

Claim No. HQ16X01238

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
IN GROUP LITIGATION BETWEEN:

ALAN BATES & OTHERS

Claimants

-v-

POST OFFICE LIMITED

Defendant

draft/ GENERIC DEFENCE

[This document includes comments from Deloitte, FJ ALP, AVB,]

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INTRODUCTION

1. This Generic Defence responds to the Amended Generic Particulars of Claim (“GPoC”). Except where otherwise indicated:

- (1) references to paragraph numbers are to paragraphs of the GPoC;
- (2) the Defendant (“Post Office”) adopts the headings and abbreviations used in the GPoC, without making any admissions of any matters implied or connoted thereby;
- (3) where matters are noted, Post Office makes no admission and reserves its rights in relation thereto.

The generic nature of the GPoC

2. Many of the allegations in the GPoC are at a level of generality which omits important details, treats different situations as if they were the same and leads to obscurity. Many of these allegations cannot meaningfully be addressed, not least because their true nature and extent cannot be properly understood until the Claimants identify the particular actions or omissions relied on and the context in which and time at which they are said to have occurred. In this Generic Defence, Post Office responds to the general thrust of such generic allegations in simple terms, without going into detail and without prejudice to its right to admit, deny and/or advance a positive and/or more detailed case in response to allegations by particular Claimants pleaded with proper particulars.

3. At the pleaded level of generality of the GPoC, Post Office cannot anticipate all possible claims that Claimants may be seeking to advance. Nor can Post Office set out all factual and legal defences that it may prove appropriate to advance in all possible cases. In this Generic Defence, it identifies the defences that it considers may usefully be identified at this level of generality, without prejudice to its ability to identify further or other matters and defences as may be appropriate for such individual claims as may be pleaded.
4. In this Generic Defence, Post Office cannot cover all the variations in its operating practices and procedures or in the operation of Horizon that have occurred in the 18 years since Horizon was first introduced. Indeed, until individual claims are properly pleaded, Post Office cannot determine which particular practices, procedures or operations are relevant to those claims. Accordingly, Post Office generally refers to the current practices, procedures and operations.
5. Similarly, Post Office cannot cover all the variations made to the contracts relied upon by the Claimants and so it refers to the versions of those contracts served with the GPoC
6. Although it alludes to possible claims by “**Assistants**” (a term which includes persons whom the GPoC refers to as Managers), Crown Office employees and directors or guarantors of franchisees (“**Franchisees**”), the GPoC is essentially concerned with claims by Subpostmasters. Many of the allegations in the GPoC refer to “the Claimants” as having certain entitlements, rights or obligations, as being required to do certain things, as taking certain steps and/or as suffering certain consequences in circumstances where the allegations appear to relate only to Subpostmasters. In this Generic Defence, Post Office responds accordingly, without pointing out in every case that it believes the allegations are limited to Subpostmasters.

SUMMARY OF THE GENERIC DEFENCE

7. Subpostmasters run Post Office branches on behalf of Post Office. They have day-to-day operational control over those branches and they and/or their Assistants have direct knowledge of what happens in them. By contrast, Post Office’s knowledge is largely based on the accounts, cash declarations and other information that Subpostmasters submit to it.
8. Cash and stock can be lost from Post Office branches or other losses caused in branches due to mistakes or misconduct by Subpostmasters and/or their Assistants in effecting transactions and/or accounting to Post Office. The Claimants now seek to avoid their responsibility for losses arising in the branches that they operated.. They do so by,

amongst other things, rewriting the legal relationship between Post Office and its Subpostmasters and trying to impose on Post Office onerous obligations in relation to the conduct of transactions and the investigation of losses arising in branches. The Claimants go on to allege that Post Office did not discharge these obligations and that, as a result, Post Office acted unlawfully in seeking to recover shortfalls from them or terminating their contracts or taking other action to vindicate its rights.

9. Post Office' position is that Subpostmasters are responsible for the conduct of transactions and the security of cash and stock in their branches, and the submission of accurate transaction records and accounts to Post Office, with Post Office merely having a duty not to prevent them performing their obligations and to provide necessary cooperation (which it did). The Claimants have not pleaded, let alone proven, any cause for the losses for which they would not be liable as agents to Post Office. Many of the allegations they make in the GPoC appear to be speculative.
10. The parties agree that Subpostmasters are Post Office's agents. As one would expect, the express terms of their contracts with Post Office reflect this agency relationship. In the circumstances, Subpostmasters are liable for losses in their branches unless they can show that the losses were caused by something other than their error or other things for which they are responsible, such as the acts and omissions (“acts”) of their Assistants. In line with usual agency principles, Subpostmasters who have signed off branch accounts recording losses in their branches are bound by those accounts (and the losses in them) unless they can show that the accounts are mistaken and that it is appropriate for the accounts to be re-opened and/or corrected.
11. The Claimants cannot rely on express contractual terms to support their claims. In an ambitious attempt to invert the legal relationship between the parties, they seek to attack certain express contractual terms as being unenforceable, to imply a great number of new terms and to impose elaborate fiduciary, tortious and other duties on Post Office. In a relationship of this sort⁵, these additional terms and duties are both unnecessary and inappropriate and they contradict the express contractual terms which are entirely reasonable and to be expected. Post Office denies the Claimants' elaborate and artificial attempt to re-write Subpostmasters' contracts. If the Claimants fail in their attempt to reverse the legal duties provided for in the contracts between the parties, many of the factual complaints made would not give rise to a cause of action, even if they were to be proved.

12. Post Office also denies that Claimants could not effectively investigate losses in their branches. Subpostmasters had access to line by line data on the transactions they undertook. Moreover, they had access to training, operations manuals, helplines and in-branch support if they wanted. Post Office also undertook its own accounting reconciliations, where possible matching a Subpostmaster's records against other records provided by third parties, and then notifying Subpostmasters of discrepancies found and allowing them to choose whether to accept or dispute those discrepancies.
13. Some Claimants chose to submit false accounts to Post Office. This false accounting concealed losses from Post Office, sometimes for many months or even years. It also corrupted the accounting records of branches, making it very difficult, if not impossible, for Post Office to assist a Subpostmaster in finding the root cause of the losses, once they were uncovered. Post Office expects that on closer enquiry of individual cases it will become apparent that where there were large, undeclared losses in a branch, the respective Subpostmaster will often have submitted false accounts to conceal those losses. Post Office's position is that where false accounting is admitted or proved, this will typically give rise to insuperable evidential difficulties for which the relevant Subpostmaster is responsible.
14. The Claimants attempt to excuse this behaviour by saying that they were placed under such economic duress or were dealt with so unconscionably that they had no choice but to deceive Post Office by submitting false accounts and/or making false declarations of cash and/or stock at their branches. These allegations are denied in the strongest terms. Post Office did not make threats or put illegitimate pressure on Subpostmasters and it had mechanisms in place for isolating disputed losses so that accurate accounts could always be rendered. In any case, Post Office denies that any pressure can have made it legitimate for an agent to act dishonestly vis-à-vis his or her principal.
15. The Claimants' attempt to excuse false accounting, combined with their attempt to place extensive duties of investigation and burdens of proof on Post Office in relation to the root cause of losses, would mean that the greater a Subpostmaster's misconduct, the more difficult it would be for Post Office to recover in respect of losses from his or her branch. This outcome would be absurd.
16. Highly generalised and speculative allegations are made that Horizon (being the IT system provided by Post Office and through which business is transacted in branches) is unreliable or vulnerable to manipulation, and is thus may have been the root cause of some of the

losses in branches. Like any other IT system, Horizon is not perfect, but Post Office maintains that it is robust and that it is excessively unlikely to be the cause of losses in branches. Its design and technical controls, when supplemented by the various accounting and cash controls in branches, make it very unlikely indeed that an error in Horizon could affect a Subpostmaster's financial position and go undetected. It is notable that the GPoC does not identify any error in Horizon said to have affected a Claimant and, in correspondence, the Claimants have accepted that there is no systemic error in Horizon.

17. It is denied that Post Office ignored, or concealed, possible problems with Horizon or failed to investigate losses in branches before holding postmasters liable for those losses or terminating their contracts. Post Office provided reasonable cooperation, training and support.
18. Post Office also asserts its rights to rely on the accounts and other transaction records provided to it by Subpostmasters and on which it relied. As appropriate in particular factual circumstances, Post Office will rely on estoppels and defences of accord and satisfaction and of account stated. Post Office also asserts a generic counterclaim in respect of any shortfalls that it has not to date recovered from Claimants.
19. It is denied that Post Office's express rights to terminate the Subpostmaster contracts are fettered in any of the ways alleged by the Claimants. Post Office had a right to terminate on notice (ranging from 7 days (for Temporary Subpostmasters) to 6 months (for Subpostmasters under the NTC). Any damages arising from a claim for unlawful termination will be restricted to the loss of profits during the relevant notice period and no claim for unlawful termination can arise where Post Office terminated on proper notice. The attempts to claim the extensive range of other losses set out in the GPoC appear to be grossly inflated and in any event are unfounded in fact, in law, and in causation and/or the losses are too remote.
20. Finally, many of the Claimants left Post Office over 6 years ago, which will likely be the last date on which their causes of action could have accrued. Their claims are time barred. Others have entered into settlement agreements with Post Office, are bankrupt and so have no standing to bring a claim or are attempting to run claims that are subject to res judicata and/or issue estoppel and/or are an abuse of the process.

THE GPoC

21. As to paragraph 1, paragraphs [2 to 6XX] above are repeated.

22. As to paragraph 2, the Schedules of Information provided to date offer little assistance in understanding the claims that the Claimants propose to bring.
23. As to paragraph 3:
- (1) Post Office has provided voluntary information and disclosure to the Claimants on a generous basis. It is denied (if it be alleged) that the matters to which the Claimants refer provide any justification for a failure properly to plead their case or for advancing and seeking disclosure in relation to speculative claims or contentions for which there is no proper basis.
 - (2) Post Office will address the alleged asymmetry of information in responding to specific allegations [CHECK WHETHER THIS IS DONE BELOW]. However, the Claimants overlook an important asymmetry of information going the other way. At all material times, Subpostmasters and/or their Assistants (but not Post Office) have had first-hand knowledge of the transactions taking place in their branches. This asymmetry of information is material to the construction of the parties' agreements, to the issues of fact between them and to the application of the burden of proof.

A. GPoC INTRODUCTION & KEY FACTS

A.1 The Parties

Defendant

24. As to paragraph 4, it is admitted and averred (1) that Post Office operates its business through a network of around 11,600 branches in the UK, (2) that it offers products and services to the public via this network, including the services referred to, and (3) that it specifies procedures and standards governing how branches are to operate its business on its behalf. Where those branches are managed by Post Office itself ("**Crown Office branches**", now known as "Directly Managed Branches"), they are directly managed by Post Office and so are under its control. However, where those branches are operated by Subpostmasters or Franchisees ("**agency branches**" and "**franchise branches**" respectively), they are under the control of the relevant Subpostmasters or Franchisees.
25. As to paragraph 5:

Commented [ALP11]: AVBD - Should we not say some along the lines of "as specified in their contract for services with Post Office"

- (1) Post Office's products and services include products and services provided by other business and organisations (known as "**Post Office clients**"). For example, Post Office provides the physical location at which a person may deposit cash into a bank account but it does not provide the underlying banking service.
- (2) As one would expect, Post Office determines the products and services which it offers to the public though this is sometimes driven by other factors, such as regulatory changes and the requirements of Post Office clients. Post Office requires some minimum products and services to be offered by its branches. However, it does not require or indeed permit all Post Office branches to offer all its products and services.
- (3) Some new products or services, such as ATMs and National Lottery terminals, were introduced in agency and franchise branches only where the relevant Subpostmasters and Franchisees specifically consented to their introduction.
- (4) No admissions are made as to the "increased ... complexity" of any particular product or service. Post Office notes that the GPoC does not allege that any such increased complexity is material to any Claimant's case. Post Office reserves the right to address these matters further in the event that the Claimants plead that they are material in some way, which would involve the Claimants identifying the product or service concerned, the nature of the complexity relied on, the claims affected and how they are affected.
- (5) Save as aforesaid, paragraph 5 is admitted.

