

Filed on behalf of the: Defendant
Witness: John Breeden
Statement No.: First
Date Made: 24 August 2018

THE POST OFFICE GROUP LITIGATION

Claim Nos: HQ16X01238

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ROYAL COURTS OF JUSTICE**

B E T W E E N:

ALAN BATES AND OTHERS

Claimants

AND

POST OFFICE LTD

Defendant

WITNESS STATEMENT OF JOHN ANDREW BREEDEN

I, **JOHN ANDREW BREEDEN** of Finsbury Dials, 20 Finsbury Street London EC2Y 9AQ
WILL SAY as follows:

1. I am the Head of Agency Contracts Deployment at Post Office Limited (**Post Office**). I am authorised to make this statement on behalf of Post Office.
2. The facts set out in this statement are within my own knowledge, or if they are outside my knowledge, I have explained the source of my information or belief.
3. In this statement, the term **Subpostmaster** is used to generally refer to agents of Post Office who operate branches on its behalf, including subpostmasters, subpostmistresses, franchisees, postmasters and operators.

INTRODUCTION

4. In this statement I discuss the following:
 - 4.1 The selection and appointment of Subpostmasters; and
 - 4.2 The circumstances in which a Subpostmaster's contract may be suspended or terminated with or without notice.

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MY BACKGROUND

5. I have been employed by Post Office for 21 years, since 6 January 1997. When I joined the company it was called Post Office Counters Ltd.
6. My first role at Post Office was Head of Management Process. The role was based in Scotland and I covered the Scotland and Northern Ireland regions. The role was concerned with planning, process management and supporting Post Office's Customer First programme. This was a programme to introduce the principles of total quality management and continuous improvement across the business in order to improve the quality of products and services and internal and external customer satisfaction. During this period, the project to introduce Horizon was underway. However, I was not directly involved in the planning of the Horizon project.
7. In 2002, I was appointed as the Operations Manager with the National Multiples team. This was a team set up to manage a number of national multiples across the country and dealt with sales and service issues that were arising. National multiples are larger businesses that manage Post Office branches across the country and at this time included TM Retail (now known as McColls), One Stop and the Co-Operative Society.
8. On 1 April 2005, I left the National Multiples team and was appointed the Area Service Manager for the Central Area. In this role I began managing a team of Contracts Advisors, a role I hold to this day. At this time there were three Area teams for the North, South and Central areas of the UK that were similar in structure.
9. Contracts Advisors are responsible for dealing with any contractual issues that may arise with Subpostmasters, including contract breaches. Their responsibilities include:
 - 9.1 Interviewing and deciding whether to appoint applicants to vacancies in the network as Subpostmaster.
 - 9.2 Dealing with any interventions. An intervention may be needed when a Subpostmaster is not performing his contract to Post Office's expectations, or, for example, if there is a customer complaint. A Contracts Advisor or his delegate may telephone or visit the branch to provide support. Depending upon the nature of the issue the Subpostmaster may be invited to a meeting to agree an action plan for improvement.

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- 9.3 Undertaking investigations following robbery or burglary incidents where there has been a loss of Post Office funds which may have arisen due to the Subpostmaster allegedly not following the correct procedures and deciding or recommending if the Subpostmaster is liable for all or part of the loss.
- 9.4 Undertaking the investigation of contract breaches and deciding or recommending the suspension and/or termination of Subpostmaster Contracts.
10. In 2006, following a management restructuring, the three Contracts Advisor teams were reduced to two; one for the north of the country and one for the south. I managed the northern team.
11. Between 2006 and 2017 I have held the following job titles; (i) National Contracts Manager North between September 2006 and January 2011 and (ii) Agents Contracts Deployment Manager North between January 2011 and March 2017.
12. I started my current role as Head of Agency Contracts Deployment on 1 April 2017. In addition to managing a team of Contracts Advisors, I also have oversight and responsibility of the following teams:
- 12.1 The Agent Application Processing Team (**AAPT**): This is the team that processes the applications Post Office receives from individuals, partnerships and companies applying to be appointed as Subpostmasters. The role of the AAPT is explained in Sarah Rimmer's witness statement.
- 12.2 The Support Services Team: This team investigates accounting issues that may arise with the branch accounts submitted by Subpostmasters. The team assists the Contracts Advisors with issues such as identifying reasons why the accounts show a shortage.
- 12.3 A Restrictions Advisor who is responsible for the restrictions policy and undertakes activity to address breaches of this policy.

