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17 April 2018

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Third Letter

For the Attention of Mr J Hartley
Freeths LLP
Floor 3
100 Wellington Street
Leeds
LS1 5LT

By email only

Email: james.hartley GRO

Dear Sirs

Post Office Group Litigation
Horizon Issues Trial

1. We refer to your second letter of Friday, 13 April 2018.

2. The meeting between us and our respective clients' IT experts at your offices on 11 April 2018 was held pursuant to paragraph 11 of the Third CMC Order, which requires the parties to attempt to agree:

   - the scope of any further information or documents required about the Horizon system; and

   - a process for inspecting the Horizon system (if needed).

3. Your clients' expert Jason Coyne very helpfully led the meeting by setting out the lines of enquiry that he would like to explore in relation to each of the agreed Horizon Issues. He did this by reading from a prepared list with sequentially numbered items. That list was not provided to us in advance nor in writing at the meeting, but from our notes we estimated that there were around 60 lines of enquiry set out by Mr Coyne. We and our client's expert, Robert Worden, then commented on those lines of enquiry as much as we and he could, given that we were addressing these points as we heard them. The parties also discussed at a high-level what further documents, information or inspection may be required to address each of Mr Coyne's enquiries.

4. At the meeting Mr Coyne agreed to update his list of intended lines of enquiry by identifying the documents, information and inspection that he is would like to see in relation to each enquiry so that our client and Mr Worden could properly consider these requests. We had understood that the document would be provided last week, but you now anticipate that it will be provided "*early*" this week. We and Mr Worden agreed to comment on Mr Coyne's document with a view to the parties reaching an agreement and avoiding the need for a further CMC in relation to the Horizon Issues (or significantly reducing the scope of a further CMC). On that basis we all agreed, subject to instructions, that a CMC on 20 April would be premature and an adjournment of around 4 weeks would be sensible.

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5. You now appear to have changed your mind about adjourning the CMC, unless an Order can be agreed. In your 13 April letter you express concern that there is a risk of limited progress being made between now and the re-listed CMC. However, you go on to say that "*it ought to be possible for the parties to agree a Consent Order in advance of 20 April, so as to enable progress to be made by [your] Expert immediately*" and you have provided a draft Consent Order on the basis of which you would agree to the CMC on 20 April being vacated.

6. We are surprised by this change of tack and do not think that it is either helpful or efficient to be requiring consent orders to be made at short notice before Mr Worden has even seen Mr Coyne's list of lines of inquiry and associated document requests. Rather than continuing the constructive discussions that are already underway, we are now having to spend time taking urgent instructions and preparing for a hearing that should not be necessary. However, in the interests of pragmatic cooperation and with a view to avoiding the necessity of incurring time and costs preparing for that hearing, we enclose a draft order that our client is able to agree at this stage. The draft order contains a schedule which in column 2 sets out the disclosure which you have proposed and in column 3 sets out either the disclosure that our client can give or briefly explains our client's difficulties with your proposed disclosure. We hope that this order can be agreed so as make it unnecessary to proceed with a contested hearing on Friday.

7. Our client accepts that the experts require further information and documents, and that they may benefit from inspecting aspects of certain systems. It is important however to keep each of these matters separate as the applicable requirements and protections are different in each case.

8. We note that in the ordinary course of litigation the allegations that require expert opinion would be pleaded, then directions for disclosure and witness evidence would follow. That would then set the factual foundation on which to draw expert opinions. Due the lack of specify in the Claimants' pleadings so far, it has been necessary for the experts to engage at an early stage to try to scope the Claimants' allegations. This does not however give the Claimants license to conduct a roving interrogation into Horizon in general, nor does it circumvent the rules on disclosure and evidence.

