

Filed on behalf of the: Defendant
Witness:
Statement No.: Fifteenth
Date Made: 26 March 2019

Claim Nos: HQ16X01238, HQ17X02637 & HQ17X04248

POST OFFICE GROUP LITIGATION
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION

B E T W E E N:

ALAN BATES AND OTHERS Claimants

AND

POST OFFICE LIMITED Defendant

**FIFTEENTH WITNESS STATEMENT OF ANDREW PAUL
PARSONS**

I, Andrew Paul Parsons of GRO

GRO WILL SAY as follows:

Introduction

1. I am a partner at Womble Bond Dickinson (UK) LLP, solicitors for the Defendant (**Post Office**) in the above proceedings. I am duly authorised to make this statement in support of Post Office's application for an order that the Honourable Mr. Justice Fraser be recused as the Managing Judge of the Post Office Group Litigation, and pursuant to paragraph 3.1 of the Order dated 22 March 2019. The facts set out in this statement are within my own knowledge.
2. References to the "Judgment" are to the Judgment handed down by the Hon. Mr Justice Fraser on 15 March 2019. Unless otherwise stated, references to paragraph numbers are to paragraphs in the Judgment.

Identification of relevant sections of the Judgment

3. Post Office will rely, in its application, on the structure, tenor and subject-matter of the Judgment as a whole.

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4. The sections upon which Post Office will particularly rely in support of the contention at paragraphs 23 and 24 of my Fourteenth Witness Statement are as follows (with passages of especial importance within these sections highlighted in bold):

20: Some sub-postmasters had their contracts with the Defendant terminated, sometimes very abruptly. In Mr Bates' case, this was done whilst he was expressly challenging the accuracy of Horizon and he believes this was expressly done *because* he was so challenging this. In Mrs Stubbs' case, notwithstanding her 27 years' experience, service and prior record (both as assistant to her husband, who was originally the sub-postmaster, and as sub-postmistress herself after he died), she found herself suspended and locked out of her Post Office.

115: Putting entirely to one side the fact that it had taken the Post Office a period of 15 months to finalise how it was to resolve this matter, and Mr Bates was given only 16 days to reply (**which attitude appears to me to be symptomatic of how the Post Office regularly treated at least some of its SPMs**), the following important points arise in respect of this letter:

1. It suggests that Mr Bates' experience was not an isolated one.

The letter states "It has been necessary to formulate a consistent approach for all such cases." "All such cases" can really only sensibly mean that there were other cases, and the Post Office was explaining that time had been spent in deciding on a "consistent approach" for all these cases. The time taken was, in the circumstances, considerable. During that time Mr Bates wrote letters addressed to specific individuals who he had been told were dealing with the matter, and these did not even gain a simple acknowledgement. As far as he was concerned, they were being ignored.

2. The ultimate resolution for the £1,041 in Mr Bates' case was to write that amount off, in other words he would not be required to make it good and pay that amount to the Post Office. **I am satisfied that if he had simply paid the amount to the Post Office as demanded in the Post Office letter of 16 July 2001 which sought "as a matter of some urgency" that he "advise me of your proposals to now make good the loss" – in other words how he would pay the Post Office that money which was at that stage demanded – this would not have occurred.**

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3. No explanation was provided to Mr Bates as to how the shortfall had occurred. He was therefore none the wiser.

4. The writing off of that shortfall was made without prejudice to the Post Office's rights in future concerning other shortfalls that may occur "for which [Mr Bates] may be liable under the contract for services" and it also did "not affect any future liability [Mr Bates] may have for such losses."

5. The "consistent policy" – if indeed there was one – seems to have been that the Post Office would simply claim all such sums from the SPMs in question.

165: Mrs Stubbs has, since leaving the Post Office, involved her Member of Parliament, The Right Honourable Sir John Redwood, who is now a backbench MP but has previously been a cabinet minister in the Government of Prime Minister John Major. At the very least, the Post Office maintains – or at least it did, when she was cross-examined – that it performed "an investigation". Mrs Stubbs says she has never seen the outcome of any investigation into these matters; and her MP who intervened on her behalf, whom Mrs Stubbs said was promised "a full investigation" by the Post Office, has never been provided with any results either. **It might be thought that if there were any proper investigation which actually reported on this, it could and should have been put to Mrs Stubbs, but if what was put to Mrs Stubbs in this trial is said by the Post Office to amount to such an investigation, then it is telling.** The "investigation" appears, on the material deployed in this Common Issues trial, to have consisted of nothing more than Fujitsu asserting that there was "nothing wrong with the kit". **That is not, in my judgment, an investigation under any normal understanding or meaning of that word in society generally.** The Post Office's way of dealing with this wholly ignores the provision in the SPMC and a SPM's liability for losses in that document (which on the Post Office's case is what applied). There was simply a blanket assertion by the Post Office that she had to pay these sums. The suggestion that there was any investigation is not made out on the documents produced and put to her during her evidence.

172: In my judgment Mrs Stubbs **is a careful and honest witness. She did her best at the time to try and work out what was happening, the reasons for it, and also notified the Helpline on numerous occasions, as well as keeping her own separate paper records in**

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an attempt, or more accurately numerous and concerted attempts, to work out precisely how these shortfalls could have arisen. None of the Post Office personnel involved at the time with Mrs Stubbs, who attempted to obtain some input or explanation from Fujitsu were called as witnesses, so it is not possible to know what their full involvement was, the extent of their knowledge of the background matters, how many other SPMs they knew of may have had similar issues, nor the degree to which they considered Mrs Stubbs' good record of over two decades (including her involvement when her husband was alive) to be relevant. I make it quite clear that I do not speculate on any of that. Nor is it possible to know what the outcome of the trial of the Horizon Issues will be later this year. **Mrs Stubbs ran the branch perfectly satisfactorily for many years,** with the exception of the periods that coincided with the electricity supply problems in 2000, and the move into the portacabin in 2009. **On the evidence before me in this trial, and upon my assessment of Mrs Stubbs as a witness, I consider that she is reliable, thorough and honest.** I accept her account of contract formation and the fact she never received, nor did she have any knowledge of, the SPMC.

193: Thereafter Mr Sabir accepted the appointment and received training, although it was not as detailed or comprehensive as he was expecting and he considered it was insufficient and very general. It was however useful. Nobody in the classroom at the end of the training could, as he put it, "balance was OK when we came to do the final thing". **This means that nobody in that session could balance correctly at the end of the training. Certainly Mr Sabir could not.** He also had training in the branch, but again he did not consider this enough, and the trainer just stood behind and observed. During the first week he was in the branch, on balance day the branch stayed open late until 9.00pm due to the National Lottery, but the trainer left at lunchtime (self-evidently well before the end of the day) and said to him "just follow the procedure and do it". Mr Sabir's evidence on this, **which I accept, matches the other evidence from other Lead Claimants about in-branch training.** Whatever the intentions of those who designed such training, which one supposes was to supplement and build on the classroom training, in practice for these Lead Claimants it was rather different. It is **characterised by the trainers observing rather than training, and also by early departures from the branch itself by the trainers.** I do however make those comments without making findings on anything to do with breach, causation or loss.