THE APPOINTMENT OF NEW SUBPOSTMASTERS

13. Post Office has a standardised process for the selection and appointment of new Subpostmasters. This ensures consistency in the information and guidance that is given to new applicants and assists us in selecting candidates who we believe will be most suitable to operate a Post Office branch. Subpostmasters are selected on the strength of their business plans, and the skills and business acumen they demonstrate at interview.

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14. The key steps in the process are set out below. As far as I am aware from my own experience and from speaking with colleagues who worked for Post Office before my time they have been broadly the same for nearly 30 years. The steps are as follows:
 - 14.1 A person decides that they want to be a Subpostmaster and they make an application to Post Office;
 - 14.2 The application will include a business plan which is reviewed by Post Office;
 - 14.3 The applicant attends an interview;
 - 14.4 If successful, Post Office makes an Offer of Appointment to the applicant;
 - 14.5 The applicant chooses whether or not to accept the Offer of Appointment;
 - 14.6 The applicant completes the acquisition of their legal interest in the branch premises from the outgoing Subpostmaster or other property owner (if needed) which usually coincides with the date of appointment;
 - 14.7 Post Office arranges introductory training (as needed);
 - 14.8 All parties agree a start / transfer date; and
 - 14.9 The applicant starts as a Subpostmaster.
15. Since around 2000, there have been 3 teams involved in the application process:
 - 15.1 The AAPT, which processes all applications and guides the applicant through the process. They support and provide guidance to applicants ensuring they have the correct information to be able to apply. They ensure that all the information and documentation required from the applicants to process their application is provided. Sarah Rimmer managed the AAPT between 2007 and 2017 and she details the work undertaken by that team in her witness statement.
 - 15.2 Post Office's finance team reviews the business plans submitted by the applicants. Further details about this can be found in Timothy Dance's witness statement.
 - 15.3 In the early 2000s, Retail Network Managers (**RNMs**), later called Retail Line Managers (**RLMs**), interviewed applicants and decided whether to offer the vacancy to the applicant. These interviews were usually conducted by two

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RNMs/RLMs. On 1 April 2005, there was a change in management structure. The regionally based RLMs were replaced with Business Development Managers and a centrally managed team of Contracts Advisors. The Contracts Advisors took over responsibility for interviewing and the appointment of applicants. These interviews were conducted with the Business Development Manager in attendance. After 2006, the Contracts Advisors started to conduct interviews alone and this is when the tape recordings of interviews were introduced. I discuss these matters in more detail below.

Vacancies

16. In order for a person to be offered a contract, there needs to be a vacancy in the network. Interested parties may become aware of vacancies through various means, either through the efforts of Post Office or the outgoing Subpostmaster. Further information can be found in Sarah Rimmer's statement in respect of the advertising of vacancies.
17. Below is a table of the number of vacancies and applications Post Office received for the years between 2013 and 2018. *"NT Programme"* refers to vacancies arising through the Network Transformation Programme. In these cases, the outgoing Subpostmaster did not always offer his premises for the new branch and the vacancy was filled at another retail premises near the existing branch. *"Churn"* refers to instances where the outgoing Subpostmaster leaves the network and puts forward an applicant (who the outgoing Subpostmaster will be selling his property interest and business to) for Post Office to consider.

Year	2013/14	2014/15	2015/16	2016/17	2017/18
NT Programme vacancies	1119	1259	1259	787	900
Churn	303	280	370	460	504
Total	1422	1539	1629	1247	1404
No. of applications received	2112	2317	2410	1690	1710
Average no. of applicants	1.5	1.5	1.5	1.4	1.2

Business Plans

18. Applicants are required to submit a business plan. Exceptionally we may appoint an applicant without a business plan where there is a family transfer following a death in service i.e. the applicant is a family member of a Subpostmaster who has

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died. The business plan is a key document for assessing the suitability of an applicant's business proposition from a financial perspective. We provide applicants with our pro-forma business plan, which is designed to elicit the information we need for our purposes. The business plan should detail how the applicant intends to run the branch and, if applicable (which it usually is), any retail / ancillary business within the same premises.

