hearing bundle and lodge by 4.30pm.	Both parties
19 September 2018	Second CMC	Both parties
5 November 2018	Common Issues Trial (listed for 20 days)	Both parties
24 November 2018	End of Common Issues Trial.	Both parties
11 March 2019	Further trial of substantive issues between the parties in the Group Litigation (listed for 20 days)	Both parties

**THE POST OFFICE GROUP LITIGATION**

**IN THE HIGH COURT OF JUSTICE**

**Claim Nos HQ16X01238 & HQ17X02637**

**QUEEN'S BENCH DIVISION**

**BEFORE THE HONOURABLE MR. JUSTICE FRASER**

**B E T W E E N :**

**ALAN BATES & OTHERS**

**Claimants**

**- and -**

**POST OFFICE LIMITED**

**Defendant**

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**ORDER**

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UPON the Court holding a Case Management Conference on 19 October 2017 and restoring that Case Management Conference on 25 October 2017

AND UPON HEARING Leading Counsel for the Claimants and Leading Counsel for the Defendant

**IT IS ORDERED THAT:-**

**COMMON ISSUES TRIAL**

1. There shall be a trial of common issues, to determine issues relating to the legal relationship between the parties, to be listed for 20 days, commencing Monday 5 November 2018.
2. The trial in paragraph 1 shall be of the issues set out in Schedule 1 to this Order (for the purposes of this Order, “**the Common Issues**”).

### **Potential Lead Claimants**

3. By 4pm on 23 November 2017, the Claimants' solicitors and the Defendant's solicitors shall each select up to 6 potential lead Claimants ("**Potential Lead Claimants**"), which will together form a pool of up to 12 Potential Lead Claimants, for the trial of the Common Issues. Only Claimants who are asserting claims as Subpostmasters (not including temporary Subpostmasters) shall be considered for selection as Potential Lead Claimants.

### **Individual Disclosure**

4. In respect of each Potential Lead Claimant, by 4pm on 19 January 2018:
  - (a) The Defendant shall disclose:
    - i. Any application to be a Subpostmaster submitted by the Claimant to the Defendant.
    - ii. Any signed Confirmations of Appointment and/or signed Preface between the Defendant and the Claimant.
    - iii. Records of any assistants employed by the Claimant recorded in the Defendant's HR database.
    - iv. Transaction and event data recorded on Horizon for the Claimant's relevant branch(es) in respect of the period(s) specified for that Claimant (subject to a limit of 400 months of data in total and the parties will cooperate in selecting the most relevant months, which shall include as a minimum, where available, the last 3 months of each Claimant's appointment as a Subpostmaster).
    - v. Customer Account from POLSAP or Core Finance (as



applicable) for each Claimant's relevant branch(es).

- vi. Records of Transaction Corrections issued to each Claimant's relevant branch(es) as recorded in POLSAP.
- vii. Written logs of calls to the Defendant's NBSC helpline recorded in either the Defendant's Dynamics or Remedy systems (as applicable) as having come from the Claimant's relevant branch(es).
- viii. Audit Reports in relation to the Claimant's relevant branch(es).
- ix. Any suspension letter and any attachment thereto sent by the Defendant to the Claimant.
- x. Any termination or resignation letter and any attachment thereto sent between the Defendant and the Claimant.
- xi. Any hardcopy former agent debt file for the Claimant.

(b) The Claimants shall disclose:

- i. Any application to be a Subpostmaster submitted by the Claimant to the Defendant.
- ii. Any signed Confirmations of Appointment and/or signed Preface between the Defendant and the Claimant.
- iii. Any correspondence appointing or terminating the employment of an assistant of the Claimant.
- iv. Any accounting records held by the Claimant showing the payment of a sum of money to the Defendant in relation to a shortfall in relation to the Claimant's relevant branch(es).

