

womblebonddickinson.com



13 February 2018

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

Womble Bond Dickinson (UK) LLP

Oceana House
39-49 Commercial Road
Southampton
SO15 1GA

Tel: **GRO**
Fax: **GRO**
DX: 38517 Southampton 3

andrew.parsons@wbd.com **GRO**
Direct: **GRO**

Our ref:
AP6/AP6/364065.1369
Your ref:

By email only

Email: james.hartley@freeths.com **GRO**

Dear Sirs

**The Post Office Group Litigation
Stage 2 Disclosure**

We refer to your third letter of 9 February 2018.

Please find enclosed our comments on your Model C requests for Stage 2 Disclosure.

Your requests for disclosure have been submitted in the context of the parties having agreed to staged disclosure. Stage 2 disclosure is currently the focus and this relates to the Common Issues, which are of a contractual nature. The breadth of this disclosure was discussed with the Court at the CMC on 2 February 2018. We have in mind:

- The Managing Judge's discussion with your Counsel in which he confirmed he intends "...to construe the contractual relations in accordance with the legal principles..." (transcript page 24).
- The discussion between both Counsel and the Managing Judge concerning disclosure not extending beyond the Lead Claimants to the wider population of Claimants or other subpostmasters (see transcript pages 9-10).
- The Managing Judge's comments that any request for disclosure needs to be a "*narrowly defined, properly considered request*" (transcript pages 24-25). This mirrors the wording in the draft Practice Direction which provides that Model C disclosure is of "*particular documents or narrow classes of documents*".
- The Managing Judge also warned the Claimants about attempting to "...put[ting] a whole bunch of categories in model C which actually when you look at them is just a rehash of his model D." (transcript page 30).

For Model C disclosure to be effective, the classes of documents being requested need to be narrowly defined. We interpret this to mean narrower than pointing to a particular type of document in relation to an issue. For example, *emails in relation to shortfalls* is not a proper class of documents and is not what was envisaged under the draft Practice Direction.

Having carefully considered your requests for disclosure, we believe that most of them go beyond the above boundaries. Nearly all of them go to issues of breach and or call for disclosure of documents that

Womble Bond Dickinson (UK) LLP is a limited liability partnership registered in England and Wales under number OC317661. VAT registration number is GB123393627. Registered office: 4 More London Riverside, London, SE1 2AU, where a list of members' names is open to inspection. We use the term partner to refer to a member of the LLP, or an employee or consultant who is of equivalent standing. Womble Bond Dickinson (UK) LLP is authorised and regulated by the Solicitors Regulation Authority. Womble Bond Dickinson (UK) LLP is a member of Womble Bond Dickinson (International) Limited, which consists of independent and autonomous law firms providing services in the US, the UK, and elsewhere around the world. Each Womble Bond Dickinson entity is a separate legal entity and is not responsible for the acts or omissions of, nor can bind or obligate, another Womble Bond Dickinson entity. Womble Bond Dickinson (International) Limited does not practice law. Please see www.womblebonddickinson.com/legal notices for further details.

4A_38100510_1

are not admissible factual matrix evidence (such as Post Office's internal and subjective views on its contract terms).

Many of your requests are also very wide. They are not narrow classes of documents, as properly understood under the draft Practice Direction. Often they are your Model D requests drawn up in new wording.

You have accepted most of the classes of documents proposed by our client. We remind you that these classes were intentionally generous and went beyond what our client would say was required for the Common Issues trial. This does not however give your client licence to expand the scope of disclosure even further.

For purely pragmatic reasons, we have accepted those requests which were sufficiently narrow that they could be given without substantial additional cost (despite them being outside the scope of Stage 2 Disclosure). The inclusion of these documents within Stage 2 disclosure is without prejudice to Post Office's position on the admissibility of them in the Common Issue trial. We have also, where possible, sought to amend some requests to narrow them such that disclosure could be given as part of Stage 2. In all other cases, we cannot currently agree to your requests for the reasons stated above.

For the avoidance of doubt, we are not saying that your requests are absolutely refused. They may well be relevant to other issues in this litigation to heard at another stage in the process, but they are not appropriate for the Common Issues trial or as part of Stage 2 disclosure.

Enclosed with this letter is an updated version of your request table, with our comments next to each request. We would be prepared to talk through these with you to see if there is some way to narrow any of the requests such that they could be given as part of Stage 2 Disclosure.

Yours faithfully



Womble Bond Dickinson (UK) LLP