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208: There is no doubt that the operation of the incorrect entry for Lottery scratch cards by his assistant was a mistake, or a number of mistakes. Mr Sabir himself discovered this mistake. However, Mr Sabir notified the Post Office of this as soon as he discovered what had happened. Mr Sabir corrected the situation in physical terms by making sure the money was put in the safe and plainly knew himself there was a discrepancy on scratch cards. He had reported this himself to the Post Office and had a reference number for this, and also expressly asked for and was awaiting help. **That help simply never came.**

217. The principal points that arise out of this are that:

1. Mr Sabir reported the problem caused by what he described to be his assistant's mistake. He knew the number of scratch cards shown on the Horizon system would not be the number physically present in his branch, because for each one that assistant had activated, she had pressed the wrong button. In simple arithmetic terms, if the total number she had activated was x , the stock would be incorrect by $2x$. Instead of each one activated and sold reducing the total stock by 1, it would increase the total by 1, a difference or discrepancy of 2 for each time she did it. The difference between the two figures would depend upon how many times she had done this, over a period of time.
2. Mr Sabir had no separate record, and no access on Horizon, to the number of scratch cards he *should* have had. **He requested this information from the Post Office, who did have it. It was not provided.** He used the Helpline to notify the Post Office of the problem. This is the way the Post Office maintain disputes should be notified.
3. Mr Sabir also had no way of identifying or recording this on the Branch Trading Statement.
4. Unless the Branch Trading Statement was completed, the system would not permit trading to commence the next day. The branch would have to close.
5. The same mistake(s) led to a surplus of cash, namely the money paid by customers for their scratch card. Mr Sabir separately kept this in the safe.

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6. When the audit was performed, the auditors obtained the figure for the correct amount of scratch cards he should have had in his branch. This took a 5 minute telephone call.

7. Due to this discrepancy, Mr Sabir was suspended.

8. The Post Office's case is that Mr Sabir falsified his accounts and misstated his stock by completing the Branch Trading Statements from the period he discovered the mistake.

218: **Mr Sabir's account is substantiated by the audit report itself, prepared by the auditors two days after the audit.** The report is dated 12 August 2009 and the audit took place on 10 August 2009. It states in part:

"I then telephoned yourself at 09.30am to report a preliminary suspected shortage of approximately £5000.00 and that I would ring you back with the final figure once I had completed the audit. At this point you advised me to contact Andrew Carpenter as you would be unavailable. However I was unsuccessful contacting Andrew Carpenter but was able to speak with Paul X Williams. This I did at 11.45am to report an overall shortage in the branch of £4878.36.

I also notified Lisa Allen Fraud Team Manager at 13.00pm to relay these findings.

A decision was taken by Paul X Williams to precautionary suspend Mr Sabir at 12.00pm and that the branch would be transferred to a relief Postmaster the (Newrose group), the assets were secured in safe and the keys taken by myself Mark Buller along with the alarm code that had been changed.

The audit and subsequent transfer of the branch was concluded at 15.00pm the following day 11/08/2009. The branch was rolled into TP 05, BP 03 and a Final Account produced.

Cash was presented to the value of £4780.00 and a cheque for £98.36 to make good the discrepancy on the day of the audit 10/08/2009, and this was put through Horizon and despatched the same day."

219: That cash was the very cash that Mr Sabir had been keeping in the safe. I accept Mr Sabir's evidence and I found him to be a reliable

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witness. When he could not remember something, he would say so. When he did not understand a question, he would make this clear. Any findings as to specific breach or breaches must await a later trial. **I do however take this evidence into account in reaching my conclusions on the Category 2 facts that are disputed by the Post Office.** I deal with that at the end of my review of all the evidence, both for the Lead Claimants and the Post Office.

222: **There can be no excuse, in my judgment, for an entity such as the Post Office, to mis-state, in such clearly express terms, in letters that threaten legal action, the extent of the contractual obligation upon a SPM for losses. The only reason for doing so, in my judgment, must have been to lead the recipients to believe that they had absolutely no option but to pay the sums demanded. It is oppressive behaviour.**

223: In my judgment, the attack on Mr Sabir's credit which I have identified above fundamentally ignores the reality of the situation, **the fact that he had contacted the Helpline and sought assistance, and the fact that the vital piece of information he needed (the number of scratch cards the system was showing that he *should* have) was so readily accessible to the Post Office auditors, but never provided to him.**

248: Turning to Mr Abdulla's operation of the branch, I have already identified his account of how even disputed Transaction Corrections had to be dealt with, at some stage prior to the next Branch Trading Period, by clicking a button "Accept Now". He would contact the Helpline about 6 or 7 times a month, and **was shocked at the inadequate support.** He would often experience apparent shortfalls on the days when he would perform balances, but **could rarely get through to the Helpline on these occasions.** He **thought the advisers were ill informed and would often give the impression of reading off a script.** Even his area manager could not help, and he was told by his area manager that he should just pay the shortfalls and wait to see if a Transaction Correction was issued in his favour.

249: Apparent shortfalls began appearing in his accounts soon after the branch transfer and continued regularly. **He could not resolve these through the Helpline.**

263: On 29 June 2009 in a letter signed by him, Mr Mylchreest wrote to Mr Abdulla and dismissed his appeal, saying:

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"I have now completed my investigation into the circumstances leading up to the summary termination of your contract for services at Post Office® Charlton branch on the grounds that you misused Post Office® funds and falsified your branch trading statement.

I have carefully considered all of the information in the case papers and the evidence you put forward at your appeal interview. I have concluded that both charges against you have been proven."

264: It is not clear if "my investigation" included any further information from or investigation of the situation regarding Camelot, either by Ms Ridge or even Mr Mylchreest. **Given the time scale, this appears unlikely. Certainly no documents were produced in this trial that suggested it was.** It was made clear by Mr Mylchreest that he did not accept Mr Abdulla's explanation regarding the undated cheque. However, the losses that were held against Mr Abdulla following the audit undoubtedly included the various items shown subject to some of the TCs that I have described. So, the issue of the cheque was not the only point being held against him and relied upon to reach the decision both summarily to terminate his appointment (by Ms Ridge) and to dismiss his appeal (by Mr Mylchreest).

297: Mrs Stockdale was accepted as a SPM and had some training. She attended the classroom training with her son. **She did not have all the training she was told she would receive** because the premises were subject to building works necessary to transform it into a Local branch, and also because one of the trainers who attended in the first week after her branch had opened, a lady called Lina, attended for only one day and had to leave unexpectedly; another person called Daniel, did not really know what he was doing (according to Mrs Stockdale) "and stayed in the back mostly".

