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Bond Dickinson

www.bonddickinson.com

Bond Dickinson LLP

Oceana House
39-49 Commercial Road
Southampton
SO15 1GA

Tel: GRO
Fax:
DX: 38517 Southampton 3

andrew.parsons GRO
Direct: GRO

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4 October 2017

For the Attention of Mr J Hartley
Freeths LLP
Floor 3
100 Wellington Street
Leeds
West Yorkshire
LS1 4LT

By email only

Email: james.hartley GRO imogen.randall GRO

Dear Sirs

The Post Office Group Litigation
Directions

1.1 As promised in our Second Letter of 1 September 2017, we write to provide our comments on Directions following receipt of your Generic Reply on 29 September 2017 (last Friday).

1.2 As a starting point, we note that this litigation covers an extremely broad range of legal and factual issues that could be tackled in a number of different ways. In this context, we consider that cooperation between our firms is likely to be more productive than adopting an oppositional approach. We would value your comments on the proposals below and would be happy to meet with you to discuss a suitable way forward.

2. Generic Reply

2.1 The Generic Reply has not provided as much assistance in narrowing or clarifying the issues in dispute as we had hoped. For example:

2.1.1 The approach taken in the Generic Reply of responding "thematically" to the Generic Defence makes it difficult to see what your client's case is on many paragraphs of the Generic Defence. However, we note that a large number of those paragraphs have not been addressed at all, except by the general denial at paragraph 92.

2.1.2 In our view, the Generic Reply does not provide a substantive response to large parts of Post Office's factual case that either cannot sensibly be in dispute or, if they are in dispute, it is important to know in what respect they are disputed. For example, Post Office provided at paragraphs 33 to 46 of the Generic Defence a detailed summary of Horizon and its basic operation. These paragraphs are responded to only selectively in the Reply, and not under the same heading or in any clear order. As a result, Post Office cannot tell which parts of its case in this regard are genuinely in dispute.

2.1.3 The Generic Reply appears to be designed more as a vehicle for argument than as a means of clarifying and either narrowing or providing more detail as to the issues in dispute. The Claimants have, for example, chosen to plead that Post Office has made various admissions that it has in fact not made. For example, paragraph 58.5 of the Generic Reply alleges that Post Office has made an admission that it has already (by way of a Response to a Request for Further Information) stated that it does not make.

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2.1.4 In several instances, the Generic Reply fails to provide any substantive response to Post Office's case on matters that were addressed in detail in the Generic Defence. For example, paragraph 49 of the Generic Reply asserts, without any particularity, that the "*terms relied upon by the Defendant*" (without distinction) may not be relied upon as a result of the Unfair Contract Terms Act 1977 (**UCTA**). The total lack of particulars is particularly regrettable in circumstances where the Generic Particulars of Claim (**GPoC**) indicated that particulars of the Claimants' case on UCTA would be provided in the Reply (see paragraph 68 of the GPoC). We find it particularly difficult to see how the Claimants could seriously contend that all of the express terms on which Post Office relies are covered by and fail to pass the reasonableness test in UCTA, but even if this is their contention, they need to set out the grounds on which they make this contention for each relevant term.

2.1.5 The Generic Reply gives no proper indication of the Claimants' generic case on the defences asserted by Post Office in the GPoC, in particular on limitation and the effect of the settlement agreements they have entered into, being matters which could not be addressed in the GPoC.

2.2 We provide the above by way of example only. We regret to say that, in our view, the Generic Reply has done little to narrow or clarify the issues in dispute and that this has reduced the utility of the generic pleadings in furthering the fair and efficient resolution of these proceedings.

2.3 This compounds the problems caused by the Schedules of Information (**SOIs**) we have received, as discussed in our letter dated 1 September 2017. In the circumstances, it is difficult to exaggerate the difficulties to which the parties will be put in seeking to break the mass of Claimants down into classes of Claimant whose claims are sufficiently similar to allow Lead Claimants to be chosen with any confidence. We address this aspect further in paragraphs 4.1, 4.2, 7.1 and 7.2**Error! Reference source not found.** below.

3. Summary of Post Office's proposed Directions

3.1 Please find enclosed our client's proposed Directions Order, which we summarise below and address in greater detail at sections 4 to 14 of this letter.

Preliminary Issues, Factual Matrix, Lead Claimants and Disclosure

3.2 In the circumstances in which the parties find themselves, Post Office's view is that addressing the contractual rights and duties between the parties may be an appropriate way to obtain Court decisions that will assist with the resolution of the majority of cases and create a foundation on which more informed decisions on future case management can be made. Subject to your views and those of the Managing Judge, we cautiously suggest the preliminary issues identified in the draft Directions Order.