Inspection

9. In paragraph 4 of your draft Order, you seek a direction for inspection of certain aspects of Fujitsu's systems. As we explain below, our client is willing to facilitate an inspection of those systems. However, the directions you seek include a requirement that employees of our client and Fujitsu who have knowledge of the system dating back to 2000 should be present for at least four days. It may be your intention that these individuals should be available, not just to explain how to access and navigate those systems being inspected, but to answer unspecified questions about what might be found, including questions about how Horizon worked 18 years ago. As you may appreciate, if this were your intention, it would cause our client serious concern. In effect, your clients would have the ability to interrogate potential witnesses about all manner of issues of which our client would have no warning and over which it would have no control.

10. A further issue with conveying information via meetings is that, without a transcript of the entire process, there is likely to be no definitive evidence in the event that there is a dispute about what was said or what was meant in relation to particular points or the context in which points were made. In the longer term, we believe that this may cause further disputes and delays.

11. We doubt that it is your intention to seek an order that raises these problems and we have redrafted paragraph 4 of your Order in a way that avoids them. For this purpose, we have tracked the wording used in paragraph 13(b) of the First CMC Order, providing for inspection of the Known Error Log. When the KEL was inspected, personnel were on hand to explain how to access and navigate it and to deal with basic questions in that regard, insofar as this was necessary to enable the inspection to take place. Our client will ensure that this precedent will be followed in this case also. No express wording is required for this purpose, just as it was not required for the purpose of the KEL inspection.

12. Fujitsu have confirm that it is possible to inspect the Peak system. However, it does not have a dedicated "Horizon Change Control and Release Management system". Its change control and

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release processes are a combination of policies and processes, rather than a specific system that may be inspected. Many of the relevant documents in this regard will be in the Technical Documents from the Dimensions system that are being disclosed as part of Stage 2 Disclosure. There is one other system, known as TFS, that Fujitsu believes might be relevant. If that is the case, then Fujitsu should be able to facilitate inspection of that system. We are waiting for confirmation from Fujitsu on this point.

Information

13. Regarding the provision of information more generally, at last week's meeting Mr Coyne requested access to Fujitsu personnel on the basis that he believes that it "*would be an effective means by which information could be communicated*". Mr Worden's view is that information is best provided in writing and in this regard we refer you to CPR 35.9 which provides that:

"Where a party has access to information which is not reasonably available to another party, the Court may direct the party who has access to the information to –

(a) prepare and file a document recording the information; and

(b) serve a copy of that document on the other party."

14. In Mr Worden's view, and ours, a preferable approach would be for your client to make written requests for information and, where those requests are reasonable, proportionate and within the scope of CPR 35.9, our client will provide answers to those questions in writing. A suggested mechanism is included in our client's draft order.

15. As we noted at the meeting it is disappointing that Mr Coyne's lines of enquiry have not been framed by reference to the nature of your clients' Horizon complaints and we understand that Mr Coyne has not spoken to the Claimants about their experiences of Horizon. It is a feature of this litigation that, by your own admission, you are looking for issues that can be tied back to the individual claims rather than working out whether there are any patterns in the issues complained of that merit investigation.

16. Horizon is a large system and it would be benefit everyone if we could target inquiries at certain alleged problem areas. It would help if you could therefore draw from the Claimants' complaints the key issues that they experienced whilst using Horizon. For example, if a large number of Claimants encountered problems with a particular function within Horizon or product transaction, then enquiries could focus on that subject, rather than potentially wasting time in areas that did not affect any Claimants.

17. In response to this point, you will no doubt say that the Claimants cannot possibly know what "bugs" there may be in Horizon. However, they must have experienced the (alleged) effects as end-users for them to be able to bring their claims and they must have valuable information to provide. We note that if there are no common trends among the Claimants then this in itself is probative evidence about Horizon and may well be useful for future case management.

18. We are giving further thought to whether more information needed from the Claimants in relation to the Horizon Issues and have therefore made the mechanism for requesting information under CPR 35.9 mutual to both parties. More generally, we would welcome a discussion with you about a process whereby an analysis of their actual experience of Horizon can be produced in parallel with our client providing information about Horizon.