302: Mrs Stockdale's experience of running the branch was not a happy one. Unexplained shortfalls would appear on Horizon when she was completing a weekly balance or submitting a trading statement. **There were no explanations for these, and there was no way available for her to get to the bottom of them either.**

303: These shortfalls continued. On 15 October 2014 there were unexplained shortfalls of over £3,500. **When she [Mrs Stockdale]**

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phoned the Helpline she was told that this was "only £3,000, that's a drop in the ocean compared to some people's problems". This contradicted an earlier statement from the Helpline when she had been told she was the only SPM experiencing these problems, which just made her feel inadequate. I will track this particular shortfall through in terms of her evidence. She phoned the Helpline again on 21 October 2014 and again asked for assistance, as well as further training in relation to the balancing problems. She felt that a sum of over £3,000 was a lot of money, notwithstanding the views of the Helpline operator when she first called. Mr Longbottom came to her branch on 29 October 2014 to try to work out what was going on, and she let him have access to her records. He printed out various documents but he could not get to the bottom of it either. He said the problem would be referred to the Horizon Technical Desk. **I accept this evidence by Mrs Stockdale. There can be no doubt that this shortfall was clearly in dispute, even on the Post Office's understanding of how disputes were to be raised.**

309: Mrs Stockdale was obviously in an extremely difficult position. **She did not know what product had caused her loss.** This was part of the problem. She had sought assistance for this problem and even a Post Office auditor could not help. She wrote back and said that Mr Longbottom was looking into it. Her e mail stated:

"I had Dave in to investigate the problem and he said the transactions were all ok at this end but was referring the problem to the Horizon Technical Desk to see if they could find any cause for the discrepancy.

Not had a response as yet but if there is a problem I am willing to pay as per your email but hopefully someone will get to the bottom of it."

310: **She felt she had no choice but to agree. I find that on the options presented to her at the time, she indeed had no choice but to agree.** She also considered that this instalment agreement meant that she could not settle any further unexplained losses for the period specified. Mr Longbottom revisited the branch on 18 November 2014 and a subsequent e mail from him shows that he discussed with Mrs Stockdale "a large loss that the branch had reported." A further Post Office employee also visited her branch, he could not get to the bottom of it either, and recommended to her that she sack all her staff.

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311: Mrs Stockdale then took **very sensible and extremely thorough measures**. She introduced a robust paper recording system for all cash movement in the branch. She required all staff to complete manual till and safe logs, what had been paid in or paid out, and even the denomination of notes. She could therefore do a complete cash reconciliation in and out. She installed CCTV so she could monitor her staff at all times. She trusted them but she wanted to be able to have tight control of all cash, in and out, and to be able completely to rule out theft by her staff. **She explained that she spent hours with the records, including her own paper records, trying to investigate. These shortfalls simply kept occurring and she could not work out why.** Even thoroughly interrogating her records and viewing the CCTV footage, she could not explain how this was occurring.

327: It can be seen that these are very wide ranging and extremely serious allegations against the Post Office, which include ones that the Post Office had treated them unlawfully, including prosecuting them, leading to bankruptcy and community and custodial sentences (which means imprisonment). Even if the precise terms of the first claim form were not known in early May 2016 (which depends upon when it was served), the Post Office would probably have learned of them at some point during the summer and before 16 September 2016. During this period the Post Office chose to act as it did with Mrs Stockdale, shutting her branch and stating she was considered to have committed a criminal offence. It also expressly stated to her that it was taking into account that she had not contacted the NSBC or asked the Post Office for assistance. **The documents available in this litigation show that this was simply not true, and she had expressly done both of these things.** I will return to this subject when summarising the evidence of Mr Carpenter, who was the Post Office witness predominantly involved.

328: **I found Mrs Stockdale to be a careful and accurate witness, and I consider she was telling me the truth.** The single question that she declined to answer was that she had been misstating the accounts to hide discrepancies. Whether she was right to act as she did at the time regarding her accounts is a matter for another trial. As with the other Lead Claimants, I am making no findings in respect of breach, causation or loss.

346: No such workbooks were sent and Mr Dar had to chase for these, which he did. The training was 3 days long. Mrs Dar raised a specific

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query with the trainer about balancing and Horizon, and was told if there were problems or she was in doubt, she should call the Helpline. **Mrs Dar considered the training inadequate.** This was followed by branch set up and induction training at the branch. The Post Office auditor present for this was Mrs Margaret Guthrie. She did not give evidence before me. She was also responsible for induction training. She had problems with Horizon, logging on took some time and even before the branch opened Mrs Dar said there was a shortfall of £977, which she believes was due to mistakes by Mrs Guthrie in inputting the stock into Horizon. **Mrs Guthrie spent some of her time trying to fix problems with Horizon rather than doing the induction training that Mrs Dar was expecting.**

352: Mrs Guthrie stayed on site after opening for 6 or 7 days. She was supposed to be providing further training during that period, at least this was how it had been characterised in the previous communications to Mrs Dar. Mrs Dar described this as shadowing, interventionist and not helpful. Mrs Dar had taken on an experienced Post Office assistant, and had been encouraged to do this by the Post Office. **Mrs Guthrie did not attend on Mrs Dar's first balance day, as she was supposed to. Mrs Guthrie also said that she would come back to give further training and support. In fact she did not, at least not until some months later on 15 July 2015 when she came back to carry out an audit.**

357: Her experience with the Helpline **was not a positive one.** She contacted them 2 to 3 times per month, often in relation to apparent shortfalls or balancing. **Most of the time she was told to recount and if there was still a shortfall she had to make this good (which means pay it herself). Once, she was told how to "get around" the problem by altering the stock figures to balance, which shocked her.** She considered there was some kind of fault within the system.

402: It is not clear to me under the regime for appealing termination without notice that did exist under the SPMC, what the test was to be applied upon such an appeal, or whether the Appeal Manager who heard the appeal was conducting a review, or a rehearing. Mr Breeden's evidence suggested to Mr Green at least (because he later put the point to Mrs Ridge) that it was a rehearing. That evidence in his statement was:

"The Appeals Manager would have had no prior involvement in the case. He would undertake a full review of the case papers

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and might meet with the Subpostmaster. The Appeals Manager would decide whether it was appropriate to terminate the Subpostmaster's Contact without notice based on his assessment of the risks to Post Office's assets and reputation and the materiality of the contract breaches. His decision was final. The contractual appeal process was not replicated in the NT Contracts."

(my emphasis)

Mrs Ridge, who had decided to terminate Mr Abdulla's appointment, said to Mr Green when he asked her, that her understanding of an appeal was not a rehearing and that "I thought – not a full hearing, but listening to the points that I have gone through and to see if I have done everything correctly." That suggests more of a review than a rehearing. This is more than an academic nicety. **Terminating someone without notice is a severe step. A right of appeal was supposed to be present under the SPMC, but the Post Office's own witnesses do not know what that appeal consisted of and what the test was. This is deeply unsatisfactory.**

403: On either approach, **I do not know why risks to the Post Office's reputation should be a relevant factor in such an appeal (which is what I find Mr Breeden's evidence to consist of) or why a SPM's entitlement to be heard on appeal would differ from case to case.** Also, the Post Office's reputation might be significantly affected if it were found to have suspended a SPM on grounds that were wholly unjustified. **Unjustified suspension ought to be a factor in favour of an appeal succeeding, on any sensible view.** The Appeal Managers are senior Post Office managers who are said to have had training to hear appeals. **The reputation of the Post Office would best be served by appeals that were justified succeeding, and those that were not failing. It should not have formed any part of the criteria.**

437: Of course, this case concerns more than just a shortage of a few stamps. But the point is a useful one because **nowhere in the training (or the interview, or anywhere else) is there any recognition of how to deal with a shortage, discrepancy or disputed TC of any order of magnitude, still less those of these six Lead Claimants,** and if the steps instructed on these laminated instructions were followed, there would be shortages in the cash accounts of branches where these occurred.