3.3 Post Office agrees with your proposal to use Lead Claimants and will provide a substantial amount of early disclosure on these cases in order to speed up progress towards resolving the factual issues (although, as stated above, the nature and scope of the factual dispute remains unclear). Post Office does not, however, agree to give disclosure sought in your draft Directions. Your clients have sought one-sided, overly broad and manifestly disproportionate disclosure on issues that are not yet the subject of any properly particularised pleading, such that giving disclosure would be not only vastly expensive but impracticable (because there would be no properly articulated case against which to apply the test for standard disclosure) and which would have the effect of dealing the progress of the litigation. As explained below, we have proposed that more limited categories of disclosure are provided by the Claimants and Post Office.

3.4 Post Office is willing to explore using an agreed statement of facts at a preliminary issues trial. It will be difficult to formulate such an agreed statement, not least because of the absence of any detailed response to Post Office's factual case in the Generic Reply. From our experience with the pleadings we anticipate that there are likely to be substantial disputes around the factual matrix against which the parties entered into contracts. We therefore propose that a group of

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Lead Claimants is selected and that the Claims of those Lead Claimants are individually pleaded and used to decide contested points of fact at a preliminary issues trial.

Horizon disclosure

3.5 We recognise that in parallel with any preliminary issues you wish to make progress on the issues relating to Horizon. Our client's proposed Directions stop short of giving permission for expert evidence because it is not possible at this stage to formulate proper questions to put to an expert (not least because the Claimants' case in this regard remains general and speculative: see, for example, paragraphs 36 to 37 of the Generic Reply). We propose providing your IT expert with access at Fujitsu's premises in Bracknell to around 4,000 technical documents that describe the Horizon IT architecture. This is in addition to access to the Known Error Log and Second Sight, both of which have already been offered / agreed in correspondence. With the benefit of this information and decisions on preliminary issues, we are hopeful that more informed decisions can be made about the expert evidence that may be needed in the future.

Further information

3.6 Around 60% of the Claimants are prima facie time-barred and/or have settled their claims. It is therefore important to address these issues at an early stage as it may significantly change the dynamic of this Group Litigation if a large number of claims are not able to proceed. Having reviewed the Reply, we note that this issue may turn on the circumstances of each case. We therefore propose Directions that further information be given on the positions of those Claimants affected by these issues.

3.7 It is clear from the generic pleadings that a key issue in this litigation will be how your clients have accounted for shortfalls in their branches. This point was discussed at the GLO hearing and a question on it was inserted in the Schedules of Information (**SOIs**). As we have explained in other correspondence, the SOIs do not answer this question adequately or at all. Our Directions therefore call for more information on this point from all Claimants.

3.8 We have also included orders to require the Claimants to provide more detailed valuations of their Claims. Post Office's view is that there are points of principle on quantum that could usefully be addressed at a preliminary issues trial. This information will assist the Court in making proportionate case management decisions. It is also necessary for ADR to have any chance of success, not least because Post Office has no real insight into how the various heads of claim asserted by the Claimants have been valued but suspects that these have been vastly over-valued.

3.9 The net result of the above should (i) give the parties clarity on the legal duties between them, (ii) provide a greater understanding of the technical questions that need to be asked of experts about Horizon and (iii) allow the proportionality of future case management to be assessed. We believe this will reduce the costs of disclosure and expert evidence going forward and make it more likely that this matter can be resolved without the need for a full trial of each Claimant's claim.

3.10 We set out below more detailed commentary on both your and our client's draft Directions.

4. Potential Lead Claimants (para 1 of our client's proposed Directions Order)

4.1 We agree with your suggested mechanism for selecting Lead Claimants. However, as already noted, we are not able to group the Claimants into classes of claims which are sufficiently similar to each other to enable Lead Claimants to be chosen with any confidence. In these circumstances, we believe that the Claimants we choose at this point in time can be Potential Lead Claimants only. We have proposed 40 Potential Lead Claimants but are open to your thoughts on whether the number should be different. Given that our client does not have a clear understanding of the ranges of claims that it faces, given the heterogeneity of the Claims and the large time period encompassed by the GLO, Post Office can see the benefit of having a relatively large pool of Potential Lead Claimants, at least at this stage.

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4.2 We do however reserve the right to call for more or different Lead Claimants in the future. We have explained in detail in our previous correspondence and our witness evidence for the GLO that the cases in this litigation are diverse with few common issues. The very poor quality of the SOIs has made the diversity problem worse. The absence of any real clarity and coherence in the SOIs has created a situation in which Post Office still does not know what specific factual allegations are being advanced by which Claimants and is therefore working in the dark when it comes to selecting Lead Claimants who could be expected to cover the broad range of claims made in this case. Without more information about the range of claims there is a serious risk of selecting Lead Claimants that are not representative of all or even many Claimants. It may well be that further Lead Claimants will be required in the future depending on the course of this litigation. We would welcome your comments on this point specifically, as it would be very regrettable if, after the trial of Lead Claims, it is discovered that the pool of Lead Claimants fails properly to capture the breadth of the claims our client is in fact facing.