- v. Any records of any calls from between the Claimant's relevant branch(es) and the Defendant's NBSC helpline.
  - vi. Any suspension letter sent by the Defendant to the Claimant and any attachments thereto.
  - vii. Any termination or resignation letter sent between the Defendant and the Claimant and any attachments thereto.
  - viii. Any letters of communications between the Claimant and the Defendant regarding the recovery of sum in relation to any shortfall.
5. The disclosure to be provided in accordance with paragraph 4(a) shall:
- (a) be provided on the basis of a reasonable and proportionate search;
  - (b) shall be required only insofar relates to the branch(es) named by the relevant Subpostmaster in his or her Schedule of Information and during the period for which the Schedule of Information indicates he or she was a Subpostmaster.
6. Inspection in respect of the documents at paragraph 4 above, shall be provided by the parties by 4pm on 26 January 2018.

#### **Lead Claimants**

7. By 4pm on 23 February 2018 the parties shall seek to agree 6 Lead Claimants from the pool of Potential Lead Claimants, and in default of such agreement, the parties shall each select 3 Lead Claimants.

#### **Individual Statements of Case**

8. In respect of each Lead Claimant and in relation to the Common Issues:

- (a) the Lead Claimants shall file and serve individual Particulars of Claim by 4pm on 29 March 2018;
- (b) the Defendant shall file and serve individual Defences by 4pm on 4 May 2018;
- (c) the Lead Claimants shall file and serve individual Replies by 4pm on 1 June 2018.

### **Agreed Statement of Facts**

- 9. The parties shall, by 4pm on 29 June 2018, file an agreed Statement of Facts in relation to the Common Issues.

### **Witness statements**

- 10. In respect of each Lead Claimant and in relation to the Common Issues, the parties shall file and serve witness statements by 4pm on 11 August 2018.

### **EARLY DISCLOSURE**

#### **E-Disclosure Questionnaires**

- 11. The parties shall exchange e-disclosure questionnaires, in accordance with paragraphs 10-12 of PD 31B, by 6 December 2017.
- 12. The parties shall notify the Managing Judge within 14 days of exchange of the e-disclosure questionnaires whether a date for a disclosure CMC is required and if so suggesting 5 dates in January and February 2018 (but excluding the period 12 – 16 February 2018) for the CMC, time estimate of half a day. In default of agreement by the parties as to a date, the Court will fix a date before 28 February 2018.

## **Initial Disclosure**

13. By 4pm on 25 January 2018, the Defendant shall:
  - (a) Disclose and make available for inspection the documents regarding the Horizon system architecture listed in Schedule 2 hereto.
  - (b) Use reasonable endeavors to arrange for the Claimants' IT expert, Jason Coyne, to be given access to inspect at the office of Fujitsu in Bracknell of the Known Error Log and the documents listed in Schedule 3 hereto.
  - (c) Give standard disclosure of, and make available for inspection, all of the documents delivered up to the Defendant by Second Sight Support Services Ltd (**Second Sight**) following the end of Second Sight's work in the Post Office Complaint Review and Mediation Scheme, save where these are subject to legal advice privilege.
14. The disclosure/inspection provided for in paragraphs 13(a) and 13(b) above shall be conditional on the Claimants' IT expert first entering into a Non-Disclosure Agreement with Fujitsu.

## **FURTHER DIRECTIONS**

### **Extension to Cut-off Date**

15. The cut-off date provided for in paragraph 37 of the GLO be extended to 4pm on 24 November 2017. The final date on which claims must be entered on to the Group Register is 4pm on 8 December 2017. The Lead Solicitors shall serve an electronic copy of the updated Group Register on the Defendant by 22 December 2017.
16. All Claimants who, after the date of this Order, issue proceedings to which

the GLO applies (by virtue of paragraph 1 of the GLO), shall serve on the Defendant as soon as reasonably possible and in any event by no later than 4pm on 15 December 2017, a completed Schedule of Information in the form set out in Schedule 3 of the GLO, such information to be provided to the best of each Claimant's knowledge and belief and be verified by a statement of truth signed by or on behalf of each Claimant, without prejudice to the Claimant seeking, and the Defendant agreeing (such consent not to be unreasonably refused) any extension of time pursuant to paragraph 38 of the GLO.