Commented [ALP12]: AVBD - However where already introduced these products and services were obligated as part of the contract for services new postmasters entered into

Types of branch

26. Paragraph 6 is admitted. These branches are also called agency branches and Subpostmasters (now more commonly referred to as "postmasters") invariably operate their own retail businesses from the same premises. In their conduct of Post Office's business, Subpostmasters act as Post Office's agent, which involves doing the following things on its behalf:
 - (1) entering into transactions with Post Office customers;
 - (2) effecting and/or processing transactions with Post Office clients such as Royal Mail (for postal services), various UK government departments (for services such as

benefit payments and passports), and various financial institutions (for banking services and insurance products);

- (3) making and receiving payments and incurring liabilities;
- (4) operating equipment belonging to Post Office or its clients, ranging from IT equipment (e.g. a Lottery terminal used to sell Camelot lottery products) to basic equipment such as scales for weighing mail and safes in which cash is stored;
- (5) holding and dealing with stock (including cheques, vouchers and other items) belonging to Post Office; and
- (6) holding and dealing with cash belonging to Post Office.

27. As to paragraph 7:

- (1) Franchisees are not always (and are not required to be) limited companies.
- (2) Post Office is unable to admit or deny whether most of the limited companies that are parties to Franchise Agreements were set up for the purpose of contracting with Post Office. Many were not (e.g. WH Smith, McColls, the Co-operative Group, and Blakemore (Spar).
- (3) Not all individuals working in Crown Office branches are employed by Post Office. For example, some are agency staff.
- (4) Save as aforesaid, paragraph 7 is admitted.

Subpostmaster Claimants and Contracts

28. Paragraph 8 is admitted as regards the Claimants (i.e. the claimants in action No. HQ16X01238).

29. As to paragraph 9:

- (1) Post Office contracts with Subpostmasters on standard form contracts.
- (2) As well as being expressed not to be contracts of employment, these contracts are not contracts of employment, as the Claimants themselves admit.

- (3) The contracts are contracts of agency. As one would expect with contracts governing the conduct by an agent of the principal's business, they reserve to Post Office the right to control certain aspects of its business (e.g. the products and services Subpostmasters may offer on Post Office's behalf and the procedures and standards in accordance with which they are to conduct Post Office's business and to account to Post Office for the transactions, the cash and the stock they have dealt with on its behalf). In relation to matters such as these, Post Office has the power to give instructions that Subpostmasters are obliged to follow.
 - (4) However, Post Office would not characterise its contracts with Subpostmasters as "reserve[ing] to the Defendant a high degree of power, discretion and control". Post Office is unsure what is meant by this vague expression, and it does not know what particular powers, discretions and controls the Claimants have in mind.
 - (5) Save as aforesaid, paragraph 9 is admitted.
30. As to the contracts pleaded in paragraph 10 ("**the Subpostmaster Contracts**"):
- (1) **SPMC:** Paragraph 10.1 is admitted, save that the SPMC is not dated 1994 but marked "1994 issue".
 - (2) **Temporary SPMC:** Save that the word "purported" is inapposite, paragraph 10.2 is admitted.
 - (3) **Community Subpostmaster Agreement:**
 - (a) The first sentence of paragraph 10.3 is admitted.
 - (b) As to the second sentence, Post Office believes that all or some of the Claimants who were engaged on the terms of these agreements will have retained a copy of their contracts. Further, in their Response to a Request for Further Information dated 16 May 2017 ("**Part 18 Response**"), the Claimants state that it is not their case that none of them (i) has or (ii) has ever had a copy of the Community Subpostmaster Agreement, from which Post Office infers that at least some of these Claimants in fact have a copy of that agreement. In any event, Post Office provided a copy to the Claimants on 10 April 2017.

- (c) As to the third sentence, the Claimants should not proceed on an assumption as to the material content of any contract on which they intend to rely but must plead a positive case.
- (4) **NTC:**
- (a) The first sentence of paragraph 10.4 is admitted.
 - (b) The second sentence is noted.
 - (c) As to the third sentence, Post Office believes that all or some of the Claimants who were engaged on the terms of these agreements will have retained a copy of their contracts. Further, in their Part 18 Response, Post Office infers that at least some of these Claimants in fact have a copy of that contract. In any event, Post Office provided a copy to the Claimants on 10 April 2017.
 - (d) As to the fourth sentence, the Claimants should not proceed on an assumption as to the material content of any contract on which they intend to rely but must plead a positive case.
- (5) Paragraph 10.5 is noted. Post Office will respond to any claim based on any other contract if and when such a claim is properly pleaded.
31. For the avoidance of doubt, Post Office pleads to the SPMC, the Temporary SPMC, the NTC and the Franchise Agreement attached to the GPoC without prejudice to its right to rely in individual cases on the terms of such agreements as they stood at the time(s) relevant to any particular claims made by particular Claimants.
32. As to paragraph 11:
- (1) Regarding paragraph 11.1, which is noted, Post Office believes that all or at least some of these Claimants will have retained a copy of their employment contract. Further, from their Part 18 Response, Post Office infers that at least some of these Claimants in fact has a copy of that contract.
 - (2) Regarding paragraph 11.2, which is noted, Post Office had no contractual or other relationship with these individuals and that the Claimants have not disclosed the basis or terms upon which they were employed by the relevant Subpostmasters.

- (3) Regarding paragraph 11.3, which is noted, Post Office believes that the relevant Franchisees contracted with Post Office on the terms of the Franchise Agreements. It had no contractual or other relationship with the Claimants who are merely alleged to have been directors and the Claimants have not disclosed the basis or terms upon which they acted as directors of the relevant Franchisees.
- (4) Save as aforesaid, Post Office is unable to admit or deny paragraph 11.

A.2 Horizon

33. Paragraph 12 is admitted. Until 2010, Horizon was a distributed system in which transactions were undertaken within branches, whose terminals transmitted transaction data to a central Post Office data centre and also to Post Office clients. Once Horizon Online was introduced in 2010, transactions were effected through real time exchanges of data from branches to a central Post Office data centre, and transaction data was also transmitted to Post Office Clients. Save where otherwise indicated, Post Office uses the term “**Horizon**” to refer both to the pre-2010 version of Horizon and to Horizon Online as the context may require, without prejudice to its ability to plead more fully as to Horizon’s features and operations as may be relevant to any individual claim, should such a claim raise any specific issues in that regard.
34. As to paragraph 13, the vast majority of Subpostmasters and their Assistants who have worked in agency branches since the introduction of Horizon in those branches would have been users of Horizon. Save as aforesaid, paragraph 13 is not admitted.
35. As to paragraph 14:
 - (1) Regarding paragraph 14.1, it is admitted that, if and to the extent that any Claimants worked in a Post Office branch prior to the introduction of Horizon to that branch and continued working in that branch thereafter, the introduction significantly changed how they were required to work in that branch. Save as aforesaid, paragraph 14.1 is denied.
 - (2) Post Office cannot meaningfully plead to paragraph 14.1A since neither the errors referred to, nor the data entry referred to, nor the “sufficient error repellency” referred to are identified. However, it is denied (if it be alleged) that Horizon had poor checks and controls for data errors.

- (3) Paragraphs 14.2 and 14.3 fail to identify any of the limitations apparently relied on. However, the general thrust of these paragraphs is denied. The introduction of Horizon increased, rather than limited, the ability of Subpostmasters and their staff to access, identify, obtain and reconcile transaction records and to investigate shortfalls. For example, before the introduction of Horizon, Subpostmasters maintained several hand-written ledgers to particular products or services. These ledgers had various limitations, including that it was not possible to know how much cash should be in the branch without first reconciling all the ledgers together, which was a time-consuming process. After the introduction of Horizon, Subpostmasters had the ability at any time to obtain a "Balance Snapshot" that showed them how much cash should be in a branch, making it much easier to identify any shortfalls. Subpostmasters also had the ability to obtain an extensive range of other reports and information from Horizon, as pleaded further in paragraph [XX] below.
36. Paragraph 15 is embarrassing for lack of particularity. In the absence of any indication as to the actual changes the Claimants intend to rely on and as to the effect(s) each such change is alleged to have had, Post Office cannot plead to this paragraph. However, Post Office notes that, on the Claimants' pleaded case, any changes in the Claimants' ability to access records and investigate shortfalls caused by the introduction of Horizon or by subsequent changes to Horizon or to products and services offered has no apparent relevance to any of the breach of contract or other claims advanced in the GPoC. As regards such changes, paragraph [35XX] above is repeated, *mutatis mutandis*.
37. The first sentence of paragraph 16 is admitted. As to the second sentence, Post Office's use of the terms "Horizon" and "Horizon Online" similarly does not include training.
- The operation of Horizon*
38. As to paragraph 17:
- (1) Save for the "others" referred to, whom the Claimants do not identify, the first sentence is admitted. The processes for transferring transaction data from branch to Post Office's central data centre, and the controls ensuring the accuracy of that data transfer, are discussed in paragraphs [XX] below.
- (2) Regarding the second sentence:

- (a) On the introduction of Horizon, transaction data was freely available to Subpostmasters for 42 days from the date of the relevant transaction. Since the introduction of Horizon Online, such data has been freely available for 60 days.
- (b) While such transaction data is available, Subpostmasters can search for, identify, organise and analyse data by means of wide range of reports, including a transaction log report which identifies each and every transaction undertaken in the relevant branch in the entire period. This report can be focused in a variety of ways if desired, including by reference to date ranges, transaction types, stock items, value ranges and even particular users or terminals
- (c) Horizon provides Subpostmasters with powerful tools for searching, checking and reviewing all aspects of the transactions undertaken in the branches for which they were responsible.