5. Early Disclosure (paras 2 to 8)

5.1 Throughout this litigation, you have made a repeated complaint that your clients are unable to proceed without further disclosure from our client. We have previously set out the reasons why we disagree with this, in particular that your clients have day-to-day knowledge of the events which occurred within their branches and have within their own knowledge the necessary information to plead their claims.

5.2 Our client has also already disclosed numerous documents to you during the course of this litigation in response to specific requests. It has also disclosed 140 contractual documents. We pause to note that by contrast, your clients have not disclosed a single document to our client. The costs to Post Office of providing voluntary disclosure have already been very substantial. We have indicated previously our client's concern that your firm is using requests for information and disclosure in preference to obtaining instructions from its clients.

5.3 Furthermore, many of your clients have the benefit of disclosure given through the Mediation Scheme that runs to hundreds if not thousands of documents and the reports prepared by Second Sight and Post Office into specific cases. You also now have access to Second Sight.

5.4 Nevertheless, our client is prepared to provide more early disclosure to assist with the selection and pleading of Lead Claimants (including for the preliminary issues discussed below). This is not intended to be a substitute for standard disclosure. Our Directions Order provides for both parties to search for and disclose certain key categories of documents. We believe that this will return the greatest number of relevant documents for a proportionate amount of time and cost and will leave your clients in a good position to plead the cases of selected Lead Claimants. We should make clear that even this reduced disclosure has substantial cost implications for Post Office.

5.5 To be clear, this is not the standard disclosure on Lead Claimants that you have proposed. Standard disclosure cannot be given until those cases are pleaded, as otherwise our client will not know what documents are material to the issues in a particular case and therefore need to be disclosed. We also note that any order for standard disclosure (even once a case is pleaded) risks pulling in an extremely wide range of documents. For example, if a Lead Claimant was to allege inadequate training, this could require a vast amount of disclosure. We describe below the problems with giving this disclosure.

5.6 By contrast with our approach, the disclosure requests in your draft Order are extremely broad, would likely lead to significant satellite disputes, would be very costly to comply with and take substantial time to conclude.

5.7 Although you label the Order at paragraph 3 of your draft Directions as a form of staged disclosure, it covers nearly all the material factual issues in this case and relates to nearly all the points made in section A to the GPoC which sets out the factual background to the claims. This is not staged disclosure but is tantamount to standard disclosure in terms of the scale and cost of the task that it foresees. This cannot sensibly be carried out without the benefit of individual pleadings or even factual pleas at a generic level.

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5.8 Neither your draft Order nor any of your related correspondence makes clear why you have tried to select certain categories of documents over other categories, or why these categories might assist with the resolution of cases, or why all the documents you seek would even be relevant to the claims your clients have brought.

5.9 Determining the scope of the disclosure you are seeking will also be very difficult based on the GPoC alone, given the very generalised nature of the allegations in the GPoC. The SOIs do not assist in the narrowing the scope of disclosure. We repeat here our client's grave concerns about the quality of those documents as raised in our Third Letter of 1 September 2017.

5.10 In light of the above, there is a high risk that our client would need to give disclosure of all of its documents on a given subject in order to comply with the very broad and generic disclosure orders which you propose. This would come at an extremely high cost, take an inordinate amount of time and come with no assurance that the disclosed documents would actually be relevant to the cases of any particular Claimant and contribute in any way to the fair and efficient resolution of these proceedings.

5.11 Your request for disclosure of "*training policies and practices*" is a good example of the problem. The GPoC says the following about training:

5.11.1 At 64.1 there is an implied term that Post Office was to "*provide adequate training and support (particularly if and when the Defendant imposed new working practices or systems or require the provision of new services)*".

5.11.2 At 92.1 there is an allegation of breach that Post Office failed to provide training in relation to:

(a) Horizon;

(b) new services;

(c) balancing accounts;

(d) resolving shortfalls;

(e) identifying root causes of losses;

(f) transaction corrections;

(g) Operating Manuals (which we note cover all Post Office operations); and

(h) how postmasters should train their assistants.

5.11.3 We note that paragraph 92.1 is caveated by paragraph 91 as only being "*indicative breaches*", so the above list is not exhaustive.

5.12 The general and non-exhaustive nature of the GPoC leaves wide open the question of what may need to be disclosed. The Claimants have not positively asserted which products and transactions they allege Post Office failed to provide training in respect of. At present, our client would have no safe basis on which to reach a view because, since specific transaction and products are not mentioned in the GPoC and no individual case has been pleaded in this regard, the vague and general allegations in the GPoC would seem to encompass training in relation to any and all types of transaction (even those that, it seems to us, are unlikely to be the subject of any allegations by specific Claimants). This may lead to either potentially important disclosure being missed and the exercise having to be repeated or Post Office spending hundreds of thousands or even millions of pounds reviewing and disclosing documents that, in the event, contribute nothing to the resolution of these proceedings.