### **Rejoinder**

17. The Defendant has permission to file a Generic Rejoinder and Reply to Defence to Counterclaim by 4pm on 10 November 2017.

### **Expert Evidence**

18. Each party has permission to rely on an expert in the field of IT in relation to the operation and accuracy of the Horizon system ("**IT expert evidence**").

### **Medical Records**

19. By 2 February 2018, any Claimant who has served a Schedule of Information identifying a claim for damages for personal injury, shall take necessary steps to request their existing relevant personal medical records.

### **Bankrupt and Deceased Claimants**

20. The Claimants identified in Schedule 4 and 5 (or their representatives) shall, by 14 December 2017 serve on the Defendant the evidence on which they intend to rely to show that they have standing to bring the claims they advance in these proceedings.



### **Quantum**

21. The Defendant do identify to the Claimants' Lead Solicitors by 4pm on 3 November 2017 the names of Claimants that have not provided an approximate value to points 8.1, 8.3, 8.4 and/or 8.5 in their Schedules of Information. Those Claimants' shall provide those details in the form of amended Schedules of Information by 4pm on 8 December 2017.

### **Amendment to Claim Forms**

22. The Claimants shall amend Claim Forms HQ16X01238 & HQ17X02637 by consent to remove the averment of misfeasance in public office by 4pm on 27 October 2017.

### **Application to Strike Out**

23. Any Application by the Defendant to strike out the claims of conspiracy and contravention of the ECHR to be issued by 10 November 2017 and to be heard by the Managing Judge on a date to be fixed.

### **ADR**

24. At all stages, the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging in any such means proposed by another must serve a witness statement giving reasons within 21 days of that proposal; such witness statement must not be shown to the trial judge until questions of costs arise.

### **Costs Management**

25. The parties shall regularly report their costs to each other and to the Court, as they pass the following milestones: £500,000, £750,000, £1 million and any increment of £250,000 thereafter.

### **Part 36 and Costs**

26. In respect of any claims that are within the pool of potential lead claims and/or are agreed or selected as lead claims in this Group litigation, pursuant to paragraphs 2 and 5 of this Order or further order, and without prejudice to the effect of any offers which may have been made prior to the date of this Order, in relation to any offers to settle which are made by either party after the date of this Order, the following approach shall be applied. In considering whether it is just to make an order of the kind referred to in CPR 36.17(3) or (4), the court will take into account, in addition to the matters specifically identified in CPR 36.17(5), the extent to which pursuing the case to a judgment has or may reasonably be expected to have assisted the just and efficient disposal of other cases in the Group litigation.

### **Electronic Litigation Bundles**

27. The parties shall utilise the Magnum Opus II platform for the purposes of the Common Issues trial and any other substantive hearing, in accordance with the Guide to Electronic Trial Bundles and Electronic Presentation of Evidence.

### **COSTS ORDERS**

28. The costs of the Defendant's Application dated 26 July 2016, reserved by the Consent Order dated 14 February 2017, are common costs in the case.
29. Costs of the Claimants' Application dated 20 September 2017 for an extension of time for filing the Generic Reply are common costs in the case.
30. Costs in respect those Claimants that have filed Notices of Discontinuance identified at Schedule 6 are reserved.
31. Costs of this CMC are common costs in the case.

## SECOND CMC

32. The parties to seek to agree proposals for the issues to be heard at the hearing in paragraph 34 below before 20 July 2018. Either a single set of proposed issues, or a set of proposed issues on behalf of the Claimants and the Defendant, to be lodged with the Court by 27 July 2018.
33. There shall be a CMC listed for 1 day on 19 September 2018 (**“the Second CMC”**) before the Managing Judge to consider any matters arising prior to the Common Issues trial, to give further directions on any such matter as may be required, and to order such further issues as may be agreed (or not agreed) under paragraph 32 for the hearing referred to in paragraph 34 below.
34. There to be a further trial of substantive issues between the parties in the Group Litigation to be set down on to be listed for 20 days, commencing Monday 11 March 2019.
35. The Claimants and Defendant to lodge skeleton arguments and draft order(s) by 12pm, 2 clear days before the Second CMC, setting out what order(s) are sought by them at the Second CMC.
36. The parties to liaise with one another and co-operate regarding documents that it will be necessary to put before the Court for the Second CMC, such documents to be contained in a separate hearing bundle, and to be lodged by 4.30pm, 2 clear days before the Second CMC.