Transaction Corrections

39. Paragraph 18 refers to transaction corrections. One of the safeguards against errors by Subpostmasters (or their staff) is a process by which Post Office proposes corrections to a branch's accounts ("**Transaction Corrections**"). These are typically generated in the following way:
- (1) Post Office checks Horizon transaction data (i.e. data as keyed into branch terminals by branch staff) against data taken from separate sources. For example, Post Office client banks provide their own records of transactions carried out in Post Office branches, which are transmitted directly from the chip and pin devices used in branches, and Post Office compares these to the transaction data on Horizon.
 - (2) Where there is a discrepancy between the two sets of data, Post Office reviews the available data with a view to determining whether the branch staff have **probably** made an error that requires correction (and it may contact the relevant Subpostmaster for further information to assist in that determination). Where this is the case, Post Office will generate a Transaction Correction notification which is sent to the relevant branch via Horizon. **For example, where a cheque deposit into a bank account is keyed in on Horizon as a £100 credit but the true amount of the cheque is £90, a Transaction Correction with a value of £10 debit is generated.**

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- (3) A Transaction Correction notification includes (i) a description of the transaction to be corrected, (ii) the contact details of an employee of Post Office who will provide further detail if required, (iii) typically, the outline reason for or nature of the correction, and (iv) sometimes, evidence substantiating the proposed correction.
- (4) A Transaction Correction notification sent by Post Office to a branch is a proposal, not an instruction, and it does not take effect unless accepted by the Subpostmaster concerned. On receiving a Transaction Correction notification, the Subpostmaster can either accept the correction or dispute it.
- (5) On the Horizon screen, there are two ways for a Subpostmaster to accept a Transaction Correction. He or she may “accept” the Transaction Correction: this immediately increases or decreases the cash or stock position (as appropriate) in the branch's accounts as recorded on Horizon. Alternatively, if the amount of the Transaction Correction is £150 or more, he or she may “settle it centrally”: this causes the amount of the Transaction Correction to be transferred to his or her personal account with Post Office. Unless a dispute is lodged with Post Office (see below), he or she thereby accepts the validity of the Transaction Correction and Post Office will in due course pay or collect the relevant amount to or from the Subpostmaster. This process is addressed in page 30 of the operating manual entitled “Branch Trading: balancing and dispatch of documents” (“**Branch Trading Manual**”).
- (6) If the Subpostmaster wishes to query or dispute the Transaction Correction, he or she should contact the person identified in the Transaction Correction notification. This process is identified in page 34 of the Branch Trading Manual. If, having discussed the matter and reviewed any further information provided by the person identified, the Subpostmaster wishes to dispute the proposed Transaction Correction, he or she should accept it or settle it centrally and then lodge a dispute with the Post Office by contacting the Helpline. This process transfers the amount of the Transaction Correction to the Subpostmaster’s personal account with Post Office and causes a block to be placed of the value transferred to the personal account whilst the dispute is resolved (see paragraph [XX] below).

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40. As to paragraph 18:

- (1) The first sentence is denied. Post Office does not require that a Transaction Correction be accepted without dispute unless proven by the Subpostmaster not to be correct.
 - (2) Save for the reference to “limited” reports (which is denied as indicated in paragraph [38(2)XX] above), the second sentence is admitted. However:
 - (a) every Transaction Correction comes with contact details for a person at Post Office who can provide more information and a Subpostmaster can in any event contact the Helpline referred to below to obtain more information;
 - (b) depending on the subject matter of the Transaction Correction, the Subpostmaster may hold corresponding paper records in his or her branch which he or she can and should check; and
 - (c) not all Transaction Corrections require further information (for example, a Transaction Correction could be generated for a missing cheque and the cheque might be found in the branch).
41. Paragraph 19 bundles several different allegations together in an indistinct way. Post Office separates out and addresses those allegations in paragraphs [42 to 46XX] below. In the interests of clarity and consistency, in this Generic Defence Post Office uses the following defined terms:
- (1) A “**discrepancy**” refers to any difference between (i) the actual cash and stock position of a branch and (ii) the cash and stock position shown on Horizon as derived from transactions input by branch staff into the branch’s terminals.
 - (2) A “**gain**” refers to an event that causes a positive discrepancy (i.e. the situation where the branch has more cash and/or stock than the derived figures for cash and/or stock on Horizon). For example, a Subpostmaster carrying out a bank account withdrawal of £100 for a customer, entering that withdrawal into Horizon but providing only £90 in cash to the customer would generate a gain of £10.
 - (3) A “**loss**” refers to an event that causes a negative discrepancy (i.e. the situation where the branch has less cash and/or stock than the derived figures for cash and/or stock on Horizon). For example, a Subpostmaster carrying out a bank account

withdrawal of £100 for a customer, entering that withdrawal into Horizon but providing £110 in cash to the customer would generate a loss of £10.

- (4) A “**shortfall**” refers to a negative net discrepancy at the end of a trading period (i.e. the amount by which losses (if any) exceed gains (if any) in the period).
- (5) A “**net gain**” refers to a positive net discrepancy at the end of a trading period (i.e. the amount by which gains (if any) exceed losses (if any) in the period).
- (6) A “**Horizon-generated shortfall**” refers to a shortfall that is attributable to errors and/or bugs in Horizon.

Branch Trading Statements, making good and disputing shortfalls

42. As to the first sentence of paragraph 19, it is denied that the matters addressed in paragraphs 19.1 to 19.3 “accentuated the importance of the accuracy of Horizon”. Paragraph 19 addresses requirements whose purpose is to ensure the proper discharge of the Subpostmaster’s contractual and common law duties to account to Post Office for the transactions they entered into on its behalf and for the cash and stock it entrusted to their care. Such requirements are to the mutual benefit of Subpostmasters and Post Office in that (amongst other things) they ensure the early identification and correction of any errors and defaults relating to the transactions carried out and/or to the cash and stock held in the branches for which the Subpostmasters are responsible.
43. These requirements are as follows:
 - (1) Subpostmasters are required to perform a regular “**balancing process**”, which involves counting all stock and cash at their branches, comparing it with the cash and stock indicated on Horizon and producing (and confirming) an account of the transactions undertaken since the last balancing process and of the cash and stock held. Initially, Subpostmasters were required to do this weekly, but since 2005, they have been required to do so at the end of each “Branch Trading Period” (Post Office-specified periods of 4 or 5 weeks, of which there are 12 in the year and which, for convenience, are referred to herein as “**trading periods**”).
 - (2) Where this process discloses a shortfall and the Subpostmaster accepts liability for the shortfall, he or she is required to make it good (1) by providing his or her own personal funds to the branch or (2) if the amount involved is £150 or more, by

settling it centrally. This election is made on the Horizon terminal in branch. By "settling centrally", a separate entry is added to the branch accounts which offsets the value of the shortfall, thereby bringing the derived cash figure on Horizon in line with the actual cash on hand figure. The amount of the shortfall is transferred to the Subpostmaster's personal account with Post Office. Arrangements can then be made to pay off the shortfall.

- (3) Where the Subpostmaster disputes liability for the shortfall, he or she is required to raise a dispute by calling the Helpline and in the meantime (if the amount involved is less than £150) to provide it from his or her own funds pending resolution of the dispute or (if the amount is £150 or more) to settle it centrally, thereby bringing the branch accounts into balance. Raising a dispute causes a block to be placed on the value of the shortfall that has been transferred to the Subpostmaster's personal account with Post Office. The blocked value is not (and is not treated as) a debt due to Post Office.
- (4) These processes are addressed in pages 92 -99 of the Branch Trading Manual. The same processes are followed where the Subpostmaster accepts or disputes a net gain, with the relevant transactions being the removal of cash from the branch or the creation of a credit on the Subpostmaster's personal account with Post Office.
- (5) Having followed these processes, Subpostmasters are required to produce and sign a statement setting out the quantities and values of the various receipt and payment transactions that have been carried out in the branch during the relevant period and the cash and stock held in the branch at the end of the trading period (called a "**Cash Account**" until 2005 and a "**Branch Trading Statement**" from 2005). Branch Trading Statements contain the following statement by the Subpostmaster: *"I confirm that the content of this balancing and trading statement is an accurate reflection of the cash and stock on hand at this branch"*.
- (6) A branch cannot enter (or "**roll over**" into) a new Branch Trading Period without the Subpostmaster declaring to Post Office the completion of the Branch Trading Statement as aforesaid. But although Subpostmasters are required to produce Branch Trading Statements at the end of each trading period, if they do not do this, their branches can continue to trade within the previous trading period (although Post Office does not allow them to do so indefinitely).

Branch Trading Statements

44. As to paragraph 19.1, subject as set out in paragraphs [43XX] above:
- (1) The first and second sentences are admitted.
 - (2) The third and fourth sentences are denied. Paragraph [43(1)XX] above is repeated as regards the comparison between the derived figures for cash and stock shown on Horizon and the actual cash and stock as counted by the Subpostmaster; paragraphs [43(2) and 43(3)XX] above are repeated as regards bringing Horizon's figures into balance with the cash and stock as counted; and paragraph [43(6)XX] above is repeated as regards the ability to continue trading without entering a new trading period.

Making good

45. Paragraph 19.2 appears to be intended to allege that, whenever there is a shortfall between Horizon's figures and the cash and stock counted by the Subpostmaster: (1) unless some special arrangement is made, the Subpostmaster is required to make good the difference; and (2) if he or she does so by settling centrally, the amount of the shortfall is treated as a debt due to Post Office. These allegations are specifically denied. As explained in paragraph [43XX] above, Post Office's procedures provide Subpostmasters with the opportunity to dispute liability for shortfalls.

Disputing shortfalls

46. As to paragraph 19.3:
- (1) It is admitted that there is no "option within Horizon" to dispute a shortfall, in the sense that the process of raising and resolving a dispute does not take place through the Horizon system. The process for disputing a shortfall requires the dispute to be lodged by calling the Helpline.
 - (2) It is denied that Subpostmasters are unable to carry out effective investigations into the disputed amounts. So is the allegation that there were unspecified "limitations" on Subpostmasters' ability to access, identify and reconcile transactions in Horizon and that Horizon had no "adequate report-writing feature". As indicated in paragraph [38(2)XX] above, Horizon provides Subpostmasters with powerful tools

for searching, checking and reviewing the transactions undertaken in the branches for which they are responsible.

- (3) There are provisions in Post Office's Operating Manual as to the process for disputing discrepancies (see, for example, pages 30 and 99 of the Branch Trading Manual) and it is denied that these provisions give insufficient guidance regarding that process. In any event, the process involves calling the Helpline and, if further guidance is needed, it is available directly from the Helpline.
- (4) As to the last sentence of paragraph 19.3, it is denied that Post Office fails to carry out any, or any fair or adequate investigations into disputed amounts. Where a shortfall is disputed then the Claimants' first point of contact would be with the Helpline. In the case of a Transaction Correction, the dispute would first be raised with the individual within Post Office who issued the Transaction Correction notification and then (if necessary) with the Helpline. Disputes are generally resolved at this stage, by Post Office and Subpostmaster reaching a common understanding of the position. But if this does not happen, the dispute can be escalated. The steps in the escalation process, and the Post Office teams involved, have changed over time and the specific escalation route can differ depending on the nature of the issue raised. However, in broad terms:
 - (a) After it is raised with the Helpline, the issue is generally escalated to more experienced and senior personnel within the Helpline staff (or the team issuing the disputed Transaction Correction) for further investigation.
 - (b) Following this, the matter would be referred to a senior person in the Post Office team responsible for investigating branch matters, which is currently the Support Service Resolution Team. This team undertakes a further investigation into the disputed amount, seeks to identify the reason for it arising and communicates with the Subpostmaster concerned.
 - (c) If following the above investigation Post Office believes that the Subpostmaster is liable for the shortfall or Transaction Correction but the Subpostmaster does not accept that liability, the matter would be raised with **[CAN WE USE A DIFFERENT TERM FROM "HIS OR HER LINE MANAGER"? – THIS SORT OF LANGUAGE COULD HELP THE CLAIMANTS' CASE ON ECONOMIC DURESS/UNCONSCIONABLE**

DEALING AND ALSO ON THERE BEING A CLOSE ANALOGY

WITH AN EMPLOYMENT RELATIONSHIP]. Discussions would be held with the Subpostmaster about why he or she was not meeting what Post Office believes to be his or her contractual obligation to make good a shortfall or accept the Transaction Correction. This role is currently undertaken by Post Office staff known as Contract Advisors.

