



**Common Issues
Judgment:
summary of the effect
on postmaster contracts**



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This document summarises the effect of the judgment in the Common Issues Trial in *Bates & Others v Post Office Ltd [2019] EWHC 606 (QB)* (referred to here as the **Judgment**) on Post Office Ltd's contracts with postmasters for the operation of a Post Office branch (referred to here as the **contracts**). In this summary, **postmaster** means the person or entity which is party to the contract with Post Office Ltd.

The Judgment changes the meaning of the contracts:

- It implies (adds) some **new terms** into the contracts. Most of these are additional obligations for Post Office Ltd. There are a small number of additional obligations that also apply to the postmaster.
- It **replaces** or **modifies** some existing terms. This mainly affects or restricts Post Office Ltd's rights under the contracts. In addition, the Judgment clarifies the meaning of the terms relating to the postmaster's responsibility for losses.
- It **removes** a small number of other terms. This affects or restricts Post Office Ltd's rights under the contracts.

These changes to the meaning of the contracts are summarised below. However, **the exact effect on each contract may vary and not all of these changes may apply to all contracts**. Please contact your area manager if you have any questions about this.

Please note that this summary reflects as far as possible the Judge's wording contained in the Judgment.

This summary includes various terms and phrases that may not be familiar to everyone, so we have provided some explanatory notes on the right-hand side. Please note these are provided for guidance only and are not definitive. This guidance does not have any legal effect and does not constitute legal advice on the meaning of those terms and phrases.

Judgment summary:
postmaster contracts

1. DUTY OF GOOD FAITH

A **new term** is added to the contracts requiring each of Post Office Ltd and the postmaster to act in good faith in the performance of its obligations and exercise of its rights under the contract.

Term or Phrase – Good Faith

Explanatory note – This is a legal concept that relates to how the parties must behave.

The Judgment states that this means that Post Office (or the postmaster, as applicable) is not entitled to act in a way that would be considered commercially unacceptable by reasonable and honest people.

2. NEW IMPLIED TERMS – GENERAL

New terms are added to the contracts that mean additional obligations **for both parties**. These new terms require each of Post Office Ltd and the postmaster:

- to take reasonable care in performing its functions and/or exercising its functions within the relationship, particularly those which could affect the accounts (and therefore liability to alleged shortfalls);
- to refrain from taking steps that would inhibit or prevent the other party from complying with its obligations under or by virtue of the contract; and
- to provide the other party with such reasonable co-operation as is necessary to the performance of that other party's obligations under or by virtue of the contract.

New terms are added to the contracts that mean additional obligations **for Post Office**. These new terms require Post Office Ltd:

- not to take steps which would undermine the relationship of trust and confidence between the postmaster and Post Office Ltd;
- to exercise any contractual, or other power, honestly and in good faith for the purpose for which it was conferred;
- not to exercise any discretion arbitrarily, capriciously or unreasonably; and
- to exercise any such discretion in accordance with the obligations of good faith, fair dealing, transparency, co-operation, and trust and confidence.

Term or Phrase – Capriciously

Explanatory note – This is generally taken to mean acting in an erratic and unpredictable manner, subject to whim

Term or Phrase – Arbitrarily

Explanatory note – This is generally taken to refer to decisions or actions being taken purely on the basis of the personal preference of whoever is taking the decision, as opposed to resulting from any systematic consideration.

3. ASSISTANTS

A **new term** is added to the contracts requiring the parties to co-operate in respect of the training of assistants in the operation of Horizon. A **new definition** of the Horizon system is also added to the contracts.

The **obligation on the postmaster** to provide training to its assistants is **modified** so that the postmaster shall only be required to train its assistants to the same and not a higher standard than the standard of training received by the postmaster from Post Office Ltd.

4. REIMBURSEMENT

The term (if any) in the contracts requiring the postmaster to reimburse Post Office Ltd in full on demand for all losses, claims, demands, proceedings, liabilities, costs and expenses (including reasonable legal costs and expenses) incurred by Post Office Ltd as a result of (i) any negligence or breach of the contract by the postmaster or its personnel (ii) any misuse or infringement of any intellectual property of any third party by the postmaster or its personnel and/or (iii) any claim brought under the Equality Act and/or its regulations in respect of the branch, is **removed**.

Additional note: please see section 5 in relation to the postmaster's responsibility for losses caused through negligence, carelessness or error.

5. LIABILITY FOR POST OFFICE CASH AND STOCK

The term in the contracts relating to the Postmaster's liability for cash and stock is **modified** to mean that **the postmaster is responsible for:**

- ♦ all losses caused through his or her own negligence, carelessness or error and also for all losses caused by the negligence, carelessness or error of his or her assistants.

Additional note: this should be read alongside the new terms in section 6 below.