## GENERALLY

37. The parties to be permitted to extend, by agreement, the dates for any steps ordered by the Court in this litigation with the exception of paragraphs 1 and 34 (trials of issues), paragraph 33 (the Second CMC) or paragraphs 35 and 36 (documents to be lodged at Court for the Second CMC). However,

such extension by agreement to be subject to the following restrictions:

1. Any date may only be extended on one occasion;
  2. Such extension is to be for a maximum extension of 5 working days;
  3. Such extension must not prejudice any other dates, or steps, ordered by the Court.
38. Any documents lodged by the parties with the Court for either the Second CMC or any other hearing must be lodged in a paginated numbered bundle in the same form to be utilised by the parties at the relevant hearing. Documents are not to be sent by post to the Court. Any hard copy documents that require insertion into the hearing bundles are to be provided in hard copy by the parties or their solicitors and, if produced too close to the hearing date (for unavoidable reasons) should be provided to the Court in the quickest method practicable, bearing in mind that the Court cannot print large and/or multiple attachments to e mails to the Clerk to the Managing Judge.
39. The Defendant's application to vacate the trial date in November 2018 in paragraph 1 for reasons of counsel's availability is refused.

#### **LIBERTY TO APPLY**

40. Liberty to apply.

Dated this                      day of October 2017

## SCHEDULE 1

### COMMON ISSUES

*References to Subpostmasters in this Schedule are to Subpostmasters who were subject to either (1) the Subpostmaster Contract (“the SPMC”), or (2) the Network Transformation Contract (local branch or main branch types) (“the NTC”).*

#### **Relational Contract**

- (1) Was the contractual relationship between Post Office and Subpostmasters a relational contract such that Post Office was subject to duties of good faith, fair dealing, transparency, co-operation, and trust and confidence (in this regard, the Claimants rely on the judgment of Leggatt J in Yam Seng Pte v International Trade Corp [2013] EWHC 111)?

**[GPOC 63, Defence 103]**

#### **Implied terms**

- (2) Which, if any, of the terms in the paragraphs listed below were implied terms (or incidents of such implied terms) of the contracts between Post Office and Subpostmasters?
  - (i) GPOC, para 64 [Denied at Defence, paras 104-106]
  - (ii) Reply, para. 96.1

(For the avoidance of doubt, the implied terms admitted at Defence para 105 are agreed)
- (3) If the terms alleged at GPOC, paras 64.16, 64.17, 64.18 and/or 64.19 are to be implied, to what contractual powers, discretions and/or functions in the SPMC and NTC do such terms apply?



### **Supply of Goods and Services Act 1982**

- (4) Did Post Office supply Horizon, the Helpline and/or training/materials to Subpostmasters (i) as services under “relevant contracts for the supply of services” and (ii) in the course of its business, such that there was an implied term requiring Post Office to carry out any such services with reasonable care and skill, pursuant to section 13 of the Supply of Goods and Services Act 1982?

**[GPOC para 63A, Defence, para. 104]**

### **Onerous or unusual terms**

- (5) Were any or all of the express terms in the GPOC paragraphs listed below onerous and unusual, so as to be unenforceable unless Post Office brought them fairly and reasonably to the Subpostmasters’ attention?
- (i) para 51.1 and 51.3 (rules, instructions and standards);
  - (ii) para 52.1 and 52.3 (classes of business);
  - (iii) para 54.1 and 54.3 (accounts and liability for loss);
  - (iv) para 56.1.a. and 56.2.a (assistants);
  - (v) para 60.1 and 60.3 (suspension);
  - (vi) para 61.1 and 61.3 (termination).
  - (vii) Para 62.1 and 62.3 (no compensation for loss of office)

**[GPOC, para 66; Defence, para. 108]**

- (6) If so, what, if any, steps was Post Office required to take to draw such terms to the attention of the Subpostmaster?