- (d) Following these discussions, Post Office can sometimes decide to terminate the Subpostmaster's contract in accordance with its terms. In such cases, the Subpostmaster is provided with the opportunity to seek further investigations into the disputed amount via an appeal mechanism (for example, see Section 18 of the SPMC).
- (e) If the appeal mechanism is not followed or if the Subpostmaster is dissatisfied with the outcome of their appeal, he or she may raise any concerns with Post Office's senior management team.

Commented [ALP15]: AVBD - This implies employee status? Whilst the name of this role has changed over time – Retail Network Manager; Retail Line Manager; Business Development Management; Sales Account Managers – the PO employees who undertook these roles were not regarded as the postmaster's line manager

A3. Fujitsu

- 47. As to paragraph 20, Post Office has provided to the Claimants a copy of its contract with Fujitsu ~~dated 31 March 2016~~ (“**the 2016-Fujitsu Contract**”). The Claimants have not identified any reasons for thinking that any other agreements between Post Office and Fujitsu are required for them properly to plead their generic claims. Nor have the Claimants identified any respects in which the redactions to the ~~2016-Fujitsu Contract~~ have prejudiced their ability to plead their case on the relationship between Post Office and Fujitsu. The redactions were made in order to preserve commercially sensitive information and/or because the redacted content was irrelevant to the issues in this case. Save as aforesaid, paragraph 20 is admitted.
- 48. As to paragraph 21:
 - (1) Depending on the specific branch and time in question, the telecommunication line from the branch to the internet may have been provided by Fujitsu or by the Subpostmaster. Save for this point of clarification, paragraph 21.1 is admitted.
 - (2) Fujitsu was only responsible for the Post Office side of the interface between central data centres and clients. Further, some client equipment in branches transmitted data

directly to those clients without that data going through Horizon or other systems for which Fujitsu was responsible. Save as aforesaid, paragraph 21.2 is admitted.

- (3) Paragraph 21.3 bundles together several different concepts and uses language that is open to different meanings. However:
- (a) Fujitsu's role included identifying and remedying coding errors and bugs in Horizon as pleaded in paragraph [XX] above.
 - (b) To the extent that the phrase "correct apparent discrepancies in the data" is meant to mean that Fujitsu implemented fixes that edited or deleted specific items of transaction data, that is denied.
 - (c) It is denied that Fujitsu has implemented fixes that have affected the reliability of accounting balances, statements or reports.
 - (d) Save as aforesaid, if Post Office understands it correctly, the general thrust of paragraph 21.3 is denied.
- (4) As to paragraph 21.4, it is admitted that until 2014 Fujitsu provided a telephone advice service to Post Office in relation to technical problems with the Horizon system or equipment. This service was used by Post Office staff (such as staff working on the Helpline referred to in paragraph [XX] below), but sometimes Fujitsu staff would have direct contact with third parties such as Subpostmasters in order to obtain a better understanding of the problem on which it was asked to advise. From 17 June 2014, this service was provided by Atos. [I PRESUME THAT PARA 21.4 IS BASED ON SOMETHING IN THE 2016 FUJITSU CONTRACT. IF THAT IS RIGHT, IT DOES NOT SEEM TO ME THAT PARAGRAPH 21.4 CAN BE TALKING ABOUT THE TELEPHONE LINE THAT THIS PARA 48(4) IS TALKING ABOUT, SINCE FUJITSU STOPPED PROVIDING THAT TELEPHONE LINE IN 2014. ARE WE SATISFIED THAT WE ARE NOT AT CROSS PURPOSES WITH THE CLAIMANTS IN THIS REGARD?]

Bugs, errors or defects in Horizon

49. As to paragraph 22:
- (1) If and to the extent that the Claimants wish to assert that any of the shortfalls for which they were held responsible were Horizon-generated shortfalls, it is for them to

make that distinct allegation and seek to prove it. Post Office notes that they do not make the allegation in the GPoC. It further notes that, in paragraph 20 of their solicitors' letter to Post Office's solicitors dated 27 October 2016, the Claimants make it clear that they do not allege that there is a systematic flaw in Horizon or indeed any flaw which has caused any Claimant to be wrongly held responsible for any shortfall.

- (2) It is denied that Post Office has unreasonably or otherwise failed to provide "obviously relevant disclosure" in relation to bugs, errors or defects in Horizon. There has been no order or application for disclosure and, in the premises set out above, there appears to be no basis for providing such disclosure.

50. Paragraph 23 is embarrassing for its lack of particularity, in that (amongst other things) it does not identify the errors, bugs or defects on which the Claimants rely or how "large" their number was or the period in which they are said to have occurred and nor does it identify the transaction data that Fujitsu is alleged to have rebuilt, how "frequent" was the need to rebuild it or the extent of the "risk of error" which is said to have been introduced. In the premises, Post Office cannot plead to the first three sentences of this paragraph.

However: [TO BE REVIEWED BY POST OFFICE TECHNICAL PEOPLE, DELOITTE AND FUJITSU]

- (1) All IT systems experience software coding errors or bugs which require fixes to be developed and implemented. Horizon is no exception. For a system of Horizon's scale, Post Office would characterise the number of errors or bugs in Horizon requiring fixes as relatively low. In any event, as is noted in paragraph [53 and 54XX] below, there are robust measures in place for their detection, correction and remediation.
- (2) All IT systems involving the transmission of data over the internet experience data or data packet errors during transmission and such systems routinely have protective measures in place to prevent such errors creating any difference between the data transmitted and the data received and retained by the recipient. Horizon has robust controls making it extremely unlikely that transaction data input in a branch would be corrupted when being transferred to, and stored in, Post Office's data centre in a manner that would not be detected and remedied.

- (3) Like all IT systems, Horizon has backups to guard against any loss of data due to local hardware failure. Where hardware fails, the data on that hardware is recovered from the backup. Post Office takes the term "rebuild" to refer to the situation before the introduction of Horizon Online where a new terminal was introduced to a branch and the data stored on the other branch terminals (or on a disc where it was a single counter branch) was restored to the new terminal. In this context, Post Office does not accept that there was a "frequent" need to recover data from back-ups.
- (4) It is admitted that Fujitsu maintain a "Known Error Log". This is not used by Post Office and nor is it in Post Office's control. To the best of Post Office's information and belief, the Known Error Log is a knowledge base document used by Fujitsu which explains how to deal with, or work around, minor issues that can sometimes arise in Horizon for which (often because of their triviality) system-wide fixes have not been developed and implemented. It is not a record of software coding errors or bugs for which system-wide fixes have been developed and implemented. To the best of Post Office's knowledge and belief, there is no issue in the Known Error Log that could affect the accuracy of a branch's accounts or the secure transmission and storage of transaction data. **[THIS PARA SHOULD BE CHECKED CAREFULLY BY FUJITSU AND CORRECTED/REWORDED AS APPROPRIATE.]**
51. In paragraph 24, the Claimants again bundle many ambiguous allegations together. Post Office separates out and addresses those allegations in paragraphs [52 to 57XX] below. **[EACH OF THESE PARAS ARE TO BE REVIEWED BY POST OFFICE TECHNICAL PEOPLE, DELOITTE AND FUJITSU]**
52. As paragraph 24.1 does not explain what is meant by "error repellency", what sorts of errors are referred to, what is meant by "data entry level", what would constitute "sufficient" prevention, detection, identification or reporting of each sort of errors, or in what respects the error repellency of Horizon was insufficient, Post Office cannot plead to this paragraph. However, the general thrust of paragraph 24.1 is denied and the robust controls, procedures and practices pleaded in paragraphs [53 and 54XX] below are referred to.
53. As to paragraph 24.1A, it is a truism that errors or bugs in an IT system and data or data packet errors have the potential to create errors in the data held in that system. However, Horizon has at all material times included technical control measures to reduce to an

Commented [ALP16]: Deloitte - This is a standard term for recreating a hardware device when it has had some kind of failure, so not quite sure why we are stating this. Note also Horizon HNG-X has no local data to recover by design.

However a rebuild is typically after a catastrophic failure not just a bug or glitch – even a data restore is not a rebuild but a recovery.

Commented [ALP17]: Deloitte - Make the point this is common problem management practise? Agree this is common practice that every IT support organisation would have.

extremely low level the risk of an error in the entry, transmission, replication and storage of the transaction record data. These have varied from time to time and they currently include the following:

- (1) Horizon creates, transmits and stores transaction data in the form of “baskets”. A basket is a complete transactional session between a customer and Post Office and may include one, several or many individual transactions taking place within the same session. Horizon will not accept a basket of transactions that does not net to zero (i.e. the value of any sales is set off by the value of any payment made or received). This reduces greatly the risk of any error in the data entered within any given basket.
- (2) If a basket of transactions fails properly to complete its transmission to the central database (because, for example, of a power loss), the system rejects any partial transmission and requests the full basket from the branch terminal. This reduces greatly the possibility of baskets of transactions failing to be recorded.
- (3) At the point of a basket being accepted by Horizon, it is assigned a unique sequential number (a “JSN”) that allows it to be identified relative to the other baskets transmitted by that branch. This reduces greatly the risk of recording duplicate baskets or there being a missing basket.
- (4) Each basket is also given a digital signature, i.e. a unique code calculated by using industry standard cryptography. If the data in the basket were to change after the digital signature was generated, this would be apparent upon checking the digital signature.
- (5) Initial data integrity checks are undertaken when baskets are received at the Post Office data centre from a branch. Baskets are then copied from the central database to the Audit Store where a digital seal is then applied (the “Audit Store Seal”). If the baskets and/or the data within the baskets were altered after the application of the Audit Store Seal, this would be apparent when the baskets were extracted from the Audit Store.
- (6) **Horizon and the above controls** are themselves subject to various audits and checks including audits carried out by third parties.

54. Further as to paragraph 24.1A, in addition to the technical controls referred to above, there are several operational procedures and practices conducted by Post Office and

Commented [ALP18]: Deloitte - As expressed previously there are some limitations around this seal.

Commented [ALP19]: Deloitte - Is it true the controls are subject to audit by third parties – I would be surprised if the scope of their reviews looked at the highly specific controls we are concerned about in this case.

Subpostmasters that serve to increase the reliability of the data and stored in the central data centre as an accurate record of the transactions entered on branch terminals. These currently include the following:

- (1) For many transaction types, Post Office compares its own transaction record against the corresponding records held by Post Office clients. If an error in Horizon were to result in the corruption of transaction data, this should be revealed by the comparison.
 - (2) There are detailed procedures in place to address the risk of data loss resulting from interrupted sessions, power outages or telecommunications failures in branches. These are set out in the "Recovery – Horizon Online Quick Reference Guide" and Horizon guides the system user through the recovery process (which include completing any transactions that are cut short). These procedures should prevent any data errors arising from interrupted sessions, power outages and telecommunications failures.
 - (3) The display of the transactions being effected on-screen at the branch terminal allows the user of the system to identify any inconsistency between the information shown on the screen and the transaction that the user has keyed into the system. If, for example, a hypothetical bug in the terminal were to cause a key-strike on number 5 to be recorded as an input of number 6, this would be detected rapidly by system users, given the large number of system users and the huge number of transactions effected on Horizon.
 - (4) The accounting and record-keeping obligations placed on Subpostmasters reduce the risk of any errors going undetected. For example, there is an obligation for each branch to count and declare to Post Office the cash it holds on a daily basis, which increases the likelihood of promptly detecting any overstatement or understatement of the cash position on Horizon. If a Subpostmaster detects that an error has been made at an early stage, its cause is more likely to be identified.
 - (5) Fujitsu operates industry standard processes for developing and updating Horizon and for identifying, investigating and resolving any identified potential system errors.
55. As to paragraph 24.2, Post Office admits that, like all other IT systems, Horizon is not a perfect system which has never had any errors or bugs. However, as indicated in

paragraphs [53 and 54XX] above, it has robust systems in place to identify them, fix them and correct their consequences (if any).