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5.13 If Post Office adopted a very broad approach to ensure that all conceivably responsive documents are covered by its searches, the combination of the GPoC and the order at paragraph 3e of your Directions could require disclosure of all documents regarding:

5.13.1 all changes to practices, systems, services and products at Post Office that could give rise to a need to further training over a 17 year period;

5.13.2 all internal decisions made by Post Office on whether or not to provide or update training in light of the above over a 17 year period;

5.13.3 all training policies, training materials and handouts given to postmasters over a 17 year period;

5.13.4 all guidance for all trainers, the training and qualifications of trainers, internal emails between trainers and their line management over a 17 year period; and

5.13.5 all practices used by Post Office to roll out training, managing the delivery of training, and gather feedback on training over a 17 year period.

5.14 We remind you in this regard of the huge scale of Post Office's operations. These documents are not stored in one location and would require searches of multiple servers and hardcopy locations. We would also need to review the emails of dozens, if not hundreds, of people who have been involved in training over the last 17 years which may mean retrieving archived records. We will (if needed) prepare evidence setting out the enormous scale of the task faced by our client if it were asked to give the disclosure you are seeking.

5.15 The above issues with the breadth and imprecision of the disclosure you are seeking apply equally to paragraphs 3c to 3f in your Order.

5.16 In short, we believe that to provide the disclosure required in paragraph 3 of your draft Directions would cost over £1m and take a minimum of 9 months, and more likely 12 months, to complete. This is not an effective or proportionate way to proceed. By contrast, we contend that our proposed approach to disclosure would be a proportionate and appropriate way to move this litigation forward.

5.17 In relation to paragraphs 4(d) and 6(b) of our client's proposed Directions, we are currently discussing with Fujitsu the best method by which to extract this data from Horizon. Retrieving this data is a considerable task because it is a labour-intensive process. As a rough guide, Fujitsu have informed us that it takes a day to retrieve 1 week of data for a branch due, in part, to the checks that are conducted on the data integrity controls. Side-stepping these controls could invalidate them with the possibility of creating a situation in which Post Office could no longer have confidence in the integrity of the data. We expect to be in a position to confirm the timings for extracting this data by the CMC.

5.18 Disclosure by the Claimants is dealt with at paragraphs 5 and 7 of the proposed Directions. We have sought to limit these categories of documents to disclosure which would be proportionate and appropriate for the Claimants to provide. However, we do not know how your clients store their documents and we recognise that a number of these requests are currently drafted in a broader fashion than those which we have drafted for Post Office (for example, requests 5(d) and 5(g)). We would welcome your proposals on narrowing these categories of documents, taking into account your knowledge (and the Claimants' knowledge) as to what documents would in practice be covered by the categories, where they are likely to be located, etc.

6. Experts and Horizon (paras 2a and 2b)

6.1 As to expert evidence, we believe that it is premature for the Court to give permission for expert evidence without a clear understanding of the issues to be addressed and / or without being able to formulate questions to be addressed by experts.

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6.2 This difficulty is principally caused by the fact that, putting it in neutral terms, the allegations regarding Horizon are very general, vague, unclear and (we would say) speculative.

6.2.1 Paragraph 94A of the GPoC is a good example of the problem. The Claimants broadly assert that Horizon is not fit for purpose, which is stated to include (presumably non-exhaustively) "*error repellency*". No particulars are given of the types of errors the Claimants have in mind or how Horizon should have better "repelled" them. Based on these very vague pleadings, the Claimants are now calling for significant disclosure (see paragraphs 3a and 3b of your proposed Directions Order) and expert evidence.

6.2.2 Similarly, paragraphs 36, 37 and 40 of the Generic Reply set out extremely general allegations in relation to Horizon (and, we would contend, at least in part, appear to proceed on the assumption that the Claimants are not responsible for the shortfalls, thereby assuming as established what must be proven).

6.2.3 As Claimants, it is for your clients to assert positive and specific claims that Horizon is defective, not fit for purpose, etc. They should plead and particularise the circumstances where they have experienced alleged problems with Horizon. For example, if they wish to allege that Horizon provided insufficient information to postmasters (para 94 GPoC), is not sufficiently "error-repellent" (para 94A GPoC) or did not accurate record transactions (para 95 GPoC), then each Claimant could indicate what the relevant errors were, how and when they were made and how they should have been "repelled". No guidance on any of these questions is given, either the GPoC or the SOIs. It is actively unhelpful to simply assert that Horizon failed properly to effect or record transactions (paragraph 40 of the Generic Reply). There is no solid foundation on which to identify focused expert issues and evidence.