Documents

19. Regarding the disclosure of further documents, Model C disclosure continues to apply such that requests must to be tied to a particular line of enquiry and sufficiently narrow. Having reviewed your requests, they repeat the difficulties that were encountered when trying to agree the classes of documents for disclosure in relation to the Common Issues Trial. In particular, the requests are often very wide and imprecisely worded, and they are not limited to specific individuals or by date ranges. In many cases, they do not describe a class of documents, but identify an issue or

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type of information that is to be found in a document. As we have said before, this is not what was intended by Model C disclosure.

20. Where possible our client's draft Order has re-cast your requests to make them sufficiently narrow for Model C disclosure to be given. Please note that it has also removed all your loose references to "information" in Schedule 1, on the basis that information requests – once properly formulated – should be dealt with in accordance with the procedure discussed above.

Timing

21. We propose bringing forward the disclosure of the Known Error Log (which formed part of Stage 2 disclosure) from 18 May to **4 May 2018**. We are also exploring whether it will be possible to bring forward disclosure of the c.80,000 Technical Documents (also part of Stage 2 Disclosure), which would otherwise be disclosed by 18 May 2018. This will be at least 80,000 documents for the experts to consider and they can review these whilst we action the above requests for further documents and information.

22. As you know, this is an extremely busy period for our client. It has the CMC on Friday 20 April, the Security for Costs hearing on 30 April and by 18 May it needs to serve its Defences to the 6 Individual Particulars of Claim and give Stage 2 Disclosure, which will extend to more than 100,000 documents. Although our client has committed substantial resources to this litigation, it does not have the manpower to take on a further parallel disclosure exercise in this period. The earliest date by which it can give further disclosure is **1 June 2018**.

23. Some of the topics that your expert raised at the meeting were quite complex and, assuming that these are reflected in your information requests, it could take some time to collate any properly formulated responses, but our client would hope to provide this information by no later than **29 June 2018** and it will provide it sooner if possible.

24. We believe that the above reflects a reasonable and achievable timetable, in contrast to your request for disclosure and information to be given within two weeks (by 2 May 2018).

25. Our view remains that it would be sensible to adjourn the CMC in order to give the parties an opportunity to reach an agreement once we are in receipt of Mr Coyne's document. If you are not prepared to agree to this we enclose a draft Consent Order for Friday's CMC. The key differences between our client's Order and your Order are:

    (a) Post Office's Order deals with requests for documents separately from requests for information.

    (b) Those disclosure requests that are appropriate have been agreed where possible or re-cast in narrower terms where drafted too widely. We have also limited these to electronic documents only as these are more likely to hold relevant information and are more cost effective to locate than hardcopy documents.

    (c) Post Office will facilitate access to Fujitsu's systems as described above. We confirm that, as with the KEL, Fujitsu personnel will be available to explain how to access and navigate the systems being inspected and to answer any appropriate questions in that regard.

    (d) The Order provides a mechanism for reasonable and proportionate requests for information under CPR 35.9.

26. We agree to your two variations to the Third CMC Order, although we note that by bringing forward these dates this may limit the time available to provide documents and information, meaning that requests will need to be limited appropriately or information provided after these dates have passed.

27. We hope that, on a pragmatic basis, the parties can agree this order, or something very like it, while discussions between the experts proceed. Please provide your comments on these

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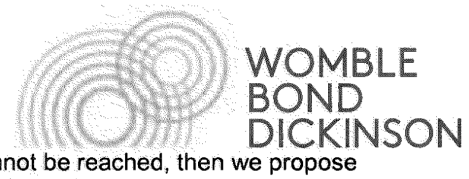

proposals by 12 noon on 18 March 2018. If an agreement cannot be reached, then we propose that skeletons are filed and exchanged by 10.30am on 19 March 2018.

Yours faithfully

Womble Bond Dickinson (UK) LLP

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