56. As to paragraphs 24.3 and 24.4:

- (1) There have been occasions on which bugs or errors in Horizon have resulted in discrepancies and thus shortfalls or net gains in some branch accounts, as outlined in Schedule 6 of the Letter of Response.
- (2) On each occasion, both the bugs or errors and the resulting discrepancies in the relevant branch accounts were corrected. Post Office took steps to ensure that it had identified all branches affected by the bugs or errors and that no Subpostmaster was ultimately held responsible for any resultant shortfalls. (Where the bugs or errors resulted in net gains, however, Post Office typically allowed Subpostmasters to retain them.)
- (3) Paragraphs 4.1 to 4.5 of Schedule 6 to the Letter of Response relate to the so-called Suspense Account Bug. Without prejudice to the burden of proof, none of the branches affected by the Suspense Account Bug are branches for which the Claimants were responsible.
- (4) None of the Subpostmasters whose branches were affected by the Suspense Account Bug was ultimately held responsible for the shortfalls that it generated. The Claimants are therefore wrong to understand Post Office as having admitted that it “recovered such alleged shortfalls from Subpostmasters”. Where Subpostmasters in the affected branches had made good or settled centrally shortfalls that were later corrected, those Subpostmasters received a payment or credit in the amount of the shortfall.

Remote editing of branch transaction data

57. Paragraph 25 appears to be concerned with the editing or deletion of transaction data input by or on behalf of Subpostmasters without the consent of the relevant Subpostmaster. Accordingly, Post Office assumes that it is not concerned with transactions such as Transaction Corrections which are sent to branches but must be accepted by or on behalf of the Subpostmaster before forming part of his or her branch account. As to the circumstances in which such transaction data can be edited or deleted without the consent of the Subpostmaster: **TO BE REVIEWED BY POST OFFICE TECHNICAL**

PEOPLE, DELOITTE AND FUJITSU. DO THE FOLLOWING PARAS REPRESENT A FAIR DESCRIPTION OF THE POSITION FROM 1999 TO THE PRESENT DAY?]

- (1) Neither Post Office nor Fujitsu has the ability to log on remotely to a Horizon terminal in a branch so as to conduct transactions.
- (2) A Post Office employee with “global user” authorisation can, when physically present at a branch, use a terminal within the branch to add a transaction into the branch’s accounts. The purpose of “Global User” authorization is to allow access to the systems for during training and/or audits. Any transactions effected by a Global User are recorded against a Global User ID and are readily identifiable as such.
- (3) Fujitsu (and not Post Office) has the ability to inject transactions into branch accounts (since the introduction of Horizon Online in 2010, transactions of this sort have been called “Balancing Transactions”). These transactions do not involve any removal or amendment of the transactions entered at the branch. Their intended purpose is to allow Fujitsu to correct errors or bugs in Horizon by introducing a new transaction to cancel out the effect of an error or bug on a branch’s transaction data. They may only be conducted by a small number of specialists at Fujitsu and only then used in accordance with specific authorisation requirements. They are rarely used. To the best of Post Office’s information and belief, only one Balancing Transaction has ever been effected, and this was not in a branch operated by a Claimant. A Balancing Transaction is readily identifiable as such.
- (4) There are a small number of Fujitsu specialists who have certain privileged user access rights which they could in theory use to amend or delete the transaction data for a branch. The intended purpose of privileged user rights is system support, not the alteration of branch transaction data. To have abused those rights so as to alter branch transaction data and conceal that this has happened would be an extraordinarily difficult thing to do, involving complex steps (including the writing of sophisticated computer programmes and circumvention of sophisticated control measures) which would require months of planning and an exceptional level of technical expertise. Post Office has never consented to the use of privileged user rights to alter branch data and, to the best of its information and belief, these rights have never been used for this purpose.

Commented [ALP110]: Deloitte - As far as we could tell – proving a negative.

Commented [ALP111]: Deloitte - Again as far as we have been able to test.

Commented [ALP112]: Deloitte - Only one ‘proper’ balancing transaction has been used. When looking I think there were actually several hundred balancing transactions used but most were to unlock locked stock units.

Only one balancing transaction impacting financial transactions ...

Commented [ALP113]: Formal policies in place – no. No special policy as so obvious that would not do it. Have general corporate governance policies / use of IT policies.

FJ to send over documents

- (5) Post Office cannot conceive of a reason why any Fujitsu personnel would have sought to add, inject, amend or delete any transactions in any branch accounts so as to create a false shortfall. It would for all practical purposes be impossible for any of them to generate significant shortfalls without detection and, even if they were able to do so, they would be unable to take the benefit of such shortfalls for themselves.
58. As to paragraph 26, the statements referred to therein are admitted. These statements were made in April 2015 and August 2015. The Post Office representatives who were responsible for the making of these statements believed that they were true.
59. As to paragraph 27, it is admitted that, although Horizon was not designed to have this functionality, there ~~was-is~~ a highly theoretical ~~and consequently remote~~ possibility that certain Fujitsu personnel could abuse their privileged user rights in such a way as to edit or delete branch transaction data as described in paragraph [57(4)XX] above.
60. Paragraph 28 is noted. The alleged inferences are inappropriate and each of them is denied. Post Office is not aware of any material suggesting that transaction data ~~having-has~~ been edited or deleted, and nor are the Claimants.

A.4 Helpline

61. Paragraph 29 is admitted. Calls to the Helpline are handled in accordance with the following processes:
- (1) Helpline operators categorise the caller's query using an online system (now called "Dynamics", previously called "Remedy") and then provide advice by reference to the Post Office "Knowledge Base", an online resource which contains numerous articles and other guidance documents on various matters. This is not scripted.
 - (2) If the Knowledge Base does not contain sufficient information to allow the operator to address the query, the next step is for the query to be escalated to a second tier of more experienced staff.
 - (3) If the second-tier adviser cannot respond in a satisfactory way to the query, he or she may seek assistance from the relevant Post Office product team. For example, if an issue relates to a lottery product, assistance could be sought from the team at Post Office who manage the operational processes for that product. Further, where assistance is required in relation to reviewing Horizon data then they may seek

assistance from the Support Services Resolution Team. For issues relating to the technical operation of Horizon (e.g. a broken printer), the matter could be referred to Post Office's IT support partner, which was originally Fujitsu and is now Atos.

- (4) If, after these steps, a satisfactory response has not been given, Post Office will consider whether to organise a visit to the branch and/or further training for the Subpostmaster and/or Assistant(s) concerned.
 - (5) Post Office is willing and able to provide further assistance to Subpostmasters whose problems are not addressed adequately through the Helpline. It is for any Claimant who asserts that inadequate assistance was provided to identify, amongst other things, the steps that he or she took to obtain further advice, assistance and/or training.
62. Paragraph 30 makes allegations to which Post Office cannot meaningfully respond at the pleaded level of generality. Post Office will respond to properly particularised claims if and when they are made by particular Claimants, but the general thrust of the allegations is denied. Further:
- (1) The Helpline's hours of operation have changed over time to meet demand and there have been periods where the Helpline was more difficult to contact than in other periods. It currently operates from 8am to 8pm on weekdays other than Wednesdays (the usual day for branch balancing processes), 8am to 9pm on Wednesdays, 8am to 6pm on Saturdays and 9am to 5pm on Sundays and most bank holidays.
 - (2) Helpline operators do not give script-based responses.
 - (3) Helpline operators are not instructed to provide misleading information or advice and they would have had no reason to do so.
 - (4) Whether it is appropriate to advise a Subpostmaster that a discrepancy should sort itself out depends on the context. For example, the branch could be awaiting a Transaction Correction that should correct an issue.
 - (5) Helpline operators are not instructed to encourage a Subpostmaster to produce and confirm a Branch Trading Statement which the Subpostmaster did not believe to be true.

- (6) Helpline operators are not instructed to review and advise callers as to the experience of and the incidence of particular problems suffered by all users of Horizon or of the Helpline or as to the incidence of such problems suffered by all such users.
- (7) Post Office notes that, in the GPoC, the Claimants have not indicated whether and, if so, how each of the matters alleged in paragraphs 30.1 to 30.7 is alleged to have caused any Claimants any loss.

A.5 Investigations

63. Post Office cannot meaningfully respond to the allegations in paragraph 31 for the following reasons:
 - (1) The paragraph makes allegations said to apply generally across “investigations, audits or similar enquiry” in circumstances where investigations are fundamentally different processes (involving different Post Office personnel and procedures) from audits and where the use of the term “similar enquiry” is embarrassing for vagueness and (depending on what it is intended to mean) may be misleading.
 - (2) The reference to “investigators” is misplaced and/or so ambiguous as to make the allegations incapable of meaningful response.
 - (3) The information and instructions that are alleged to have been provided to “investigators” and what they are alleged to have done are expressed at such a high a level of generality that it is impossible to assert a generic case as to what “investigators” were told and/or otherwise knew and/or did in any potentially relevant period.
 - (4) Post Office will, as appropriate, respond to any particularised allegations as to specific enquiries, audits and investigations if and when such allegations are made by particular Claimants.
64. Without prejudice to the foregoing:
 - (1) The people undertaking Post Office’s various audits, enquiries and investigations are experienced individuals with a good knowledge of the operation of Horizon and of the experience of Horizon users.

(2) The nature of their instructions and actions varies depending on whether they are undertaking an audit, enquiry or investigation and the reasons why they are doing so. For example:

- (a) An audit is a process conducted by the field support team within Post Office. The people undertaking audits are not called investigators. An audit is typically ordered where Post Office is concerned that a branch is failing properly to account to Post Office, though some are randomly selected branches. The purpose of an audit is principally to check the level of cash and stock in a branch; it is generally not to determine the root cause of any shortfalls.
- (b) For a wide variety of purposes (including the purposes referred to in paragraph 46XX above), Post Office can make a wide variety of enquiries into a branch's operations without undertaking an audit. The people undertaking such enquiries are not called investigators.
- (c) Post Office has a security team whose main role is to investigate (and/or to assist the police to investigate) suspected criminal offences. Persons in the security team sent to branches to carry out such investigations are often called investigators. In many instances, their enquiries focus on suspected criminal offences by Subpostmasters and Assistants (such as theft or rendering false accounts), which may or may not require them to determine the root cause of a shortfall.

(3) None of these "investigators" were instructed to disregard possible problems with Horizon as a possible cause of shortfalls, nor was information deliberately withheld from them about bugs or errors in Horizon or the alleged remote alteration of data.

(4) The alleged "organisational culture or practice" is specifically denied.

(5) Save as aforesaid, the general thrust of paragraph 31 is denied.