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462: In any event, her evidence does demonstrate the Post Office's default position regarding their SPMs. This is that shortfalls and discrepancies are not caused by the Horizon system, therefore those that do occur can only be the responsibility of SPMs. **This conclusion means that the Post Office fraud prevention and debt recovery procedures will be used against SPMs in this position, unless an SPM can show that the shortfall or discrepancy was not their fault.** Whether this is justified will only be resolved after further trials, and this judgment does not contain findings on breach, loss or causation. Evidence saying in general terms how fraud occurs and that the perpetrators are not necessarily "bad" people does not advance matters a great deal.

479: Mrs Ridge also dealt with the suspension of Mr Abdulla. She was cross-examined about this. He was invited to a meeting as has been seen, and Mrs Ridge had some documents that showed, in particular, Lottery TCs. The documents she had in the interview were lacking in much (or any) detail about what different items were, or to what they related. Some were simply numbers listed. She accepted that the much greater detail on another document, which she did not have at the time (an Excel spreadsheet in the trial bundle) would have been helpful, and would have helped her more fully to investigate, and she also accepted that given what she had in the interview, she "could not investigate in any depth". **Given the odd combination of various items all for £1,092 – which she accepted "was a bit odd" - this information would evidently have been very useful.** She also accepted that this would be "pretty important" anyway, and would have helped her decide whether to believe Mr Abdulla at the time. **I find that he was giving her an account concerning £1,092 which she would have been more willing to consider was truthful had she had the Excel spreadsheet at the interview. She treated his account with scepticism because she did not have the relevant internal Post Office documents that showed a number of TCs for the Lottery, all for £1,092.**

480: **The hearing process in respect of Mr Abdulla's suspension (and eventual termination) therefore proceeded with incomplete information being provided to the person tasked with conducting the hearing and making this important decision, and still less information being given to Mr Abdulla by the Post Office.** More and better information was available, and I have already expressed my view on it dealing with Mr Abdulla's evidence above. Mrs Ridge said

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requesting further information from Fujitsu – something called an ARQ - is not something that she would have done, which I took to mean in any case, not simply Mr Abdulla's alone. She also said that the Post Office rule that a SPM could not be accompanied by a legal adviser to such a meeting was something that the Post Office lawyers had told them, and that was the origin of the rule. I make no findings on any matters connected with breach, causation or loss. Mrs Ridge seemed to me to have a greater awareness of the need to be fully accurate and helpful to the court than some of the other Post Office witnesses.

514: Mr Carpenter was also responsible for the decision to suspend Mrs Stockdale. **Because this happened after the litigation had commenced, I was most interested in the exact sequence.** Therefore in questions from me at the end of his evidence I wanted to ensure that I had a complete understanding of the sequence in respect of this.

"MR JUSTICE FRASER: Just focusing on the Mrs Stockdale suspension decision, just so I have the sequence right. I think you say you requested the audit.

A. Yes.

Q. You were looking at the whole figure [ie the shortfall in her accounts]

A. Yes.

Q. By "whole figure", do you mean including the amount that she was repaying over a period of time?

A. Yes, I was aware of the outstanding debt, my Lord, and of course the £18,000 that she had settled.

Q. What was your understanding of her choices in terms of settling sums centrally during that period when she was repaying the amount?

A. My understanding is there was never a block on her settling centrally a shortage. The options are both the same.

Q. Sorry, when you say "the options", which options?

A. Making good to cash or cheque or settling centrally.

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Q. You say they are both the same. Both the same in terms of what? Because as I understand it, if you make good to cash you put the cash in.

A. Sorry, I didn't explain myself clearly. She would have had the options she would always have had in that she could settle cash, settle cheque or settle centrally. What I understand was the situation, she wouldn't have then been able to request a repayment plan because she was already on a repayment plan to pay back previous losses.

Q. So what was your understanding of – let's just take an example figure. If she settled £5,000 centrally –

A. Yes.

Q. – she can't request a repayment plan, is that right?

A. (Witness nods)

A. The process would be she would settle it centrally. She would then have been invoiced for that amount.

Q. For the £5,000?

A. Yes. At which stage she would have had the opportunity to say "I can't make it good, I have a problem", and we could have then investigated further as to what was happening at the branch.

Q. Were you individually responsible for the decision taken to suspend her in May 2016?

A. At that stage I would have put a recommendation forward to make the suspension.

Q. To whom would that recommendation go?

A. To my line manager, Mr Breedon.

a A. When you made that recommendation did you know she was claimant in the litigation?

A. I don't believe I did. I knew very quickly because of the email I received the same day. I don't believe I was aware at the time but I'm not 100 per cent certain on that, my Lord."

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515: The following pertinent points arise from this evidence, **which I found of considerable interest**. I do not consider the re-examination (which was both lengthy and leading) changes its substance in any appreciable respect.

(1) Sums that were disputed by SPMs were treated by the Post Office, and those responsible within the Post Office for decisions to suspend SPMs, as though they were "outstanding debts".

(2) There was in effect no difference, so far as the Post Office was concerned, in terms of amounts "made good to cash" or "settled centrally". The latter were treated as debts owed to the Post Office, and were invoiced to the SPM on that basis.

(3) Having been on one repayment plan (which in reality simply means the Post Office had given an SPM time to pay, rather than having to pay the full amount immediately) an SPM such as Mrs Stockdale would not be granted another plan at the same time. Other documents show this period lasted for 12 months after the repayment plan had ended.

(4) An investigation would only be started – even on Mr Carpenter's evidence – if *after* an invoice had been sent (which did not refer to contractual obligations for losses, and asserted sums due to the Post Office in blanket terms) an SPM did not pay it and said "I can't make it good, I have a problem". I have seen no correspondence to any SPM that explains this, and this ability does not seem to have been notified to any SPM. It is also directly contrary to the correspondence sent to the SPM telling them to pay the sum due. No such option is explained in that correspondence.

(5) Mr Carpenter was not 100% sure that he did not know Mrs Stockdale was a claimant when he recommended her suspension. Even though – on his evidence - he found out on the day, that does not seem to have had any effect on his recommendation to suspend at all.

517: It must be understood with crystal clarity that I am not making findings on these substantive and serious issues in this judgment. Whether the Post Office was guilty of acting in the ways complained of

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by the Claimants can only be resolved later in these proceedings after other trials. However, **even putting it at its best for the Post Office, such conduct towards Mrs Stockdale during this early stage of the litigation could potentially be construed as threatening, oppressive, and potentially discouraging to other potential Claimants to become involved in the litigation, whether by accident or design. I can think of no reason why such an approach was taken unilaterally by the Post Office in such a way, without the Post Office's solicitors giving advance notice to her solicitors, so that a less confrontational and aggressive path was adopted, given her role as a claimant in the litigation. However, even once it was done and she was suspended, the Post Office continued to act in a highly regrettable fashion.**

541: Secondly, a number of contemporaneous documents internal to the Post Office show that **there has been, at least to some degree, an awareness of Horizon problems within the Post Office itself over a number of years.** A number of these documents were put to the different Post Office witnesses. These documents were referred to in the transcript of proceedings, but not all of the documents were put. I did however tell counsel for both parties that I would read all of the documents in preparing this judgment and neither party objected to my doing that.