6.3 A further problem with your proposal is that it takes no account of the fact that the parties have very different positions on the legal duties of Post Office and the Claimants and the relevance of these duties to the operation of Horizon. The precise formulation of these duties will change quite considerably the nature of the expert evidence needed. Taking the above example again, if the Court decides that there is no duty on Post Office to ensure that Horizon is free from defects, then expert enquiries into "error repellency" may not be needed.

6.4 So we can formulate appropriate orders for disclosure and expert evidence around Horizon, we first need better pleadings on this topic and some preliminary decisions on the legal duties in relation to it (which are addressed in our list of proposed preliminary issues).

6.5 It may be that your clients' real intention is not to seek permission for expert evidence at this stage but rather to obtain an order that presses the parties to start the process of gathering information on Horizon in order to get experts up to speed. If that is the case, our client can see the sense of this and is willing to cooperate, but we would suggest approaching the matter slightly differently, as follows:

6.5.1 Our client can provide some early disclosure about Horizon, even in the absence of any proper pleading in this respect. We would accept that the most sensible first step is for our client to provide reasonable and proportionate access to basic information about Horizon. We therefore enclose with the proposed Directions a list of 4 documents that are held by Fujitsu and that, we are informed, Fujitsu believes best describe the Horizon IT architecture at a high-level. Fujitsu has agreed to provide copies of these documents.

6.5.2 Our proposed Directions also provide for access by your IT expert to around 4,000 technical documents about Horizon also held by Fujitsu. These technical documents are held in a content management system and are the current version of each of the live technical documents for Horizon Online. These documents range from high level designs to detailed designs of the system and its code, along with documents that describe hardware that is used in the system.

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6.5.3 These documents are security sensitive and are also the internal know-how of Fujitsu, which is highly commercially sensitive. Fujitsu has indicated that it will consent to your expert inspecting these documents at its premises in Bracknell, but it has not agreed to provide copies, at least at this stage.

6.5.4 In addition to these 4,000 documents, there are approximately 20,000 further documents held by Fujitsu regarding Horizon in its content management system. These may be old documents that are no longer used or previous versions of existing documents, with the version number now up to 36 on some documents. Fujitsu has suggested that the (approximately) 4,000 documents being offered for inspection are the best place to start for the experts to understand the Horizon system, since they describe the system as it stands now. Fujitsu has indicated that it could be willing in the future to allow your expert to inspect the further documents at its premises in Bracknell, if a need for to inspect them is explained. This has not been included within the proposed Directions Order at this stage as the review of the disclosed and inspected documents will hopefully guide which (if any) of these further documents your expert will feel that it is necessary to inspect and in relation to which Fujitsu will be asked to allow access (taking into account its concerns as to confidentiality).

6.6 This approach is provided for in paragraphs 2(a) and (b) of our client's proposed Directions Order. The proposed Order also includes additional protections around the inspection and use of Fujitsu's confidential and sensitive information. The non-disclosure agreement it refers to will be (or will be based on) Fujitsu's standard non-disclosure agreement and we will provide a copy in due course.

6.7 We should make it clear that our client is making this proposal in spite of its belief that the Claimants' allegations regarding Horizon are speculative. For the avoidance of any doubt, it fully reserves its right at any time to assert that these allegations have no proper evidential basis, are not sustainable and do not justify a fishing expedition in the hope that something might turn up. As a side point, we note that expert evidence may be needed on other issues as well as Horizon, such as forensic accounting expertise on certain cases. We cannot comment further at this stage however, given the absence of detailed particulars as to quantum, and our client's position on the full scope of expert evidence is fully reserved.

7. Claim Questionnaires (para 9)

7.1 To assist with (i) picking Lead Claimants and (ii) those Lead Claimants pleading their cases, our client is prepared to offer further disclosure, as explained above. As explained in our Second Letter of 1 September 2017, due to the poor quality of the SOIs it will be difficult for our client to select Preliminary Issue Lead Claimants which are representative of the claims brought by the group and the preliminary issues proposed below, and impossible to pick any other Lead Claimants. You have previously refused to rectify the SOIs to address our client's concerns. We would now urge you to make a sensible proposal on what additional information should be provided by the Claimants to remedy the deficiencies in our client's understanding of the ranges of claims our clients face and to make it possible to ensure that the Lead Claimants can safely be said to cover those ranges of claims.

7.2 Subject to any proposals you may make, it appears to us that it may be appropriate to adopt a procedure under which (1) Post Office has liberty to serve a questionnaire on the Claimants, (2) the Claimants have liberty to apply to raise objections, and (3) failing any application in relation to any questions, the Claimants will be required to give proper answers to those questions within a specified period.

7.3 We look forward to hearing from you on these points.

8. Preliminary Issues and Second CMC (paras 10 to 14)

8.1 In your Second Letter of 19 September 2017, you proposed that there be a preliminary issue on whether the contractual relationship between the parties amounts to a "relational contract". You

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make this proposal because, you say, this will have an effect on the construction of all Post Office's contracts.