A.6 Terminations

65. Paragraph 32 makes allegations to which Post Office cannot meaningfully respond at the pleaded level of generality. For example, the paragraph overlooks critical distinctions between summary termination of appointments for cause, termination of appointments on notice without cause and suspension of appointments. However:

- (1) Post Office has terminated Subpostmasters' appointments summarily where it was of the view that they have acted dishonestly in relation to their functions (e.g. by falsely accounting to Post Office with a view to concealing a shortfall from it) or that they were otherwise in material, irremediable and/or repudiatory breach of their obligations;
 - (2) Post Office has suspended Subpostmasters when it has suspected them of acting as set out in sub-paragraph [(1)XX] above; and
 - (3) Post Office has terminated Subpostmasters on notice where it did not wish continue its relationship of principal and agent with them; but
 - (4) Post Office has not terminated Subpostmasters summarily or suspended them merely because they have challenged shortfalls or have alleged inadequacies in the Horizon system or difficulties in interrogating data.
66. Regarding the importance of dishonesty in the conduct of its business, Post Office notes that:
- (1) Clause 19.1 of the SPMC provides that dishonesty is viewed most seriously and any Subpostmaster involved in an act of dishonesty against Post Office Ltd renders himself liable to summary termination of his contract.
 - (2) Clause 3.1.2 of the NTC provides that: "*The Operator shall ... act honestly at all times in the operation of the Branch. Any failure by the Operator to comply with this Clause 3.1.2 shall be deemed to be a material breach of the Agreement which cannot be remedied*".
67. As to paragraph 33, Post Office will respond to properly particularised claims of wrongful termination or suspension if and when they are made.

A.7 Context and Effect on Claimants

68. In Section A.7 of the GPoC, the Claimants set out what they contend to be relevant contextual matters, and these are addressed below. However, the Claimants overlook the importance of the role that Subpostmasters performed as agents of Post Office, holding cash and stock and effecting transactions, making payments and incurring liabilities on its behalf, all from premises under their direct control and supervision. They also overlook the importance of false accounting to and its effect on Post Office. Subpostmasters are obliged (a) each working day to count the cash in their branches and make "cash

declarations” to Post Office setting out the cash counted and (b) at the end of each trading period to count the cash and stock in their branches and make Branch Trading Statements to Post Office setting out the cash and stock counted and the transactions undertaken in the relevant trading period. Unless an audit is undertaken, these accounts are Post Office's only information about the amount of cash and stock actually held in the branch. In all cases in which a Claimant Subpostmaster makes false cash declarations or false Branch Trading Statements (i.e. cash declarations or Branch Trading Statements that he or she does not believe to be true):

- (1) Where a shortfall is subsequently uncovered at a branch, the fact of this false accounting invariably makes it impossible or alternatively extremely difficult for Post Office to identify or assist in the identification of the likely cause(s) of the shortfall. Post Office is unable to place reliance on the declarations and the branch's accounts in seeking to identify the date(s) on which the discrepancy (or discrepancies) giving rise to the shortfall are likely to have arisen or the cause(s) of the shortfall.
 - (2) As regards any enquiries it might make into the cause(s) of a shortfall, Post Office cannot reasonably be expected and is not obliged to devote significant resources to investigating factual circumstances that were, as a result of false accounting, impossible or alternatively extremely difficult properly to investigate.
 - (3) As is noted above, false accounting or other similar conduct by a Subpostmaster represents a material, irremediable and repudiatory breach of his or her contractual obligations entitling Post Office to terminate the Subpostmaster's appointment summarily. Further, where Post Office suspects that a Subpostmaster is guilty of such conduct, it is contractually entitled to suspend the Subpostmaster's appointment.
 - (4) In relation to any issue arising in these proceedings as to the true state of account in the relevant branch, the Court should make all presumptions of fact against that Subpostmaster as are consistent with the other facts as proven or admitted.
69. Paragraph 34 appears to address a situation where a balancing process has been undertaken at the end of a trading period and this process has disclosed a shortfall in the cash or stock held at the branch which is disputed by the relevant Subpostmaster. It appears to be the Claimants' case that, in this situation, some Claimants felt that they had no choice but (a) to sign off Branch Trading Statements disclosing the shortfall, accept liability for the shortfall

and make the shortfall good by paying or crediting the relevant amount to Post Office or (b) to sign off incorrect Branch Trading Statements which misrepresented the cash and stock held at the branch and thereby concealed the shortfall from Post Office. Post Office will respond to properly particularised allegations of that sort if and when they are made by particular Claimants. However:

- (1) It is denied that Subpostmasters had no choice but to proceed in this way or that it was reasonable for them to feel that they had no such choice. As indicated in paragraphs [42 to 46?XX] above, Post Office's procedures provided Subpostmasters with the opportunity to dispute liability for shortfalls and render accurate accounts whilst any disputed shortfall was resolved.
- (2) It would never have been reasonable for a Subpostmaster sign off a Branch Trading Statement – and thus to confirm to Post Office that the cash and stock recorded by Horizon as being held at his or her branch it was correct – in circumstances where he or she did not believe that it was true. Amongst other things, in that situation the Subpostmaster would have:
 - (a) deceived Post Office as to the true level of cash and/or stock at his or her branch, and to the true state of his or her branch account;
 - (b) made it impossible or at least extremely difficult for anyone to identify when or how the shortfall arose; and
 - (c) committed (i) a material, irremediable and repudiatory breach of the contract pursuant to which the Subpostmaster was appointed (including, amongst other things, Section 12.3 of the SPMC and/or Clause 3.6 of the NTC), and (ii) a fundamental breach of the fiduciary duties the Subpostmaster owed Post Office as its agent.
- (3) As is pleaded further in paragraphs [XX] below, all Subpostmasters who signed Branch Trading Statements in that situation are bound by the accounts that they signed off. Alternatively, in relation to any issue arising as to the true state of account in the relevant branch, the Court should make all presumptions of fact against that Subpostmaster as are consistent with the other facts as proven or admitted. Further or alternatively, they may not now challenge, seek to avoid or seek any relief in relation to the payment(s) made to or demanded by Post Office in

accordance with those accounts (including in making good shortfalls), without pleading and proving such accounts to be mistaken. [THIS PARA IS TO BE SUBJECT FURTHER REVIEW TOMORROW IN THE LIGHT OF THE FINAL VERSION OF SECTION N BELOW]

- (4) These principles apply to false cash declarations made by the Subpostmaster to Post Office, *mutatis mutandis*.

70. Regarding paragraph 35:

- (1) As to paragraph 35.1, paragraph [29XX] above is repeated.
- (2) As to paragraph 35.2, the Horizon system did not allow a Subpostmaster to roll his or her branch over into a new trading period until he or she had signed off and submitted to Post Office a branch account for the previous trading period.
- (3) As to paragraph 35.3, Subpostmasters were contractually required to use the Horizon system but that system did not require them to roll over into a new trading period: that requirement was contractual, being contained in "A Quick Guide to Balancing - Reconciling your Cash and Stock with Horizon" and page 93 of the Branch Trading Manual.
- (4) Paragraph 35.4 and 35.5 are denied and paragraphs [42 to 46XX] above are repeated.
- (5) As to paragraph 35.6, at this generic level, Post Office cannot admit or deny what any Claimants may have hoped. However, Post Office denies (if it be alleged) that it advised or encouraged Claimants to believe that it was appropriate to sign off false Branch Trading Statements and thereby deceive Post Office.
- (6) As to paragraph 35.7, at this generic level, Post Office cannot admit or deny any Claimant's individual financial circumstances. However, Post Office denies (if it be alleged) that a desire to ensure that a Subpostmaster's appointment is not terminated justifies rendering false accounts to and deceiving Post Office as aforesaid.
- (7) Subparagraph 35.8 is denied and paragraphs [29? above, 76? and 78?XX below] are repeated.

71. As to paragraph 36:

- (1) The act of intentionally submitting false accounts is, of itself, a dishonest act.
- (2) In some circumstances (for example where a Subpostmaster refuses to give any explanation as to what had happened in his or her branch), it is an appropriate inference that, where the Subpostmaster has deliberately rendered false accounts, he or she has done so in order to cover up some dishonest conduct (such as theft).
- (3) It is denied that it was unfair, flawed or irrational to infer dishonesty from the submission of false accounts. The natural inference from an agent's decision to render false accounts to his principal is that the agent wishes to deceive his principal and conceal a shortfall in his accounts. Rendering false accounts is a breach of the fundamental duty of loyalty owed by an agent to his principal.

72. Paragraph 37 is denied. In particular:

- (1) Post Office did not exert illegitimate pressure on Claimants.
- (2) Post Office did not exert "unfair" pressure on Claimants (whatever that means).
- (3) It is not clear to Post Office what it is alleged to have done that constitutes economic duress exerted or unconscionable dealing by Post Office, but in any event (a) Post Office denies that it exerted economic duress on Claimants and (b) Post Office denies that it is guilty of unconscionable dealing with Claimants.
- (4) Post Office denies that it was in material breach of contract.
- (5) Post Office denies it wrongfully failed to disclose material facts.
- (6) The Claimants do not explain the relevance of the legal concepts pleaded in paragraph 37 to any cause of action asserted by the Claimants. However, Post Office denies that these legal concepts can be invoked so as to justify false accounting of the sort described in paragraph [68:XX] above.

A.8 The Defendant's Suspense Accounts

73. As to paragraph 38:

- (1) Post Office operates suspense accounts relating to all its dealings with Post Office clients. A typical situation in which an amount is credited to a suspense account would be as follows:

- (a) A client, such as a bank, makes a payment to Post Office that exceeds the payment that Post Office considers to be due.
 - (b) Post Office does not reach agreement with the client as to the amount due and the client does not accept repayment of what Post Office considers to be the overpayment.
- (2) Where amounts are held in suspense accounts and not resolved within 3 years, these amounts are credited to Post Office's profit and loss account.
- (3) The operation of suspense accounts in this way reflects ordinary business practice.
74. As to paragraph 39: **[REDRAFT AFTER DELOITTE REVIEW INTO THIS]**
- (1) The Claimants have not pleaded any "shortfalls wrongly attributed to the Claimants" and the causes of such shortfalls. In these circumstances, Post Office does not speculate as to how any such shortfalls could in principle have arisen and how, if at all, such shortfalls (or, more accurately, the losses giving rise to such shortfalls) might relate to any overpayments by Post Office clients that resulted in a credit in a suspense account. In the absence of proper particulars, there is no case to which Post Office can meaningfully respond.
 - (2) However, at no material time did Post Office profit from any amount held in a suspense accounts that it knew or believed to have been overpaid to it as a result of an error (or errors) that also led to a shortfall in any branch accounts. Where Post Office identified, through reconciling its own transaction records against those of Post Office clients, that its records required correction, it would correct those records both (a) as between itself and the Post Office client and (b) as between itself and the relevant Subpostmaster(s), by issuing Transaction Corrections that would, once accepted at the relevant branch(es), remove any wrongly attributed shortfalls. Post Office adopted the same approach in relation to net gains **[CONFIRM]**.
 - (3) For the avoidance of doubt, Post Office denies (if it be alleged), that any of the bugs and/or errors set out in Schedule 6 of the Letter of Response resulted in credits to suspense accounts that correlated to any wrongly attributed shortfalls and from which Post Office ultimately benefited (by moving amounts held in suspense accounts to the profit and loss account). **[CAN WE SAFELY PLEAD THIS? IT**

SEEMS TO FOLLOW FROM THE FACT THAT THE ERRORS WERE ALL FIXED AND ALL SHORTFALLS CORRECTED].

- (4) [THIS SECTION IS WEAK. ON THE CURRENT STATE OF OUR INSTRUCTIONS, IS THERE ANYTHING ELSE WE CAN SAFELY SAY THAT IS HELPFUL TO OUR CASE?]

B. CONTRACT TERMS - SUBPOSTMASTERS

75. As to paragraph 40, Post Office will also rely at any trial on the full contractual terms in force at the material time(s) between Post Office and the relevant Claimant (if any). These terms varied from time to time, as already noted.