19. The business plan asks the applicant to provide his proposals for running all elements of the branch and the retail / ancillary business. This includes: the location, premises and property interest to be held; proposed opening hours; staffing levels; ongoing running costs; repairs and estimated refurbishment costs, if any; the last 3 years' trading accounts of the outgoing Subpostmaster's business; proposed advertising; personal finance expenditure (e.g. last 6 months' bank statements); personal income; and predicted profit budget.
20. In preparing a business plan I would expect an applicant to undertake the appropriate research to attain a good understanding of the Post Office business, the way a branch operates in overview, the obligations of operating a branch and how the branch will complement his retail business. At the interview, we expect the applicant to talk us through his business proposition, how the existing branch operates and his plans to grow the business.
21. In addition to the guidance Post Office provides¹, an applicant has access to various sources of information to prepare his business plan, research the Post Office business and prepare for the interview. One such source is the outgoing Subpostmaster. The business plan requires the applicant to provide information regarding the existing branch, and to attach the last 3 years' accounts of any retail business he is acquiring. He should be having conversations with the outgoing Subpostmaster to fully understand the business he is acquiring. Even if the applicant is not acquiring the outgoing Subpostmaster's independent retail business, he should as good business practice be speaking to him about the operation of the branch.
22. Many applicants use accountants or business advisors to assist them in preparing their business plans. There are advisors who specialise in Post Office applications and assist applicants in drafting their business plans and preparing for the interview. Examples are SubPostmaster.com² and Humberstones³. My team estimates that around a third of applicants use the services of

¹ The guidance that applicants receive is discussed in the statements of Sarah Rimmer and Paul Williams.

² See <http://subpostmaster.com>.

³ See <http://www.humberstones.co.uk>.

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SubPostmaster.com and Humberstones. I believe many applicants also use their accountants to assist them in preparing their business plans.

23. If the business plan is assessed to be not viable by our Finance team, the application is rejected. If the business plan looks likely to be commercially viable the applicant will be invited to an interview.

Interviews

24. I mainly refer below to Contracts Advisors as they were in place for most of the relevant period. The points I make below however apply equally to RNMs and RLMS.
25. The interview is conducted by a Contracts Advisor (who may be accompanied by a Post Office Sales Manager if the application is for a larger branch). Most interviews, particularly more recent ones, are tape recorded and the Contracts Advisor will prepare a written rationale of his decision to appoint or reject the applicant.
26. During the interview, the applicant has the opportunity to present his plans for the branch opportunity in greater detail. The Contracts Advisor will assess the applicant against a range of competencies relevant to the running of a branch. From 2013, these include the following:
- 26.1 The applicant's awareness of good customer service standards;
- 26.2 The applicant demonstrating an understanding of, and rationale behind, the information in his business plan and how he intends to grow sales;
- 26.3 The applicant demonstrating a knowledge and an understanding of the range of Post Office products and services applicable to his type of branch;
- 26.4 The applicant demonstrating an understanding and awareness of the principles of good staff management and leadership;
- 26.5 The applicant demonstrating (i) an awareness of working in a regulated environment and the importance of complying with any regulatory framework; (ii) an awareness of their responsibility for, and of what is involved in looking after Post Office cash and stock and operating in a secure environment and (iii) an understanding of Post Office's Restrictions Policy and a willingness to comply, if appointed; and

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- 26.6 The applicant's reasons for applying and the role his proposed branch will have in the local community.
27. To the best of my knowledge, prior to 2013, applicants would have been assessed against a similar range of competencies during the interview.
28. To the best of my knowledge, after 2006, Contracts Advisors used a checklist to confirm that certain contractual issues were discussed with the applicant during the interview. An example of the checklist is at document {POL-0156076}.⁴ Prior to the use of the checklist, a summary of similar sections of the contract were sent to the applicant when they were invited to the interview and these were discussed at the interview. An example of the contract summary is at document {POL-0155443}.
29. As is illustrated by the checklist, the issues the interviewing Contracts Advisor would discuss with the applicant include the following:
- 29.1 That if successful the applicant will be entering into a contract for services and is not an employee of Post Office. It would be made clear to the applicant that he does not have to provide personal service in operating the branch. However, the Contracts Advisor will ask if the applicant intends to provide at least 18 hours personal service per week. This is for Post Office records, as a Subpostmaster who is physically present at the branch may apply for holiday substitution allowance and sickness substitution allowance⁵.
- 29.2 That Subpostmasters are free to appoint assistants as they see fit but all assistants must be registered with Post Office for vetting purposes. The applicant will be informed that he will be fully responsible for the actions of his assistants, including errors in transacting Post Office business and any loss of Post Office's cash caused by his assistants. It is also mentioned that the assistants are the Subpostmaster's employees and not Post Office's.
- 29.3 In cases where the applicant is acquiring an existing branch, the Contracts Advisor will inform the applicant that there may be TUPE issues that he should take advice on if he does not wish to retain the existing staff. The Contracts Advisor will not provide any legal advice.