543: These internal Post Office entries make it clear that, notwithstanding the tenor of the Post Office evidence before me, behind the scenes **there were at least a number of people within the Post Office who realised that there were difficulties with the Horizon system.** Some of these entries relate specifically to some of the Lead Claimants, for example Mrs Stubbs. Whether the internally expressed reservations then, or the different position expressed now by the Post Office, is the correct one is something that will only be resolved after the Horizon Issues trial.

556: However, the Helpline does not seem to have operated in that way, and **on the evidence before me for the issues in this trial, the matters in dispute reported to the Helpline were not treated differently even when they were reported. The Lead Claimants' evidence made it clear that just getting through to the Helpline was an achievement in itself, and when this was finally accomplished, the experience would be variable at best, and does not seem to**

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have come close to resolving any of the disputes. Some operators would assist with getting Horizon to permit rollover into the next trading period by suggesting "work arounds". These "work arounds" did not resolve disputed items. No particular investigation appears, in the case of any of the six Lead Claimants, to have been initiated by reporting a dispute to the Helpline. An item "settled centrally" would be subject to debt recovery processes by the Post Office regardless of what the particular Lead Claimant did regarding the Helpline. Mr Carpenter said he thought the Helpline's role was to direct a query to a particular department within the Post Office, but **that was not simply made out on the evidence before me.**

557: Mrs Stockdale telephoned the Helpline. She then assumed the debt recovery letter she received meant an investigation had been done and resolved against her. **That assumption was not correct.** Mrs Stubbs has been pressing for many years to find out the outcome of whatever "investigation" was in fact performed in her case. In both cases, the Helpline had been notified by each of these Lead Claimants. **In neither case could the Post Office produce and put to each of these Lead Claimants, or show the court, the end product of any such investigation.**

558: **It is therefore the case that, on the evidence before me, the Helpline did not operate for the Lead Claimants in the manner that the Post Office contended for.** What was presented to the court by the Post Office in respect of disputes notified to the Helpline show that, for the most part, initially the SPM in these individual cases was told they would have to pay the shortfall. Even when persistent, all that would happen is the sum would be "settled centrally" and after a period of a few weeks the SPM would be chased for the Post Office for that sum as though it were a debt. Detailed findings of fact as to this must however wait for a later trial.

569 (Factual Matrix Points 34, 35, 40, 42, 43, 50-51, 54-57, 70):

34. Claimants were themselves unable to carry out effective investigations into disputed amounts because of the limitations on their ability to obtain the necessary information from Horizon.

35: The process for disputing discrepancies or apparent or alleged shortfalls is agreed by the parties in Appendices 3 and 4 to the judgment as being by phoning the Helpline. **However, even amounts that were**

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disputed in this way were treated by the Post Office as debts owed by the SPM.

40: The Defendant in fact sought recovery from the Claimants for apparent shortfalls. I would also add that on the evidence the Post Office did this regardless of whether disputes had been reported to the Helpline or not. This was accepted by all the Post Office witnesses, and occurred whether the SPM in question was appointed under the SPMC or the NTC, even though the terms of those contracts were different. It was also done regardless of any analysis of any causative fault on the part of SPMs. It was also done when the SPM in question had been told that no action would be taken in respect of a disputed shortfall.

42: The Post Office required Claimants to accept changes to records of branch transactions, ("Transaction Corrections" or "TCs" issued by the Post Office), unless the Claimant was effectively able to prove that the Transaction Correction was not correct.

43: The Post Office did sometimes issue Transaction Corrections after the end of the branch trading period in which the transaction had taken place. There was only limited evidence before me about whether this was also done after the 42/60 day period during which Claimants could generate (limited) reports using Horizon. However, for some of the examples used in evidence, this time limit was not observed by the Post Office.

50. The introduction of Horizon limited the Claimants' ability to access, identify, obtain and reconcile transaction records.

51. The introduction of Horizon limited the Claimants' ability to investigate apparent shortfalls, particularly as to the underlying cause thereof. Both this, and 50 immediately preceding it, are obvious on the evidence, and could readily have been agreed. It cannot sensibly be argued to the contrary, in my judgment.

54 to 57. I cannot make detailed findings about Fujitsu's role on the basis of the evidence before me. However, **it is clear that Fujitsu were able to obtain greater information about a particular branch's transactions than either the Post Office or the SPM.** How this was done, and whether it included providing a data transfer service between

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the central data centres and clients of the Post Office, must await the Horizon Issues trial (if relevant).

70: On the evidence of the six Lead Claimants, **even when further training was specifically requested it was not provided**, and in some cases the SPM was told there was no entitlement to it, even though it was specifically requested.

723(1): Even though the Post Office's own case on the relevant provision in the SPMC dealing with liability for losses requires negligence or fault on the part of a SPMC, **this was routinely and comprehensively ignored by the Post Office, who sent letters of demand for disputed sums in express terms as though the SPM had strict liability for losses. These letters entirely misstated the legal basis of a SPM's liability, even where they had been appointed under the SPMC.**

723(2): Legal representation is not permitted by the Post Office at interviews which deal with whether a suspended SPM is to have their engagement terminated – which effectively ends that part of their livelihood. Regardless of whether this is justified or not, **the specific grounds and proper particulars of why they face potential termination are not even clearly identified in advance to the SPM in question. Additionally, information directly relevant to the grounds (or at least what the Post Office is concerned about, in the absence of properly identified grounds) is not provided to the SPM either, or at least not in the case of the Lead Claimants who faced such procedures.** Mr Abdulla tried at his interview to explain the situation regarding TCs and the Lottery. He was disbelieved. The documents available in the trial show that, **whatever else he had done, he was telling the truth about the existence of these TCs.** Neither he nor the interviewer had this information available to them at the time.

723(4): The approach of the Post Office is to **brook no dissent, and it will adopt whatever measures are necessary to achieve this.** An example of this is in the Modified SPMC, which in Section 15 clause 19 deals with something called an Investigation Division Interview. This Division includes investigation of potential criminal offences against the Post Office. One part deals with the presence at such an interview of a friend of the SPM. The relevant clause states:

Modified SPMC Section 15 clause 19:

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"A friend may only attend and listen to the questions and answers. He must not interrupt in any way, either by word or signal; if he does interrupt he will be required to leave at once and the interview will proceed without him. Whatever is said at the interview is to be treated as in strictest confidence. The friend may take notes of the interview but he must keep the notes in the strictest confidence. The only communication the friend is entitled to make on behalf of the person who has been questioned will be in the form of a written "in strictest confidence" statement which may be submitted by the latter, in support of any official appeal which the person questioned may desire to make in connection with the methods followed at the enquiry. No other communication about the interview is allowed (unless made by permission of the Post Office) as it might constitute a breach of the Official Secrets Acts."