B.1 Factual Matrix

76. Post Office asserts that the following matters are important aspects of factual matrix against which the various Subpostmaster Contracts relied on by the Claimants should be construed:
- (1) Subpostmasters typically stood to benefit from the relationship with Post Office in at least two respects: first, by obtaining remuneration in accordance with their Subpostmaster Contracts and, second, as a result of offering Post Office services in the Subpostmasters' premises, by enjoying increased footfall and revenue for the retail businesses that Subpostmasters typically operated alongside the Post Office business.
 - (2) Subpostmasters contracted with Post Office on a business to business basis and in the expectation of profiting from the business relationship as noted above.
 - (3) Subpostmasters were under no obligation and no pressure to contract with Post Office on the terms that it offered or at all.
 - (4) Post Office was unable to monitor at first hand the transactions undertaken in branches on its behalf, in relation to which it was liable to the relevant counterparties. These transactions and the manner in which they were carried out were the responsibility of the relevant Subpostmasters.

- (5) Post Office was unable to monitor at first hand the custody and use of its property (principally, cash and stock) in branches. Again, these matters were the responsibility of the relevant Subpostmasters.
- (6) Post Office accordingly needed to have trust in the honesty, diligence and competence of the persons who operated branches on its behalf and as its agents. It would obviously not have been willing to allow persons in whom it did not feel safe to repose such trust to continue doing so.
- (7) Given the nature of Post Office's business and the variety of transactions and processes required for the operation of a Post Office branch, it would be impracticable for all of the parties' rights and obligations to be set out in a single contractual document. It was to be expected that Post Office would rely upon manuals and other documents containing instructions.

77. Paragraph 41 is admitted.

78. If and insofar as it is understood, paragraph 42 is denied. At the time of contracting, each of Post Office and the Subpostmaster was free to contract or not contract with the other and each of them took an unconstrained and self-interested commercial decision in that regard.

79. As to paragraph 43:

- (1) Post Office is unable to admit or deny what steps Subpostmasters took to put themselves in a position to discharge their obligations to Post Office. Whether and to what extent to any of the steps referred to in paragraphs 43.1 to 43.7 were taken in any case and, if they were taken, whether and to what they were expensive or long term, will be a matter for each Claimant to plead and prove.
- (2) Post Office also incurred long term and expensive commitments in respect of the Subpostmaster relationship, including by providing valuable cash, stock and equipment to Subpostmasters on an unsecured basis.
- (3) It was for the Subpostmaster to assess the commercial risk and reward involved in contracting with Post Office, taking into account (amongst other things) each party's contractual rights of termination.

80. As to paragraph 44, the operation of the relationship between a Subpostmaster and Post Office required communication and cooperation.
81. Regarding paragraph 45:
- (1) The SPMC, Temporary SPMC and NTC all stated expressly that Subpostmasters were not employees of Post Office. Subpostmasters were not employees of Post Office and Post Office notes that the Claimants accept this in paragraph 45, as they have in correspondence.
 - (2) Regarding paragraph 45.1, paragraphs [24 and 29? above and XX below] are repeated.
 - (3) Paragraphs 45.2 and 45.3 appear to be based on a misconception as to what constitutes personal service. The various Subpostmaster Contracts were in no way contracts for personal services and the provisions referred to in paragraphs 45.2 and 45.3 did not require personal service. On the contrary, most of them made it clear that Subpostmasters were entitled to employ third parties to run their branches. For example:
 - (a) The holiday substitution allowance and sick absence allowance provisions in Sections 4 and 7 of the SPMC expressly provided that they only applied where Subpostmasters chose personally to work in their branches for at least 18 hours each week.
 - (b) Section 3 of the SPMC expressly provided that Subpostmasters were not obliged to render personal service and that they were entitled to make suitable arrangements to employ a third party to run the relevant branch. That they were required to notify Post Office when a third party was running the branch and to give Post Office the name of the third party does not mean that they were required to perform a personal service.
 - (c) Properly understood, Section 8 (which the GPoC mistakenly refers to as Section 10) and Section 15 of the SPMC reinforce the point that the SPMC is not a contract for personal services.
82. Paragraph 46 is noted. If the Claimants wish to assert any additional facts as aspects of the factual matrix, Post Office will respond if and when they are pleaded as such.

B.2 Written Terms

Overview

83. As to paragraph 47, at a generic level, it is admitted that the written terms of the Subpostmaster Contracts reserved to it some control over some aspects of the business conducted by Subpostmasters on its behalf (see paragraphs [24 and 29?XX] above). It is denied these terms imposed “very few express obligations” on it. Post Office will respond to any particular allegations made about particular terms if and when they are made.
84. As to paragraph 48:
- (1) Post Office’s practice at all material times has been to provide prospective Subpostmasters with a copy of the written terms of the agreement with Post Office and to require them to sign a document recording their agreement to those terms.
 - (2) If any Subpostmaster alleges that he did not obtain a copy of the written terms of his agreement, Post Office will respond to that allegation if and when it is properly pleaded.
 - (3) The allegation that Post Office did not draw a Claimant’s attention to “onerous or unusual terms” is unparticularised and cannot properly be pleaded to in this Generic Defence. Without prejudice to that contention, it is denied that any of the terms alleged by the Claimants to be onerous and unusual were such: as indicated below, they were the sort of terms that would be expected. It is further denied that Post Office was under any obligation to draw a Claimant’s attention to any such terms.
85. As to paragraph 49:
- (1) The written Subpostmasters Contracts are to be construed as a whole and in light of the relevant matrix of fact pleaded in paragraph [68?XX] above.
 - (2) It is denied that those contracts are to be construed presumptively against Post Office. Further, the Claimants have not identified any ambiguity in the written terms that they contend should be resolved in accordance with the *contra proferentem* principle, which is a principle of last resort.
 - (3) It is denied that the contracts are “relational contracts” in the sense alleged by the Claimants and, even if they were classified as such, it is denied that this should affect

their construction. They should not be construed “in the context of” the alleged implied terms and any term that it is alleged should be implied must (amongst other things) be consistent with the express terms properly construed.

- (4) It is denied that the terms identified by the Claimants are unenforceable and paragraph [XX] is repeated.
 - (5) It is denied that the Unfair Contract Terms Act 1977 affects any of those terms.
86. Each and every allegation in paragraph 50 is denied. The only agreements between the parties as to termination of the Subpostmaster Contracts are the agreements expressly provided for in those contracts. Further, the Claimants’ attempt to invent an alternative “true agreement” between the parties and thereby to invoke **Autoclenz v Belcher** in order to rewrite the Subpostmaster Contracts is unfounded (see paragraph [XX] below).
87. As to the contractual terms referred to in paragraphs 51 *et seq.*, Post Office will refer to all the relevant terms of the relevant contracts for their full meaning and true effect.

Rules, Instructions and Standards

88. As to paragraph 51:
- (1) Save that the reference in paragraph 51.3(a) should be to "Part 2, paragraph 1.1", ~~the~~ terms of the SPMC, the Temporary SPMC and the NTC pleaded therein are admitted and averred-[CHECK].
 - (2) It is admitted that, in accordance with those terms, Subpostmasters were required to comply with (and were required to procure compliance by their Assistants with) the rules, instructions and standards set out in the documents to which the terms referred and as were notified to Subpostmasters in accordance with such terms. As indicated in paragraph [76(7)?XX] above, in a business such as Post Office’s, requirements of this sort were to be expected.
 - (3) It is denied that paragraph 51 is an accurate characterization of these rules, instructions and standards, and it is denied (if it be alleged) that the contractual standard of performance required by the SPMC, the Temporary SPMC and the NTC was Post Office’s “discretionary satisfaction”.

- (4) If the Claimants wish to rely upon alleged failings in any rules, instructions or standards or in the meaning and effect of the terms incorporating the same, they should provide proper particulars of these allegations. Post Office will respond if and when they do so.

Classes of Business

89. As to paragraph 52, the terms of the SPMC, the Temporary SPMC and the NTC pleaded therein are admitted and averred ~~{CHECK}~~. In a business such as Post Office's, terms of this sort were to be expected. They reflected the fact that, as Subpostmasters were Post Office agents offering products and services to customers on Post Office's behalf, Post Office must be entitled to change those products and services from time to time. If the Claimants wish to rely upon alleged failings in any changes that Post Office made to any products and services or in the notice given therefor they should provide proper particulars of these allegations. Post Office will respond if and when they do so.

Agency

90. As to paragraph 53:
 - (1) The terms of the SPMC, the Temporary SPMC and the NTC pleaded therein are admitted and averred ~~{CHECK}~~. Terms of this sort were to be expected.
 - (2) In accordance with those terms, Post Office appointed Subpostmasters and Subpostmasters accepted appointment as agents of Post Office. Such appointments were true, not purported. The legal relationship between Post Office and Subpostmasters was that of principal and agent.
91. Post Office notes that, as its agents:
 - (1) Subpostmasters owed fiduciary duties to Post Office, including an overriding duty to act in Post Office's interests in relation to the functions they undertook on Post Office's behalf (which functions included holding and dealing with Post Office cash and stock, effecting and recording Post Office transactions, generating liabilities for Post Office, maintaining proper and accurate records and preparing and rendering accounts).
 - (2) Subpostmasters owed a duty to account to Post Office.

Accounts and Liabilities for Loss

92. As to paragraph 54, the terms of the SPMC, the Temporary SPMC and the NTC pleaded therein are admitted and averred **CHECK**. Clause 3.7.4 of the NTC also provided that: “The Operator shall ... immediately produce all Post Office Cash and Stock for inspection whenever requested by Post Office Ltd”. These terms imposed on Subpostmasters responsibility for losses at their branches. In circumstances where Subpostmasters were in control of and they and/or their employees had first-hand knowledge of the transactions effected on Post Office’s behalf and cash and stock belonging to Post Office held at their branches, such terms were to be expected. It is denied that Post Office applied them wrongly.
93. Post Office notes that the Claimants’ case set out in paragraph 55 applies only to Section 12.12 of the SPMC. More generally, as regards shortfalls disclosed in a Subpostmaster’s accounts, Post Office notes the following principles, each of which applies to Subpostmasters:
- (1) Where a Subpostmaster asserts that he or she is not responsible or liable for a shortfall, the legal and/or evidential burden of proof is on him or her to establish the factual basis for such assertion, in that:
 - (a) Subpostmasters bear the legal burden of proving that a shortfall did not result from losses for which they were responsible. This is because (1) the truth of the matter lies peculiarly within the knowledge of Subpostmasters as the persons with responsibility for branch operations and the conduct of transactions in branches, (2) it would be impracticable and unjust for Post Office to be required to prove allegations relating to matters that fall peculiarly within the knowledge of Subpostmasters and/or (3) where a person is subject to a fiduciary obligation as regards his or her dealing with assets, the burden is on that person to establish the justification for his or her dealings.
 - (b) In the absence of evidence from a Subpostmaster to suggest that a shortfall arose from losses for which he or she was not responsible, it is appropriate to presume and/or to infer that the shortfall arose from losses for which he or she was responsible. Such a presumption and/or inference is appropriate because (1) branches are under the management of Subpostmasters or their Assistants, (2) losses do not arise in the ordinary course of things without fault or error on the part of Subpostmasters or their Assistants and (3) it would not

be right to presume or infer that a shortfall and loss was caused instead by a bug or error in Horizon.