⁴ Please refer to the Contracts Advisor, "SPSO/MPSO checklist", "LOCAL Checklist" and "MAIN Checklist" tabs of the spreadsheet.

⁵ These allowances are available for subpostmasters operating under the Subpostmasters Contract and the Modified Subpostmasters Contract. They were phased out for the Network Transformation Contracts.

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- 29.4 The Contracts Advisor will explain the Subpostmaster's responsibilities regarding the safeguarding of Post Office's cash and stock, in particular, that Post Office's cash must be kept separate and not be used for any purpose other than Post Office business.
- 29.5 The applicant will be informed of a Subpostmaster's accounting responsibilities, in particular, his responsibility to submit daily cash declarations and a full trading statement at least once a month. He will be informed that all discrepancies must be made good immediately.
- 29.6 He will be informed that Post Office cash cannot be used for any private purpose under any circumstances.
- 29.7 It will be explained to him that should there be a robbery or burglary where Post Office cash is taken, the Subpostmaster may be liable for part or all of the loss if the security procedures have not been followed. It will also be mentioned that personal cheques are not to be encashed in the branch.
- 29.8 The Contracts Advisor will explain the remuneration structure and that the Subpostmaster's income is variable depending on the sales performance of the branch.
- 29.9 Post Office's Restrictions Policy will be explained to the applicant.
- 29.10 The applicant will be informed that the accounting for National Lottery sales must be undertaken through Horizon, and that depending on his sales performance, Camelot may decide whether or not to retain the National Lottery terminal in the branch.
- 29.11 During the interview the Contracts Advisor will also discuss and confirm, as appropriate, the Conditions of Appointment with the applicant. The Conditions of Appointment might include improvement works to the branch premises.
30. The interview is also an opportunity for the applicant to ask any questions he might have regarding Post Office, the role and his obligations and responsibilities.
31. Following the interview, the Contracts Advisor will make the decision on whether or not to offer the vacancy to the applicant. The decision is made on a points scoring system and the Contracts Advisor will complete a rationale document detailing the reasons for his decision to offer the vacancy or not as the case may be. The Contracts Advisor's decision will be sent to the AAPT.

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32. Thereafter, where the applicant has been successful at interview, the AAPT sends the contractual documents to the applicant to be signed. If the applicant chooses to accept the appointment and signs the contractual documents, Post Office's Scheduling team arranges the initial training and the date for the transfer of the branch to the new Subpostmaster.

SUSPENSION AND TERMINATION

33. I understand that one of the Common Issues in this litigation is whether the express written terms of the Subpostmasters Contract and Network Transformation Contracts (**NT Contracts**) represent the true agreement between the parties in relation to termination. Post Office has good reason for needing to have and, where appropriate, rely on the termination rights in the contracts. I explain below the circumstances in which Post Office may suspend and subsequently terminate a contract, and where Post Office or a Subpostmaster may terminate the contract by giving notice.
34. Both the Subpostmaster and NT Contracts contain important provisions governing how these contracts may be brought to an end. Prior to accepting his appointment, a Subpostmaster has the opportunity to review his contract. I would expect a Subpostmaster to review and understand the main terms of his contract, including the termination provisions, so that he knows what he is signing up to.

Suspension

35. Both the Subpostmaster and NT Contracts contain provisions which allow Post Office to suspend or terminate the contract.
36. The situations where Post Office may consider it appropriate to suspend a Subpostmaster include:
- 36.1 The Subpostmaster is arrested, or (in the case of the NT Contracts) is charged or investigated by the police or Post Office in connection with an offence.
- 36.2 There are civil or criminal proceedings brought against the Subpostmaster.
- 36.3 There are irregularities or misconduct at the branch, and/or a material breach of the contract and/or grounds to suspect dishonesty. Typically, this may be when shortfalls are discovered during an audit that are significant and/or previously undeclared by the Subpostmaster.