(emphasis added)

Other parts of Section 15 deals with the requirement for a caution and so on, but **I find it somewhat unusual, and potentially oppressive, that the Post Office could seek to use the Official Secrets Acts in this way. I do not see how, in a routine case, these Acts could possibly apply in the way suggested by the Post Office in this contract.**

824: This point was, perhaps presciently, identified by Mr Bates himself as long ago as 2000. With his background knowledge in IT systems, and his high degree of attention to detail, he attempted to get to the root cause of the first unexplained shortfall in his case, and **he realised that the information for him to do so was simply not available to him, or any SPM in a branch. The Horizon system did not allow him to do this.**

955: **One feature which seemed to me to be wholly absent from the training courses run by the Post Office for the Lead Claimants was any sort of assessment or test of competence at the end of the training.** Every case will of course be wholly different, but whereas one individual might, after four days, be wholly competent to use the Horizon system unsupervised, another might need longer than that. If they are all given four days of training regardless, and there is no assessment at the end of that four days, then some incoming SPMs might not be conversant with all the features of the system. **This situation is in no-**

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one's interests, and in my judgment I would go further and say it is contrary to business logic. Although there was some in-branch training, the approach to that did not appear to be uniform either. Add to this that the auditors have the dual role of in-branch training after branch transfer day, and subsequent auditing of that particular branch, it can be seen that inadequate training is not likely to be readily discernible to the Post Office. Certainly the subjective experiences of the Lead Claimants so far as training was concerned was far from ideal. I do not consider that it would be difficult for any training to include at the end of it some sort of assessment or test, and if a SPM were to fail that assessment or test, then they would not have been satisfactorily trained. They would therefore require further training.

5. The sections upon which Post Office will particularly rely in support of the contention in the first sentence of paragraph 25 of my Fourteenth Witness Statement are as follows (with passages of especial importance within these sections highlighted in bold):

21: Nothing in this judgment should be taken as my expressing any concluded view on the functionality of the Horizon system, as the issues relating to that will be tried by me between March and May 2019. Nor should this judgment be taken to be making any findings in fact concerning any particular allegations of breach by the Post Office. This judgment is concerned with the Common Issues. However, this cannot be done in complete hermetic isolation from any facts at all. The Post Office adopted a curious position so far as the Lead Claimants' evidence of fact is concerned. Having failed to have that evidence struck out, and not having sought to appeal that order, Mr Cavender QC cross-examined on a great many aspects of it. The Post Office made submissions that some of the Lead Claimants were positively lying to the court (for instance Mr Abdulla), and were mistaken in fact as to contract documents provided prior to contract formation (for instance Mr Bates). However, at the same time, the Post Office urged me not to make findings as to credit. This appeared, on close examination during oral submissions, to amount to adopting a hybrid approach to witnesses, and an approach with which I am not familiar (nor can I find any authority). The Post Office was entitled to challenge the credit of the Lead Claimants, if it so chose, and it did. **However, the Post Office seemed to want findings on that only if they were in the Post Office's**

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favour. This is a peculiarly one-way approach by any litigant. I deal with the credit of the Lead Claimants in Part C.

28: Another point with which I have to deal is what Mr Cavender QC for the Post Office described in Opening as a "challenge to the court". He submitted that "one of the challenges to the court might be how it approaches that situation where its sympathies on one side might be in a certain sub-postmaster group in one direction and with a more commercial group in another". It ought not to be necessary to state that no judge makes decisions based on personal sympathy. It also ought not to be necessary to recite that every party, and every witness, comes to the court at a substantive trial with a clean slate, regardless of the procedural history of the proceedings. This litigation is being tried by a judge and not a jury, but even juries are told (and are assumed) to make their decisions objectively and to put no personal emotion into the decision-making process. **The Post Office may have made these submissions because, on an objective analysis, it fears objective scrutiny of its behaviour,** or it may have made them for other reasons.

30: I found the approach by both parties in some respects unhelpful. The rule of law means that all individuals and legal entities are subject to the same laws as everyone else. There is no special exemption available for the Post Office because it has a lot of branches, or for sub-postmasters either. The balance of bargaining power can be a relevant feature in the law of contract, and this is well known, and commercial common sense is also relevant. However, a party (here the Post Office) threatening dire consequences to national business should their case *not* be preferred is not helpful, and **this seemed to me to be an attempt to put the court *in terrorem*.**

34: Each side called evidence of fact. I heard from each of the six Lead Claimants. The Post Office called fourteen witnesses. All of the witnesses were cross-examined. I deal with my conclusions as to these witnesses in Parts C and D of this judgment. The Post Office objected to vast tracts of the Lead Claimants' evidence of fact and sought to strike it out in advance of the trial; I dismissed this application in *Bates v Post Office Ltd (No.2) at [2018] EWHC 2698 (QB)*. In closing submissions, the Post Office sought to persuade me that none of the evidence that I had refused to strike out was relevant to any of the Common Issues. **The Post Office seemed to adopt an extraordinarily narrow approach to relevance, generally along the lines that any evidence that is unfavourable to the Post Office is not relevant.**

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117: The full subsequent trial of Mr Bates' claim will show what, if any, consideration was given at the Post Office internally not only to this shortfall, but others (if there were others) in the period December 2000 to March 2002. **If the Post Office did in reality do what Mr Bates suggests they did – namely bury their heads in the sand, press on regardless, and chase numerous SPMs for shortfalls and discrepancies caused by the Horizon system – then that would be behaviour of an extraordinary kind, and given the criminal implications for some SPMs, may be extraordinarily serious.** On the other hand, Mr Bates' shortfall in December 2000 may, upon investigation by the Post Office, have been put down to early difficulties by SPMs in operating or understanding the new system and writing off the amount may have been decided upon as a pragmatic solution in the circumstances. I make no findings either way at this stage of the proceedings in this judgment.

123: I reject the criticisms made by the Post Office of Mr Bates and his evidence. I find that his evidence was careful, and he was an honest, thorough and reliable witness. Where he could not remember he would say so, and he would accept sensible points put to him if they were factually correct. Many of them were not, for example the number of SPMs in the Second Sight scheme who had problems with their contract. He is undoubtedly committed to resolving this dispute, and given the length of time he has been involved, he must have a degree of stamina and endurance that most people would not possess. The Post Office subjectively might view him as unreasonable or stubborn, as he simply refuses to let this matter drop, and has obviously over the years involved himself in the campaign to resolve these issues. Mr Bates has, from about December 2000 onwards, proved himself to be a considerable irritant to the Post Office so far as the Horizon affair is concerned. He was an irritant to them in 2001 when he simply refused, point blank, to pay the £1,000 odd demanded of him (that sum ultimately being written off by the Post Office the following year). He had undoubtedly continued to be an irritant to the Post Office from then on, both from the establishment of the JFSA onwards. He is persistent and no doubt possesses what might be termed staying power. There was nothing unreasonable or stubborn in his evidence before me, and none of the pejorative terms deployed by the Post Office to describe his evidence are justified, in my judgment. The Post Office must have decided to attack him because the whole case of the Post Office requires an assumption or acceptance that the predominant, or only, cause of

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shortfalls is fault (or worse) on the part of SPMs. The case by the Post Office is that careful and/or diligent and/or honest SPMs and/or their assistants do not experience shortfalls. Therefore, so far as the Post Office is concerned, in each branch where such shortfalls occurred, either the Claimants and/or their assistants must have at least some, and potentially all, of those characteristics. **If it were otherwise, the Post Office edifice would run the risk of collapse.**