8.2 As we have said previously, the dispute as to whether or not the contracts can properly be characterised as "relational" and what, if any, implications this has for the construction of those contracts is one small part of the dispute as to implied terms and construction. It is an interwoven part of a much larger dispute. Post Office has pleaded 2 implied terms and in its Defence responded to the Claimants' (now more than 20) pleaded implied terms as well as a number of related points on the construction of express terms. From the Generic Reply, we now know that the Claimants deny Post Office's implied terms and its construction of (seemingly all) of the key express terms. Post Office does not agree that it would be useful to select one sub-issue going to the implication of one of the many terms alleged (an implied term requiring good faith, transparency, etc.) and determine it in isolation, especially where Post Office has pleaded that whether or not the contracts are characterised as "relational" will not have any (or any substantial) effect on the contract and/or the application of the contractual terms to the facts of the Claims: see paragraph 85 of the Generic Defence.

8.3 Given the above, Post Office's position is that, if there is to be the trial of any preliminary issues regarding the construction and implication of terms, those issues (including any argument you might wish to advance regarding a "relational contract") should all be dealt with together. Although we are conscious that this would not be a straightforward process and would have some disadvantages, we tentatively propose for consideration whether these issues should be tried as preliminary issues for all the major versions of the contract used for subpostmasters. This exercise should not however extend to franchisees, directors, guarantors or employees who are in markedly different positions, both in relation to the terms of their contracts and legal duties and the factual matrix against which their legal positions will be judged.

8.4 Moreover, from our review of the SOIs, we believe that there are around:

8.4.1 4 Claimants who were crown employees.

8.4.2 14 Claimants who were franchisees or guarantors of franchisees.

8.4.3 6 Claimants who were directors of companies who were postmasters or franchisees.

8.5 These figures are not precise because (i) some of the SOIs are unclear on even this basic detail and (ii) some Claimants had multiple roles (e.g. he or she was an employee who later became a subpostmaster). In any event, the numbers of these types of Claimants is relatively small, and we believe it disproportionate to include these Claimants within the preliminary issues.

8.6 We set out in Schedule 3 to our draft Directions a list of possible preliminary issues for your consideration, subject of course to the Managing Judge's views. We invite your comments.

8.7 As noted above, we are happy to explore your idea of an agreed Statement of Facts for this purpose. However, we anticipate that this would be a slow and difficult process and would leave many issues outstanding and refer to comments above in paragraph 3.4 on this matter.

8.8 You propose to deal with these points of dispute through evidence from a small number of Claimants. We can see some merit in this proposal. However, any evidence will need to be preceded by the pleading out of individual cases so as to identify (and, hopefully, narrow) the factual issues in dispute; in the absence of such pleadings, Post Office will not know on what factual points evidence is required or even what time periods it should address in its evidence. We repeat the points made in our previous correspondence and above about the inadequacy of the GPoC, the Reply and (in particular) the SOIs, the result of which inadequacy is that there is as yet no clear framework on which witness evidence could be built.

8.9 We therefore propose that 20 Preliminary Issue Lead Claimants are selected from the 40 Potential Lead Claimants, their claims are pleaded out and then the CMC is restored to allow the Managing Judge to review the position in the light of the pleadings, to make a final decision as

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whether to proceed with the preliminary issues suggested and, if he sees fit to do so, to give further directions on evidence.

8.10 We believe that having this number of claims pleaded will greatly assist to understand both the context and practical consequence of any preliminary issues for particular Claims and, more generally, the application of the outcome of the legal issues to the type of factual allegations that are advanced. In this regard, the claims of subpostmasters and assistants who have been convicted may be included in the pool of Lead Claimants for preliminary issues. On the Claimants' case, these Claimants will be affected by the determination of the preliminary issues (or some of them).

9. Strike out (paras 15 to 18)

9.1 As referred to in our letter of 1 September 2017 and your letter of 19 September 2017, there are a number of other issues that also need addressing at the CMC. We have made provision for these in our draft Directions Order and describe them briefly below:

9.1.1 Conspiracy claim. Our client requires the abandoned conspiracy claim to be withdrawn by way of amendment to the Claim Forms. We note your position on s.32 Limitation Act.

9.1.2 Misfeasance in public office. In your letter of 27 October 2016, you agreed to discontinue the misfeasance in public office claim having considered the arguments in our Letter of Response. Those arguments were that Post Office, as a private company, was not a public office holder. It is irrelevant if this claim is connected to the malicious prosecutions claims or not; it is bound to fail anyway. Please confirm that this claim will be withdrawn.

9.1.3 ECHR. Your letter of 19 September 2017 is the first time you have ever said anything about the nature of the human rights claims. These claims were not discussed at all in the Letter of Claim or your long substantive letter of 27 October 2016 or pleaded. Please properly explain the nature of this claim, as at present we have no information about how this claim is being formulated or why Post Office, as a private company, could be subject to such a claim. Failing an adequate explanation, we will contend that this claim should be withdrawn or struck out.