**[GPOC, para. 66; Defence, para. 108(2)]**

### **Unfair Contract Terms**

- (7) Were any or all of the terms at paragraph (5) above unenforceable pursuant to the Unfair Contract Terms Act 1977?

[GPOC, paras. 67-68; Defence, para. 109; Reply, para. 49]

### **Liability for Alleged Losses**

- (8) What is the proper construction of section 12, clause 12 of the SPMC?
- (9) What is the proper construction of Part 2, paragraph 4.1 of the NTC?

[GPOC paragraph 49 and 55; Defence, paras 93-94]

### **Agency and Accounts**

#### Post Office as agent

- (10) Was Post Office the agent of Subpostmasters for the limited purposes at GPOC paragraphs 82 and 83?

[Defence, paras 124-125]

- (11) If so, was the Defendant thereby required to comply any or all of the obligations at GPOC paragraph 84?

[Defence, para 126]

#### Subpostmasters as agents

- (12) Was the extent and effect of the agency of Subpostmasters to Post Office such that the principles of agency alleged at Defence 91 and 93(2) and (3) applied as Post Office contends?

[Defence paras 90-91; Reply, paras 59-60]

- (13) Did Subpostmasters bear the burden of proving that any Branch Trading Statement account they signed and/or returned to Post Office was incorrect?

[Defence, paras 69(3) 183; Reply, paras 64 and 92]

## **Suspension and Termination**

### **Suspension**

- (14) On a proper construction of the SPMC and NTC, in what circumstances and/or on what basis was Post Office entitled to suspend pursuant to SPMC Section 19, clause 4 and Part 2, paragraph 15.1 NTC?

**[GPOC, paras 32-3, 49, 60, 64.13 and 99; Defence, paras 66-72, 99 and 142]**

### **Summary Termination**

- (15) On a proper construction of the SPMC and NTC, in what circumstances and/or on what basis was Post Office entitled summarily to terminate?

**[GPOC, paras 34-37, 61, 64 and 99; Defence, paras 66-72, 100,104-106 and 142]**

### **Termination on Notice**

- (16) On a proper construction of the SPMC and NTC, in what circumstances and/or on what basis was Post Office entitled to terminate on notice, without cause?

**[GPoC, paras 49, 61 and 64, Defence para. 100]**

### **True Agreement**

- (17) Do the express written terms of the SPMC and NTC between Post Office and Subpostmasters represent the true agreement between the parties, as to termination (in this regard, the Claimants rely on Autoclenz v Belcher [2011] UKSC 41)?

**[GPOC, paras 50, 69-71; Defence, paras 86, 110-112]**

- (18) If not, was the “true agreement” between the parties as alleged at GPOC, para. 71?

**[GPOC, para. 71; Defence, para. 112]**

**Compensation for loss of office**

- (19) On a proper construction of the SPMC and NTC, where Post Office lawfully and validly terminated a Subpostmaster's engagement, on notice or without notice for cause, was the Subpostmaster entitled to any compensation for loss of office or wrongful termination?

**[See GPOC, para. 62; Defence, para. 101]**

- (20) On a proper construction of the SPMC and NTC, in what, if any, circumstances are Subpostmaster's breach of contract claims for loss of business, loss of profit and consequential losses (including reduced profit from linked retail premises) limited to such losses as would not have been suffered if Post Office had given the notice of termination provided for in those contracts?

**[GPOC, para. 131; Defence, para. 171; Reply, paras 81-82]**

**Subsequent appointments**

- (21) On a proper construction of the SPMC and NTC, what if any restrictions were there on Post Office's discretion as to whether or not to appoint as a Subpostmaster the prospective purchaser of a Subpostmasters' business?