295: It therefore remains the case that notwithstanding that Mrs Stockdale's interview was recorded, that the recording undoubtedly exists, and that she became a claimant in these proceedings as long ago as the issue of the first claim form on 11 April 2016, I am told that because Mr Carpenter's computer has been replaced, the ability to access the actual recording is said by the Post Office to have been lost. **If that replacement took place after April 2016, and if it is because of the replacement that this recording is not available, then that means the Post Office has failed properly to deal with an important record directly relevant to the litigation during the proceedings themselves.**

368: I provide an analysis of the relationship between the Post Office and the NFSP in Part F below. Mr Beal was centrally involved in the relationship between the NFSP and the Post Office. I summarise that relationship and what was disclosed in this litigation in Part F. It is obvious, in my judgment, that **the NFSP is not remotely independent of the Post Office, nor does it appear to put its members' interests above its own separate commercial interests.**

369: Mr Beal was completely unrealistic about this. Mr Green put the following point to him, having explored the documents in some detail, about the NFSP linking its own financial remuneration for a significant number of years going forwards with its role in agreeing the terms of the NTC:

"Q. And that is not necessarily what you expect, is it, if you were a subpostmaster from an independent union?

A. I am not a subpostmaster, so I don't have a view on that."

370: I am not a subpostmaster either, but I doubt one needs to be, in order to have a view on what is a very obvious point. **Such matters plainly should not be linked in the way that the NFSP and the Post Office linked them in this instance. I do not consider that the NFSP**

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can in these circumstances properly be considered to be independent, or to be acting in the interests of SPMs, given the way it involved its own commercial interests as a condition in the way explained in Part F of this judgment.

393: Her written evidence did however more than merely stray into areas of arguing the case. It embarked upon argument with gusto. One example will suffice:

"There is a strong and I would say completely reasonable expectation that applicants for the position of Subpostmaster will obtain a significant amount of information from the outgoing Subpostmaster. As I have explained, the outgoing Subpostmaster will have the responsibility for providing information and relevant particulars for the marketing of their branch, whether this is through the AB website (or previously the purple website) or through an estate agent. In addition, they would be the first point of contact for potential applicants prior to NT [Network Transformation]. Following implementation of NT, they would still have a reasonable level of contact with applicants. It would seem very strange for the incoming Subpostmaster not to take full advantage of the opportunity to obtain information about the branch and its operation from the current Subpostmaster and indeed they were encouraged to do so by my team during the application process as this was the best source of information about the branch and the conditions that they would be subject to".

394: There is only one part of this lengthy paragraph that is actually evidence that should be given by a witness of fact, and that is part of the final sentence dealing with encouragement coming from Mrs Rimmer's team. The rest is pure argument. **It may well not have been drafted by Mrs Rimmer at all, as some litigants' solicitors are often responsible for the content of witness statements. This was not pursued in cross-examination and so it is neither necessary nor desirable to make any finding about it. I certainly do not criticise Mrs Rimmer for it, although if it were not written by her, it should not have been in her statement.** A witness statement is not the place for this sort of general argument.

476: She would perform 5 to 6 interviews a week on average, and often several a day. She could not therefore remember specific details of Mr

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Abdulla's interview and cannot be criticised for this. Although she stated what areas would be covered by reference to two Post Office documents, these were from Mr Trotter's interview conducted with Mrs Dar in 2013. There is nothing to suggest that these documents were in use at the time she interviewed Mr Abdulla 7 years earlier, and **this part of her written evidence sought to give the impression, through careful wording of her witness statement, that she had covered the same ground in the interview as contained in these much later checklists.** Her evidence orally was very clear and she made it perfectly clear that she could not remember the interview at all and had based her recollection entirely on documents. She immediately accepted paragraph 12 of her witness statement, dealing with everything she "would have" gone through with Mr Abdulla, was based solely on the 2013 document and she could not otherwise remember. Her reliance on documents not then in use cannot have been something that Mrs Ridge herself initiated for the purposes of her statement. I reject the suggestion that all of the different items in the 2013 document were gone through in the interview with Mr Abdulla in 2006. **This passage of her evidence appeared to have been written for her, but again, the point was not put so I make no findings about it.**

483: He had performed a visit to one of the other Claimants – not a Lead Claimant – and in February 2017 he had requested transaction logs from the Financial Services Centre to assist in dealing with an investigation that SPM was trying to perform in terms of an unexplained shortfall. He had internally requested these going back only to November 2016, and the Post Office department in question had refused to give them to him. This left him angry and frustrated, although he tried to play this down by saying the visit wasn't an audit and he was doing it for the SPM "as a favour". He was undoubtedly there in his official capacity as an auditor, and he was undoubtedly asking for these records in that capacity too. I do not accept that he was performing such a task informally or as "a favour". I consider that attempting to get to the bottom of the unexplained shortfall is another example of him being diligent and careful. I do not know why such records should not be made available to a Post Office auditor by others in the Post Office, particularly when that auditor specifically requested them in order to get to the bottom of what a SPM maintained was an unexplained shortfall. **Given by early 2017 this litigation was well underway it may be an example of internal suppression of material, but I make no specific findings on that, as**

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the point was not raised. I can think of no rational explanation for this, however.

523: For the reasons I have expressed above, I **have considerable misgivings about the Post Office's motivation for the treatment of Mrs Stockdale during this litigation, and for the treatment itself in terms of refusal to provide obviously relevant documents.** The evidence by Mr Carpenter, far from satisfying these concerns, actually increases them. **The Post Office appears, at least at times, to conduct itself as though it is answerable only to itself.** The statement that it is prepared to preserve documents – as though that were a concession – and the obdurate to accept the relevance of plainly important documents, and to refuse to produce them, is extremely worrying. **This would be a worrying position were it to be adopted by any litigant; the Post Office is an organisation responsible for providing a public service, which in my judgment makes it even worse.**

532: I wholly reject this evidence by Mr Trotter. The transcript shows that she did express concerns. She [Mrs Dar] expressly stated her concerns about data protection, what she termed "legislative and contractual requirements", the Financial Services Authority, wanting "more assurance", and saying "I don't want too much of a risk". **This next point was not put to him, but it appeared as though his witness statement had been written by someone else, and not by Mr Trotter.**

560: What is less understandable is the way that this approach seems to have affected the Post Office's approach to documents. The following examples can be given:

...

5. Even the identity of both the sender and recipients of internal e mails about the termination of Mr Bates' appointment have been redacted from disclosed correspondence, as I have explained at [120] above. The Post Office in later submissions on typographical corrections maintained this was done for Data Protection reasons. The contents of the e mails are themselves heavily redacted, and the court will not go behind such an assertion of privilege. However, given that part of the e mails are accepted as not being privileged, and have not been redacted, I

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cannot see any sensible basis for maintaining any redaction of the identity of the sender and recipients.