9.1.4 Bankrupt claims. Please confirm that you are not aware of any other Claimants having been made bankrupt as we requested in our Second Letter of 1 September 2017.

Please also provide evidence of the claim assignment or annulments referred to in the schedule to your letter of 19 September 2017 by noon on 6 October 2017.

Assuming that there are no other bankrupt claims and the above evidence is provided, no orders about will be required in the Directions Order.

9.1.5 Deceased Claimants. Please respond substantively on this issue by noon on 6 October 2017.

9.2 In relation to your second letter of 20 September 2017, your refusal to engage on specific cases is counter-productive. It may generate the impression that your clients are trying to hide particularly weak claims in amongst the group and so swell its ranks. This is wasting costs on both sides. We also do not agree with your characterisation of the Group Litigation process.

9.3 According to the SOIs, the values of the manifestly hopeless claims identified in our Second Letter of 1 September are, except for one claim, all in excess of £100,000. Had these claims been brought individually, we contend that they would have been the subject of reverse summary judgment or struck out.

9.4 Further, the Group Litigation process does not eliminate the need for your clients ultimately to prove the merits of each individual case. Although there may be some issues that can be dealt

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with collectively, there are many more that will ultimately turn on the circumstances of individual cases – as we have been saying since the outset of this matter. It therefore will result in no saving of costs to indefinitely put off addressing the point that certain of the Claims obviously have no real prospect of success

9.5 We note your point about our firm only providing *examples* of manifestly hopeless claims. We therefore propose not addressing this point at this first CMC, but will return to it at the second CMC described in paragraph 13 below once we have had more time to review all of the SOIs and the further information discussed below and to identify a more comprehensive list of claims that our client contends should not proceed any further.

10. Further Information on time-barred claims and settled claims (paras 19 and 20)

10.1 Your clients' Generic Reply fails to address the important issues regarding Claimants who are potentially time-barred and / or have signed settlement agreements with our client.

10.2 Paragraph 69 of the Generic Reply simply denies that the settlement agreements provide our client with any defence yet does not provide any specific grounds for this. Paragraph 71 does little more than state the sections of the Limitation Act 1980 on which the Claimants rely. We note that neither of these matters were addressed directly or in detail in the GPoC, and the Claimants' reliance upon s32(1)(c) of the Limitation Act 1980 was not brought to our client's attention in the Claimants' pre-action correspondence.

10.3 We believe that there are:

10.3.1 At least 192 Claimants whose claims may be time-barred. The standard limitation period for most of your clients' claims is no more than 6 years. This would include all the claims for breach of contract, fiduciary or agency duty and in tort. The limitation date for these claims is therefore either 11 April 2010, 26 July 2010 or 24 July 2011 depending on which Claim Form a Claimant is named. If one assumes that the last material action of our client is the termination of a Claimant's contract then this termination date is likely to be the key date for limitation purposes. Using the termination dates stated in the Schedules of Information and on the Group Register, we believe that 192 Claimants were terminated before their respective limitation date, meaning that their claims may be wholly time-barred.

10.3.2 114 Claimants have entered into settlement agreements with Post Office. These settlement agreements contain wide releases of claims against Post Office. They occur in generally two situations:

(a) 12 Claimants settled with Post Office as part of the Mediation Scheme.

(b) From its internal records, Post Office currently believes that 102 Claimants settled with Post Office as part of either its Network Change or Network Transformation programmes. In consideration for a payment to leave the Post Office network or convert their existing branch to a main or local branch, these Claimants waived all claims against Post Office. Our client is currently in the process of locating the relevant settlement agreements.

10.4 Details of time-barred Claimants can be found at Schedule 6 to the proposed Directions and details of those who entered into settlement agreements can be found in the enclosed spreadsheet. Please note that these lists of Claimants are not exhaustive and further information may come to light in due course that identifies further Claimants as falling into the above categories.

10.5 It is not clear from the Generic Reply whether all Claimants are asserting that they relied on the same fraudulent representations or concealed fact or mistake that Post Office is said to have made to or concealed from all postmasters in general, or whether each of them intends to assert that there were fraudulent representations made to or facts concealed from individual Claimants.

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Our client is therefore left in a position that it does not know the case which is being brought against it. We would be grateful if you would clarify this point.

10.6 If the latter, then our client needs to understand the fraudulent representation or concealed fact(s) or mistake alleged by each Claimant that are relied on to extend the standard limitation periods and/or avoid a settlement agreement. Paragraphs 19 to 20 of our proposed Directions provide orders for your clients to provide further information on this point.