**[GPOC, para. 62; Defence, para 102]**

**Assistants**

- (22) Did SPMC section 15, clause 7.1; NTC, Part 2, clauses 2.3 and 2.5 and/or any of the implied terms contended for by the parties and found by the Court purport to confer a benefit on Assistants for the purposes of section 1 of the Contracts (Rights of Third Parties) Act, and if so which of these terms did so?

**[See GPOC, para. 74; Defence, para. 116; Reply, para. 92]**

- (23) What was the responsibility of Subpostmasters under the SPMC and the NTC for the training of their Assistants?

**[See GPOC, para. 56; Defence, para. 95(4); Reply, para. 92]**



**SCHEDULE 2**  
**TECHNICAL DOCUMENTS**

- 1) Horizon Core Audit Process dated 30 January 2014
- 2) Horizon Online Data Integrity for Post Office Ltd dated 28 November 2013
- 3) Horizon Data Integrity dated 3 December
- 4) High level architectural overview of Horizon Online reference document  
(undated)

**SCHEDULE 3**  
**FURTHER DOCUMENTS**

The technical documentation regarding Horizon and Horizon Online identified in paragraph 87 of the Fourth Witness Statement of Andrew Paul Parsons dated 9 October 2017.

**SCHEDULE 4**

**CLAIMANTS WITH BANKRUPTCIES**

Isabella Armstrong-Wall (No.9)	Manjit Kaur (No. 348)
Thomas Brown (No. 32)	Donna Marie Lanaghan (No. 359)
Deirdre Connolly (No. 45)	Martin Holgate Legat (No. 362)
Joanne Foulger (No.60)	Deborah Mann (No. 372)
Donna Gosney (No. 65)	Gordon Martin (No. 374)
Francis Maye (No.114)	Jacqueline McDonald (No. 377)
Dominic Savio (No. 160)	Lewis Lavern McDonald (No. 378)
Hughie Noel Thomas (No. 177)	Doreen Anne McQuillam (No. 384)
Elizabeth Barnes (No. 219)	Senapathy Narenthiran (No. 395)
Chris Dawson (No. 265)	Carl Page (No. 410)
David Charles Blakey (No. 225)	Suzanne Lesley Palmer (No. 412)
Gillian Blakey (No. 226)	James Richards (No. 440)
Lisa Brennan (No. 229)	Sandra Richardson (No. 441)
Lee Castleton (No. 240)	Balvinder Singh Gill (No. 473)
Julie Dell (No. 270)	Rita Threlfall (No. 498)
Lesley Dunderdale (No. 275)	Gail Lesley Ward (No. 506)
Tracey Ann English (No. 282)	Penelope Jane Williams (No. 511)
Richard Andrew Finlow (No.293)	James Withers (No. 514)

**SCHEDULE 5**  
**DECEASED CLAIMANTS**

Claimant No 75 - Marion Holmes the personal representative of Peter Holmes (deceased)
Claimant No 122 – Jacqueline Barr the personal representative of Enid Mummery (deceased)
Claimant No 130 - Wendy Ann Owen the personal representative of John Owen (deceased)
Claimant No 215 - Jasvinder Barang the personal representative of Rajbinder Singh Barang (deceased)
Claimant No 195 – Karen Wilson the personal representative of Julian Wilson (deceased)
Claimant No 296 - Menna Garland-Ellis and Jonathan Garland the personal representatives of Mr Michael Garland (deceased)
Claimant No 477 - Janet Smith the personal representative of David Smith (deceased)
Claimant No 488 - Sonya Sultman the personal representative of David Graham (deceased)
Claimant No 497 - David Thornton the personal representative of Amy Thornton (deceased)

**SCHEDULE 6**  
**DISCONTINUED CLAIMANTS**

Conrad Chau (No.41)
Vijay Parekh (No. 132)
Sarah Javed (No.86)
Usman Kiyani (No. 101)
Mario Lummi (No. 109)
Dermot Lynch (No. 110)
Chelsea News Limited (No. 244)
Anil Kumar (No. 358)
Hums Group Ltd (No. 325)
Ling Ma (No. 368)
Nalin Patel (No. 418)
Potential Estates Limited (No.429)