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36.4 Where the Subpostmaster is insolvent.

37. Post Office needs the suspension power in order to protect its assets and reputation. Subpostmasters hold substantial amounts of Post Office's cash and stock in their branches. They interact on Post Office's behalf with members of the public and are, in effect, the 'face' of the Post Office brand.
38. There will be instances where Post Office needs to act quickly to manage its financial and reputational risk. Suspension can also be important to prevent any further deterioration of the position, or to enable an investigation of the suspected breach where it is likely that such an investigation would be difficult or impossible without the suspension.
39. For example, it might come to light, following an audit, that there is a significant loss. If the Subpostmaster is unable to explain how the loss arose, this will often generate doubt as to whether that Subpostmaster is capable of running the branch properly and protecting Post Office's assets at the branch. It would often be appropriate to suspend such a Subpostmaster, not only to protect Post Office's cash, but also to protect the Subpostmaster from potentially being liable for further losses.
40. The decision to suspend a Subpostmaster is not taken lightly. A suspension not only disrupts a Subpostmaster's business but also results in Post Office incurring additional costs. Following a suspension, steps may need to be taken to defund the branch (that is to securely remove the cash held in the branch). A Temporary Subpostmaster may be appointed (and will have to go through an appointment process) to operate the branch during the suspension. There is a risk that the suspended Subpostmaster may decide to resign which will necessitate Post Office looking for a replacement. Where we decide to suspend we do so to protect Post Office's assets and reputation.
41. Prior to 2014, the decision to suspend a Subpostmaster and subsequently to either re-instate or terminate the contract rested with the Contracts Advisor allocated to the case. The Contracts Advisors may have consulted with their line managers, such as myself, but the decision was theirs.
42. From 2014, the decision to suspend a Subpostmaster's contract had to be made by me as the Team Leader of the Agents Contracts Deployment team for the North or by my counterpart who led the Agents Contracts Deployment team for the South. The reason for the change was that the contractual process to appeal an immediate termination under the old Subpostmasters Contract was not replicated in the NT Contracts. Given this change we introduced a two tier

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decision making process whereby the Contracts Advisor would recommend a course of action which was approved or not by their team leader. This two tier process applied to both the suspension and termination decisions.

43. Where a suspension is considered, the process is that the Contracts Advisor will undertake an initial assessment and make a recommendation as to whether to suspend the Subpostmaster's contract. The Contracts Advisor will discuss his/her recommendation with me and I will decide whether to suspend. If I am unavailable, the Contracts Advisor can discuss the matter with one of my delegates who will be authorised to make a decision on my behalf. I have spoken to Keith Bridges who leads the Agents Contracts Deployment team, South and he has confirmed to me that he follows the same process.
44. The typical scenario where a suspension is considered is where a previously undeclared shortfall is found during an audit. Upon discovering the shortage, the lead auditor will immediately telephone the Contracts Advisor to discuss the audit findings. The Contracts Advisor will speak with the Subpostmaster to ascertain the reasons for the audit shortage. The Contracts Advisor may also discuss the matter with other teams, if it is appropriate.
45. In the audit shortage context, the decision to suspend has to be made quickly on the day of the audit, as the auditors are waiting in the branch for our decision (so that they can take steps to secure stock and cash before the end of the day). There would be little sense in leaving a suspended Subpostmaster in control of Post Office's cash and stock.
46. If a decision is taken to suspend the Subpostmaster's contract, the Contracts Advisor will inform the Subpostmaster by telephone. This is followed up by a letter confirming the suspension.
47. Under the Subpostmasters Contract, where a Subpostmaster has been suspended, they will be offered the opportunity to either attend a meeting (these are known as 'Reasons to Urge' meetings) or provide a written submission to put forward their explanation of what had happened and any mitigating circumstances. The Subpostmaster may bring a friend to the meeting who could be another Subpostmaster, a registered Assistant, an employee of Post Office or a representative from the National Federation of Subpostmasters.
48. Under the NT Contracts, a Contracts Advisor may request an informal meeting or phone call with the Subpostmaster to allow the Subpostmaster the opportunity to give his explanation of how and why the breach occurred and any mitigating circumstances.