561: These are examples, in my judgment, of **a culture of excessive secrecy at the Post Office about the whole subject matter of this litigation. They are directly contrary to how the Post Office should be conducting itself. I do not consider that they can be a sensible or rational explanation for any of them.**

576: In about 2013 the Post Office commenced discussions with the NFSP in terms of its Network Transformation Programme which had started in pilot form in 2011. It wished to have the support of the NFSP to the revision of some of the terms, and in an e mail dated 2 August 2013 Mr George Thomson, the General Secretary of the NFSP, set out what he called the framework for a potential agreement. Part of this e mail – the Post Office being referred to as POL - stated the following:

"POL and NFSP to sign a 15 year contract for the NFSP to represent all post office operators. This will include:

Financial agreement

£500k payment 2013-14

£1.25m payment 2014-15

£1.25m payment 2015-16

£2.5m payment 2017 onwards to 2028

This process allows for the drop off of our present membership fee, and facilitates the change from check off towards POL charging a fee from all agents which is passed directly to the NFSP.

Memorandum of Understanding to be worked on with rights and responsibilities on both sides.

If necessary, NFSP will drop Union badge to sign contract.

Please note - a signed agreement with the blood of both myself and Paula is necessary on the future of the NFSP before any agreement is granted on either NT and other points ."

(emphasis added)

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577: "Paula" is Paula Vennells, the Chief Executive of the Post Office. The sums represent amounts to be paid to the NFSP from the Post Office. The total amount identified in that e mail represents £30.5 million. Mr Beal explained that the compensation provision for SPMs under the 2011 NTP was based upon 18 months' remuneration, and the e mail in question above was in respect of (inter alia) an *increase* of that to 26 months. He also accepted that the matters were linked in the negotiations between the Post Office and the NFSP. **Rather curiously therefore, the e mail above demonstrates that the NFSP was only prepared to agree what amounted to an increase in its members' potential compensation, if its own future was assured by the payment of substantial sums to it. I find that this shows that the NFSP put its own members' interests well below its own, and I also find that the NFSP is not fully independent.**

589: Also, the NFSP's own website was amended during the trial. At some point between this matter being raised in cross-examination with Mr Beal, and the question of documents evidencing dates being revisited at the end of the evidence, someone at the NFSP had specifically altered the NFSP website. I deal with this at [594] below. What they did not know, when whoever it was did this, was that counsel for the Lead Claimants had printed the NFSP website page as at the beginning of the trial. It was therefore clear that the change had been made, and also clear that it was done during the trial. **I was given no evidence by anyone from the Post Office about why this was done, and done in terms that suited the Post Office's case on this point. I find this behaviour highly suspicious.** It also undermines, yet further, the claim by the Post Office that the NFSP is independent.

724: There is no doubt that the Post Office is in an extraordinarily powerful position compared to each and every one of its SPMs. **It appears to wield that power with a degree of impunity.**

1059: I put to one side entirely that the Post Office's case on this shifted during the trial – at one point it seemed to be argued in opening that the Post Office's case was that the extent of liability was as Mr Beal (in evidence I have rejected) explained he understood, namely that it sought to replicate the extent of liability of a SPM under the SPMC. I also put to one side entirely that the genesis of this clause emerged about a decade *after* SPMs, on their case, started to experience significant discrepancies and shortfalls due to Horizon; and which on any case, they

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expressly blamed upon the Horizon system. **It would be, perhaps, too cynical for even the most hardened Post Office watcher to suggest that the problems with Horizon led to changes to, and extension of, the contractual liability of SPMs for losses that were adopted in the NTC. However, that option cannot be entirely discounted.**

1111: The Post Office describes itself on its own website as "the nation's most trusted brand" (at <http://corporate.postoffice.co.uk/our-heritage>). **So far as these Claimants, and the subject matter of this Group Litigation, are concerned, this might be thought to be wholly wishful thinking.** Trust is an element of an obligation of good faith, a concept which I find is to be implied into the contracts between the Post Office and the SPMs because they are relational contracts. **The Post Office asserts that its brand is trusted by the nation, but the SPMs who are Claimants do not trust it very far, based on their individual and collective experience of Horizon.**

6. The sections upon which Post Office will particularly rely in support of the contention in the third sentence of paragraph 25 of my Fourteenth Witness Statement are as follows (with passages of especial importance within these sections highlighted in bold):

375: Mr Beal's way of giving evidence was **very much the house Post Office style, certainly for the more senior of its management personnel who gave evidence. This was to glide away from pertinent questions, or questions to which the witness realised a frank answer would not be helpful to the Post Office's cause.** Giving evidence in court and being cross-examined, is an unusual experience for most people, regardless of the amount and type of preparation that a person may have undertaken in advance. Mr Beal certainly knew his subject very well. **He sought to give me evidence highly favourable to the Post Office, which I consider was slanted more towards public relations consumption rather than factual accuracy.** It did not match the contents of the documents to which I have referred, namely the GFA, and the change in wording of the terms dealing with liability for loss by a SPM under the NTC.

425: In a witness statement by her [Mrs Van Den Bogerd] of 145 paragraphs, 44 of those are devoted to the Post Office as a business. None at all deal with the very great number of detailed points put to her by Mr Green, based on internal Post Office documents over the years, which demonstrate an internal view of unsatisfactory performance at

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odds with the Post Office position in the case. This therefore must mean that **Mrs Van Den Bogerd is an extremely poor judge of relevance**. Her judgment also seems to have been uniquely exercised to paint the Post Office in the most favourable light possible, regardless of the facts.

544: I have no reason to think that any of the Post Office witnesses were doing anything other than stating their genuine belief as at 2018 (when the trial occurred) based on their recollection, with two exceptions. **The first is some of Mr Beal's more extreme claims that the drafting of the NTC was designed to replicate a SPM's responsibility for losses under the SPMC, and that it was also intended by the Post Office that the contract with the NFSP would be made public**. Neither of those claims bear analysis when compared with the detailed drafting of each of those documents, both of which had been carefully drafted no doubt with the assistance of sophisticated legal advisers. **The second is Mrs Van den Bogerd. She tried to give me the impression that the detailed cross examination about Mr Abdulla was something she could not really deal with because she had no detailed knowledge in the witness box. This was simply not correct; she had signed a very detailed witness statement just a few days before for the Horizon Issues trial which dealt with the matters being put to her about Mr Abdulla in considerable detail**. I find that she was simply trying to mislead me. She also explained a wholesale absence in her witness statement of highly relevant matters as being due to a restriction on length of that document, or if not a restriction, a desire to keep her witness statement short. **That answer was simply disingenuous**. This is a very significant and high-profile dispute for the Post Office. There was no such restriction on length, and I do not believe that, of all the witnesses, she felt there was any need to keep her statement short. The non-inclusion of that evidence within her statement is explained, in my judgment, by the Post Office's approach to the litigation. The Post Office has appeared determined to make this litigation, and therefore resolution of this intractable dispute, as difficult and expensive as it can. **Mrs Van den Bogerd did not provide any reference in her witness statement to matters unfavourable to the Post Office case**. That witness statement was her evidence in chief, and therefore supposed to be the whole story. I find that she did not do so, because those matters (which Mr Green put to her in some detail) were highly unfavourable to the Post Office's case. She was simply not prepared to volunteer such matters in a witness statement. She was only grudgingly prepared to accept them in cross-examination, after some time.

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STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed:

Date:

Claim No:

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES

B E T W E E N:

POST OFFICE LIMITED

Defendant

AND

ALAN BATES AND OTHERS

Claimant

[X] WITNESS STATEMENT OF [X]