6. LOSSES AND SHORTFALLS

New terms are added to the contracts that mean additional obligations for Post Office Ltd. These new terms **require Post Office Ltd:**

- to provide adequate training and support, including through the provision of training materials, to the postmaster, particularly if and when Post Office Ltd imposes new working practices or systems or requires the provision of new services;
- to provide a Horizon system which is reasonably fit for purpose, including any or adequate error repellency;
- properly and accurately to effect, record, maintain and keep records of all transactions effected using Horizon;
- properly and accurately to produce all relevant records and/or to explain all relevant transactions and/or any alleged or apparent shortfalls attributed to the postmaster;
- to co-operate in seeking to identify the possible or likely causes of any apparent or alleged shortfalls and/or whether or not there was indeed any shortfall at all;
- to seek to identify the causes of any such apparent or alleged shortfalls, in any event;
- to disclose possible causes of apparent or alleged shortfalls (and the cause thereof) to the postmaster candidly, fully and frankly;
- to make reasonable enquiry, undertake reasonable analysis and even-handed investigation, and give fair consideration to the facts and information available as to the possible causes of the appearance of alleged or apparent shortfalls (and the cause thereof);
- to communicate, alternatively, not to conceal known problems, bugs or errors in or generated by Horizon that might have financial (and other resulting) implications for the postmaster;
- to communicate, alternatively, not to conceal the extent to which other postmasters are experiencing problems relating to Horizon and the generation of discrepancies and alleged shortfalls;
- not to conceal from the postmaster Post Office Ltd's ability to alter remotely data or transactions upon which the calculation of the branch accounts (and any discrepancy, or alleged shortfalls) depend;
- properly, fully and fairly to investigate any alleged or apparent shortfalls; and

Term or Phrase – Error repellency

Explanatory note – This is a technical computer term meaning the way the system deals with errors.

**Judgment summary:
postmaster contracts**

- not to seek recovery from the postmaster unless and until:
 - (i) it has complied with its duties above (or some of them);
 - (ii) it has established that the alleged shortfall represented a genuine loss to Post Office Ltd; and
 - (iii) it has carried out a reasonable and fair investigation as to the cause and reason for the alleged shortfall and whether it was properly attributed to the postmaster under the terms of the contract.

The term in the contracts requiring Post Office Ltd to provide a helpline to postmasters is **modified** to require such helpline to be reasonably fit for purpose, including (to the extent applicable) any or adequate error repellency.

7. SUSPENSION

7.1 Right to suspend

In contracts containing a right to suspend, **new terms** are added, requiring **Post Office Ltd** not to suspend the Postmaster:

- (i) arbitrarily, irrationally or capriciously;
- (ii) without reasonable and proper cause; and/or
- (iii) in circumstances where Post Office Ltd is itself in material breach of duty in respect of the matters which Post Office Ltd considers give it the right to suspend.

The suspension clause is also **modified** so that Post Office Ltd may only suspend the postmaster if it is in Post Office Ltd's legitimate interests to do so.

7.2 Right to withhold payment during suspension

Post Office Ltd's right to withhold payment during suspension is **removed** from the contracts.

7.3 Temporary substitutes during suspension

Post Office Ltd's right to appoint a temporary substitute during suspension is **removed** from the contracts.

7.4 Access during suspension

The obligation on a postmaster to, at its own cost and expense, enable Post Office Ltd to maintain access to its branch during suspension is **removed** from the contracts.

8. TERMINATION

8.1 Termination – general

New terms are added to the contracts that mean additional obligations **for Post Office Ltd**. These new terms require Post Office Ltd not to terminate the contract:

- (i) arbitrarily, irrationally or capriciously;
- (ii) without reasonable and proper cause; and/or
- (iii) in circumstances where Post Office Ltd is itself in material breach of duty in respect of the matters which Post Office Ltd considers give it the right to terminate.

This does not restrict Post Office Ltd's ability to terminate for a repudiatory breach.

Term or Phrase – Repudiatory breach

Explanatory note – This is a legal concept that refers to serious breaches of contract.

It is generally taken to mean a breach of contract that relates to something so fundamental that it undermines the very purpose of the agreement and, in doing so, prevents the party not in breach from deriving any substantial benefit.

8.2 Termination on notice

The term in the contracts specifying the notice period on which Post Office Ltd may terminate the contract is **modified** to clarify that Post Office Ltd must conscientiously consider what the duration of the notice period should be, acting in good faith and taking into account all relevant factors (but not irrelevant ones).

8.3 Immediate termination

The term in the contracts giving Post Office Ltd the right to terminate immediately on giving written notice in the following circumstances is **modified** such that the right to terminate is limited to circumstances where the breach is repudiatory:

- the postmaster commits a material breach of the contract;
- the postmaster fails to provide Post Office Ltd products or services to the required standards, or at all;
- the postmaster fails to properly account for any money due to, or stock of, Post Office Ltd or its clients; and
- the postmaster fails to pay any sum due to Post Office Ltd under the contract by the due date.

9. CONSEQUENCES OF TERMINATION

The term (if any) in the contracts stating that the postmaster acknowledges that he/she shall not be entitled to receive any compensation or other sums in the event of the termination or suspension of the contract or compensation for loss of office is **removed**.

10. APPOINTMENT OF A NEW POSTMASTER ON TERMINATION

The term (if any) in the contracts giving Post Office Ltd discretion to appoint a new postmaster on termination of the contract is **modified** to clarify that Post Office Ltd must act for a proper purpose and in accordance with its duty of good faith when exercising its discretion to appoint a new postmaster.

11. AMENDMENTS TO THE CONTRACT

Post Office Ltd's rights to amend the terms of the contracts are **modified** such that Post Office Ltd may only make such amendments if the new terms are reasonable.