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49. Thereafter, the decision is taken as to whether to terminate the contract or re-instate the suspended Subpostmaster with or without conditions. Similar to the decision to suspend, the Contracts Advisor handling the case will compile all the evidence and present a recommendation to me (or my counterpart, Keith Bridges) and either I or Mr Bridges (or one of our delegates if we are not available) would make the decision.
50. Over the period April 2013 to June 2018, there were 626 suspension cases. Out of the 626 contracts suspended, 407 contracts were terminated and 150 contracts were reinstated. The balance of 69 cases are work in progress as at 23 June 2018.

Remuneration During Suspension

51. During the suspension period, Post Office suspends the remuneration payments to the suspended Subpostmaster. The reasons for this are:
- 51.1 If the Subpostmaster agrees to the appointment of a Temporary Subpostmaster (a **Temp**) to operate the branch while he is suspended, the remuneration that Post Office would have paid to the Subpostmaster is paid to the Temp who is providing the Post Office services. Michael Shields discusses the appointment of Temps in his statement.
- 51.2 Alternatively, if the suspended Subpostmaster does not agree to the appointment of a Temp, it would be appropriate to suspend the remuneration payments as no Post Office business is being transacted at the branch.
52. The suspended Subpostmaster will agree terms with the Temp for operating from his premises i.e. paying a contribution to rent and utilities, essentially "renting" that part of the retail premises from which the Post Office services are provided. Any terms agreed is a private matter between the Subpostmaster and the Temp. In my experience, a suspended Subpostmaster often agrees to the appointment of the Temp so that he can continue to receive some income from the continued use of that part of his premises from which Post Office services are provided, and to maintain service and the benefit of the footfall of customers into his retail premises that Post Office services drive.
53. Under the Mains NT Contract, the Subpostmaster is obliged to agree to the appointment of a Temp. The Mains NT Contract therefore includes a revenue sharing model whereby a suspended Subpostmaster receives 20% of the remuneration (calculated on a daily average of the total remuneration earned in the preceding 12 months) with the Temp receiving the remainder.

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54. In all cases, the appointment of a Temp is subject to the suspended Subpostmaster's agreement. Notwithstanding the provision in the Mains NT Contract for revenue sharing, whether there is any sharing of the remuneration is subject to the agreement between the Subpostmaster and the Temp. In my experience, in many cases, Temps will insist on receiving all the remuneration before accepting the appointment. The Temp will still however have to negotiate and agree with the Subpostmaster any payment for the use of the area occupied by the Post Office counter in his retail premises from which the Temp will provide Post Office services.
55. If the suspended Subpostmaster is re-instated, Post Office will consider whether to pay the Subpostmaster any of the remuneration he did not receive whilst he was suspended. A payment will be made if the decision to suspend was incorrect. However where there were contractual grounds to suspend, Post Office's practice is to not make a payment because of the financial reasons set out in paragraphs 51.1 and 51.2 above.

Termination Without Notice

56. Under the Subpostmasters Contract, Post Office may terminate the contract without notice where there was a "... *Breach of Condition by him, or non-performance of his obligation or non-provision of Post Office Services...*"⁶ When the NT Contracts were drafted, the opportunity was taken to set out more prescriptively the circumstances in which Post Office may terminate a contract without notice, which was based on our experiences of when the Subpostmasters Contract had been terminated.
57. The typical situations include the following:
- 57.1 The Subpostmaster has used Post Office's cash for his own purposes, attempted to cover up a shortage and/or acted dishonestly.
 - 57.2 The Subpostmaster is unable or unwilling to repay the sum owed to Post Office.
 - 57.3 The Subpostmaster has failed to remedy a breach following a formal written notice(s). This may arise where the Subpostmaster is not managing the branch to the standards we expect, not accounting for transactions accurately or where he may be selling products in breach of our Restriction Policy. In these cases, we would typically only terminate

⁶ See section 1 paragraph 10 of the Subpostmasters Contract.

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as a last resort following a number of conversations seeking to improve performance and remedy the breach(es).

57.4 The Subpostmaster ceases to hold a valid property interest (i.e. where the Subpostmaster does not have full exclusive control of the branch premises for at least the notice period of his contract).