11. Further Information on Accounting to Post Office (para 21)

11.1 As we raised in our Third Letter of 1 September 2017, question 3.2(d) in the SOIs was included by the Master to draw out how your clients have dealt with shortfalls. This is a key issue in this litigation. The response in your Second Letter of 20 September 2017 is evasive and does not address the failure to answer this question in the SOIs in the majority of cases.

11.2 Our proposed Directions therefore call for more information from each Claimant on how they have accounted for shortfalls. The wording of this request for information mirrors the wording in the GPoC. In essence, we are calling for each Claimant to clarify which aspects of the generic claim they are relying on.

11.3 Please take this letter and our proposed Order as a request that you provide this information voluntarily in accordance with Practice Direction 18.

12. Further Information on Quantum (paras 22 and 23)

12.1 In our Third Letter of 1 September 2017, we explained how the SOIs failed adequately to value the claims in breach of the GLO. This means that it is difficult to judge whether directions are proportionate and will be an impediment to any ADR process.

12.2 Our proposed Directions therefore include orders for your client to submit proper claim valuations. These orders go further than the GLO, in that they call for your clients to provide more detail as to the value of their personal injury claims and their stigma / reputation loss claims. We see no reason why your clients should not provide this information. It will assist the parties because:

12.2.1 Our client's case is that stigma / reputation losses are not recoverable in connection with many of your heads of claim. This could be a useful question to address as a preliminary issue. However, to decide whether it worth investing time on this point we first need to understand how much is being claimed for stigma / reputation loss. We have not included this issue in the list of preliminary issues at the moment, pending further quantum information.

12.2.2 Post Office presently considers it implausible that, as the SOIs indicate, 67% of the Claimants can have suffered personal injuries in respect of which compensation could be recovered. Properly valuing these claims will flush out those Claimants who did and did not truly suffer a personal injury and so provide a more stable footing on which to form a realistic estimate of the values of the Claims. We have therefore called for the personal injury claims to be valued in accordance the Judicial College Guidelines, and have only required your client to indicate into which bracket a claim falls. You will note that in the disclosure section of our draft Order we have also sought disclosure of medical records for each Claimant who is claiming personal injury for a similar reason.

12.3 Please take this letter and our proposed order as a request that you provide this information voluntarily in accordance with Practice Direction 18.

13. Further CMC (paras 13 and 14)

13.1 As you will see in our draft direction, the various strands above can be pulled together at a further CMC to take place in on the first available date after 3 October 2018. At this second CMC, we envisage the Court making decisions on:

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13.1.1 the list of preliminary issues (if not agreed or ordered at the first CMC);

13.1.2 directions to a preliminary issues trial; and

13.1.3 possible directions for handling any summary judgment / strike out applications made by our client.

14. Costs

14.1 For the sake of avoiding argument at the CMC, our client is prepared to agree to costs in the case in respect of our client's application in relation to out of time amendments, if your clients will agree to costs in the case in relation to its recent application for an extension of time for the Generic Reply. If this point is not agreed, our client intends to seek its costs on its application and will contend that your client should bear the costs of its application for an extension of time.

14.2 We have also included the standard provisions that those Claimants who have served Notices of Discontinuance shall pay to the Defendant their respective individual costs and an equal proportion of the common costs up until the date on which their Notice of Discontinuance was served on the Defendant.

15. Disclosure Report

15.1 We are in receipt of your clients' Disclosure Report served on us today. On the basis that the Claim Forms include claims for personal injuries, pursuant to CPR 31.5(2) we do not believe that CPR 31.5(3) applies and there is therefore no need for the parties to file and serve a Disclosure Report.

15.2 Further, in a case of this kind, we do not believe that a Disclosure Report would be of any practical utility, as your clients' own disclosure report demonstrates.

15.3 This letter proposes that the parties give a substantial amount of early disclosure to assist with the selection and pleading of Lead Claimants but not for the parties to give standard disclosure. Further, we propose to set out substantial detail as to disclosure, including the sources of potentially relevant documents, in our evidence for the CMC. We therefore do not consider that, if required, to file and serve a Disclosure Report serves a useful purpose at this time and we have not prepared one. However, we consider that the spirit of CPR 31.5 is to encourage dialogue on disclosure and hope that this letter will be a useful step in such a process.

16. Next steps

16.1 We welcome your comments on our proposed Directions Order by noon on 6 October 2017. We appreciate that this is asking for a quick response, but the parties only have limited time to discuss these matters before the Court deadline of 9 October 2017 for filing draft Directions due to the later provision of the Generic Reply.

16.2 If you are really unable to provide a full response by this time, we would ask you to respond to the specific requests for response in paragraphs 9.1.2 to 9.1.5 above by noon on 6 October 2017 and invite you to respond to the remaining points as soon as possible thereafter.

16.3 We do however believe that much time might be saved if the parties were to meet to discuss these matters rather than exchange correspondence. If you would prefer to meet, please provide your dates of availability.

Yours faithfully

Bond Dickinson LLP

Bond Dickinson LLP