57.5 The Subpostmaster becomes insolvent (if a company) or bankrupt (if an individual).

58. Under the Subpostmasters Contract, the Subpostmaster had a contractual right to appeal a decision to terminate his contract without notice.⁷ The appeal had to be lodged within 10 working days of the date of the termination letter. When the Subpostmaster appealed, the case would be allocated to a member of the Appeals Panel (the **Appeals Manager**). Appeals Managers were senior Post Office managers who were familiar with the contract and had training to hear appeals. The Appeals Manager would have had no prior involvement in the case. He would undertake a full review of the case papers and might meet with the Subpostmaster. The Appeals Manager would decide whether it was appropriate to terminate the Subpostmaster's Contract 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. In its place Post Office introduced a 2-stage decision making process whereby the Contracts Advisor would recommend a course of action and I or my counterpart for the South team would make the decision. In addition, the Contracts Advisor or the Subpostmaster could request an informal phone call or meeting along the lines described in paragraph 48 above.

Termination on Notice

59. Under the Subpostmasters Contract, Post Office had the right to terminate the contract on giving "*not less than three months notice*".⁸ Post Office would in some cases make a payment in lieu of notice by paying 3 months' remuneration. The Subpostmaster had the same right to resign by giving 3 months' notice.

60. The typical scenario where Post Office might terminate the contract by giving 3 months' notice is where there is a capability or performance issue. In these instances, the decision to terminate on notice would be after there had been discussions aimed at improving performance, and after a written direction had

⁷ There was no right to appeal a decision to terminate the contract with 3 month's notice or against a termination with payment in lieu of notice.

⁸ See section 1 paragraph 10.

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been given. Occasionally, Post Office may terminate by giving 3 months' remuneration in lieu of notice. This would be done where the continued operation of the branch by Subpostmaster for a further three months would present a risk to Post Office's brand and/or reputation (but the Subpostmaster had not committed a breach that was so serious as to warrant summary termination).

61. Under the new NT contracts, the notice period to terminate was extended to 6 months for the Local Contract and 12 months for the Mains Contract. In both cases, the notice period may not expire before the first anniversary of the start date.
62. The reason the notice period was extended was because Post Office found that the 3 month notice period was rarely sufficient for a new Subpostmaster to be found and for the appointment process to be completed. Very often, where the outgoing Subpostmaster intended to sell on his premises and business, it would be agreed that he would continue operating the branch after the notice period until the replacement was appointed. Where the outgoing Subpostmaster did not offer his premises, the 3 month notice period meant Post Office could be left without a branch in that locality until a replacement Subpostmaster and replacement premises was found. In the case of the Mains Contract, there was a view within Post Office that 12 months would be necessary to locate a sufficiently large vacant premises on a high street required to host a Mains branch. In short, longer notice periods for both parties seemed to make more sense in light of the timescales involved in replacing a Subpostmaster.
63. A provision was included in the NT Contracts requiring the Subpostmaster to maintain his appointment for at least the first 12 months. This minimum commitment from the parties reflected that under the NT Contracts the Subpostmaster would be receiving financial support to transform their branch or on setting up a branch at a new location.
64. The same notice periods in both the Subpostmaster and NT Contracts apply to Post Office and the Subpostmaster.
65. Over the years Post Office has implemented a number of branch closure programmes. Please refer to Angela Van Den Bogerd's witness statement where the programmes are discussed. It would be difficult for Post Office to undertake such large scale strategic programmes if it was not able to close branches on notice without cause. Outside these strategic network wide closure programmes, in my experience, it is rare that Post Office gives notice to terminate a contract simply because it determines that it does not require a branch. I think it is well-known that Post Office is generally very reluctant to close branches, because it

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has obligations to Government in relation to branch coverage. Nevertheless, a right to terminate on notice is required so that Post Office has the necessary flexibility to terminate to support its overall objectives and needs without having to justify this, whether for reasons relating to the individual or more widely across the network. Subpostmasters can give the same notice if they want to leave, for whatever reason at all.

66. On occasion, Post Office receives resignations from Subpostmasters who offer less than the contractual notice periods. Usually, we will inform the Subpostmaster that under their contract they are obliged to give 3, 6 or 12 months' notice (depending on the contract). We may exceptionally agree to a shorter notice period depending upon the circumstances, such as on compassionate grounds, or where service will not be broken as there is a replacement Subpostmaster.

STATEMENT OF TRUTH

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

Signed:

J BREEDEN

Date:

24th August 2018