- (2) Where an agent renders an account to his or her principal, he is bound by that account unless and to the extent that he discharges the burden of demonstrating that there are mistakes in the account that he should be permitted to correct.
- (3) Where an agent deliberately renders a false account to his or her principal, in relation to the matters covered by the account the Court should make all presumptions of fact against that Subpostmaster as are consistent with the other facts as proven or admitted.

94. As to Section 12.12 of the SPMC:

- (1) Section 12.12 should be construed in accordance with the principles set out in paragraph [93XX] above.
- (2) On the true construction of Section 12.12, Subpostmasters are responsible for all losses (as defined in paragraph [41XX] above) disclosed in their branch accounts save for (a) losses which were not caused by any negligence on their part, by any carelessness on their part or by any error on their part or (b) losses which were not caused by any act or omission (“act”) on the part of their Assistants.
- (3) Subpostmasters who allege that they are not liable for any losses disclosed in their branch accounts bear the burden of proving that such losses were not caused by any of the things referred to in sub-paragraph (2) above.
- (4) Regarding paragraph 55.1, no admissions are made as to what is meant by the term “real loss”, but Post Office notes that, in Section 12.12, the concept of a “loss” is not tied to or dependent on economic detriment to Post Office.
- (5) Paragraph 55.2 is denied.
- (6) Paragraph 55.3 is denied.
- (7) Paragraph 55.4 is denied.

Assistants

95. As to paragraph 56:

- (1) The terms of the SPMC, the Temporary SPMC, ~~and~~ the NTC and the Operations Manual pleaded therein are admitted and averred. ~~[CHECK]~~.
- (2) These terms provided (and did not merely purport to provide) that Subpostmasters were liable for the acts of their Assistants. Having been appointed as agents of Post Office to conduct its business on its behalf from their branches, Subpostmasters were responsible for the conduct of the business at those branches. If Subpostmasters employed Assistants for that purpose (giving those Assistants at least some control over and/or custody of Post Office transactions, cash and stock), one would expect these Subpostmasters to be responsible for their acts.
- (3) The SPMC and the NTC stated that Post Office would provide initial training to Assistants and/or would provide to Subpostmasters training materials that were adequate for the provision of initial training of Assistants.
- (4) The terms pleaded in paragraph 56 made it clear that the Subpostmaster was ultimately responsible for providing or procuring the provision of such training as was necessary to enable the Assistant assist the Subpostmaster in discharging his or her obligations to Post Office. Accordingly, where a Subpostmaster considered that for any reason an Assistant was not, without further training, able properly to discharge his or her functions in relation to Post Office business, the Subpostmaster was required to: (a) notify Post Office that the Assistant was not so able; (b) where further training could resolve the situation, provide or procure the provision of such training, as appropriate; and (c) where further training could not resolve the situation (and/or had failed to do so), to cease to engage the Assistant on Post Office business.

Commented [ALP114]: Para 56.2 of the GPOC – CIs have pleaded the terms of the SPMC as amended in July 2006 rather than the terms of the 1994 contract

Helpline

96. Paragraphs 57 is admitted.
97. Paragraph 58 is admitted.

Access to Branch Accounts and Records

98. Paragraph 59 is admitted. The terms of the SPMC, Temporary SPMC and NTC pleaded therein are admitted and averred. In an agency relationship of this sort, such terms were to

be expected. They reflected Post Office's common law rights as principal and the Subpostmaster's common law duties as agent.

Suspension

99. As to paragraph 60:

- (1) The terms of the SPMC and the NTC pleaded therein are admitted and averred **{CHECK}**.
- (2) These terms provided for Post Office to have the right (and not merely a purported right) to suspend Subpostmasters in the circumstances provided for therein. In circumstances where Subpostmasters conducted Post Office's business, entering into, effecting transactions and incurring liabilities on its behalf, and dealing with Post Office cash and stock for this purpose, it was to be expected that Post Office would have the right to suspend Subpostmasters in circumstances where it no longer felt that it could safely trust the Subpostmaster to discharge his obligations.
- (3) Regarding the Temporary SPMC, paragraph 60.2 is admitted.

Termination - Notice

100. As to paragraph 61:

- (1) The terms of the SPMC, the Temporary SPMC and the NTC pleaded therein are admitted and averred **{CHECK}**.
- (2) These terms permitted (and did not merely purport to permit) Post Office:
 - (a) to terminate its contracts with Subpostmasters summarily for cause; and
 - (b) to terminate those contracts on notice without cause (i.e. at will).

Post Office was in an agency relationship with Subpostmasters pursuant to which Subpostmasters were entering into and/or effecting transactions and incurring liabilities on its behalf, and dealing with Post Office cash and stock for this purpose. It was to be expected that the contracts governing this relationship would contain provisions conferring on Post Office (i) a right to terminate that relationship immediately where the Subpostmaster had committed material breaches of their contracts and (ii) a right to terminate the relationship on notice where for whatever

reason Post Office no longer wished to maintain that relationship with that Subpostmaster.

- (3) The provisions for summary termination contained in these contracts did not exclude either party's common law right to terminate the contracts for repudiatory breach. Further, the provisions for termination on giving notice were matched by equivalent provisions entitling the Subpostmaster to resign on giving the same notice (see Section 1.10 of the SPMC, Clause 2.4 of the Temporary SPMC and Clause 2.16.1 of the NTC).

Termination – Compensation for loss of office

101. As to paragraph 62 and 62.1 to 62.3, the terms of the SPMC, the Temporary SPMC and the NTC pleaded therein are admitted and averred [CHECK]. On their true construction, these terms provided that Subpostmasters did not have a contractual right to compensation for the lawful termination of their contracts. Such terms did not affect a Subpostmaster's right to damages for wrongful termination in circumstances where (1) Post Office had summarily terminated the contract where it had no right to do so or (2) Post Office had given insufficient notice of termination (i.e. it had not given the period of notice specified in his or her contract).

Termination – Subsequent appointments

102. As to paragraphs 62.4 to 62.7, the terms of the SPMC, the Temporary SPMC and the NTC pleaded therein are admitted and averred [CHECK]. These terms expressly preserved (and did not merely purport to preserve) Post Office's commercial freedom to decide whom to appoint as its agent to conduct its business on its behalf, and from where such person should conduct that business. Such terms were to be expected in a contract of this sort.

B.3 Relational Contract and Implied Terms

Relational Contract

103. Paragraph 63 is denied. Further:
 - (1) It is denied that the Subpostmaster Contracts are "relational contracts" in the sense alleged by the Claimants. Without prejudice to the generality of that contention, Post Office notes that the relevant contracts were terminable on notice without cause.

- (2) It is denied that the classification of these contracts as “relational contracts” would affect their construction or effects. There are no special rules or principles of construction that apply to such contracts.
- (3) Whether or not the relevant contracts can be called “relational contracts”, the implied term at paragraph 63 should not be implied because it is neither so obvious as to go without saying nor necessary to the business efficacy of the agreements. Further, the implication of such broad and general obligations would contradict the express terms of the contracts.
- (4) Post Office will address **Yam Seng Pte Ltd v International Trade Corpn** [2013] EWHC 11 and related case law in due course as and when appropriate.

Implied terms

104. Paragraph 63A is denied. At all material times, Post Office has obliged Subpostmasters as its agents to conduct its business on its behalf and to perform their duty to account to it through the electronic point of sale and accounting system called Horizon. At no material time has Post Office agreed to carry out Horizon as a service to Subpostmasters, and nor has it agreed to carry out any of the steps necessary to enable Subpostmasters to fulfil their agency obligations as a service to Subpostmasters. In relation to Horizon, the Helpline and the training and training materials referred to in paragraph 63A, the Subpostmaster Contracts are not relevant contracts for the supply of services by Post Office and the Supply of Goods and Services Act 1982 does not apply to those contracts as alleged. As regards Claimants who are or were not Subpostmasters, there are no contracts to which that Act could apply as alleged.
105. As to paragraph 64, Post Office avers that each of the Subpostmaster Contracts on which the Claimants rely contained the following implied terms (implied as being so obvious as to go without saying and/or necessary to the business efficacy of the agreements):
 - (1) Each party would refrain from taking steps that would inhibit or prevent the other party from complying with its obligations under or by virtue of the contract (the “**Stirling v Maitland Term**”).
 - (2) Each party would provide the other with such cooperation as was necessary to the performance of that other’s obligations under or by virtue of the contract (the “**Necessary Cooperation Term**”).

106. Save as aforesaid, paragraph 64 is denied. Further:

- (1) The Claimants' reliance on the alleged status of the Subpostmaster Contracts as "relational contracts" as the basis for implying terms is wrong in law. Save for terms implied at law (which category is not asserted by the Claimants), no term is to be implied unless it is so obvious as to go without saying and/or is necessary to the business efficacy of the agreement.
- (2) The numerous additional terms alleged by the Claimants in paragraphs 64.1 to 64.19 are neither necessary to the business efficacy of the Subpostmaster Contracts nor so obvious as to go without saying. Many of them would obviously have been rejected by Post Office had they been proposed and/or are unreasonable and/or make no commercial sense. Further, many of them address matters that are already governed by the terms of the said contracts (including the Stirling v Maitland Term and the Cooperation Term) and/or they positively contradict those terms.
- (3) For the avoidance of doubt, it is specifically denied (if it be alleged) that any of the alleged implied terms:
 - (a) affected or qualified Post Office's contractual or common law rights to terminate the relevant Subpostmaster Contracts, whether summarily for cause or on notice without cause;
 - (b) affected or qualified Post Office's right to assert claims, rights and liabilities against Subpostmasters or any other party which it believed to be valid or to seek to enforce or otherwise vindicate such claims, rights and liabilities;
 - (c) affected or qualified Post Office's right to decide whom to appoint as its agent to conduct its business on its behalf, and from where such person should conduct that business.
 - (d) affected or qualified Post Office's private law right to bring a private prosecution against Subpostmasters or any other party.

107. Paragraph 65 is noted. The matters pleaded in that paragraph do not support the Claimants' case on the implied terms they allege.

B.4 Onerous and Unusual Terms

108. Paragraph 66 is denied. Specifically:

- (1) It is denied that any of the terms identified in Section B.2 of the GPoC was onerous or unusual in the relevant business context and, in particular, in the context of the appointment of an agent such as a Subpostmaster. As noted in paragraphs [XX] above, one would expect Subpostmaster Contracts to contain terms of this sort.
- (2) It is denied that the principle in **Interfoto Picture Library Limited v Stilleto Visual Programmes Limited** [1989] QB 433 has any application to the identified terms. These terms formed part of written contracts entered into in a business to business context and in the anticipation of a commercial relationship.
- (3) If and to the extent that any Claimant may contend that he did not obtain or have access to a copy of his or her written agreement and/or was unaware of or did not have access to its terms before agreeing to them, that is a matter for him or her to plead and prove.

B.5 Unfair Contract Terms

109. Paragraphs 67 and 68 are denied. Specifically:

- (1) None of the terms identified in Section B.2 of the GPoC would entitle Post Office (a) to render a contractual performance substantially different from that which was reasonably expected of it or (b) to render no performance at all in respect of the whole or any part of its contractual obligations. Accordingly, Section 3(2) of the Unfair Contract Terms Act 1977 (“UCTA”) does not apply.
- (2) If (contrary to Post Office’s primary case) and to the extent that any of the identified terms do in any respect(s) fall within Section 3(2) of UCTA, Post Office will say that they are fair and reasonable and so may be relied upon.

B.6. The True Agreement

110. Paragraphs 69 is denied. Specifically, it is denied that the *dicta* in **Autoclenz v Belcher** [2011] UKSC 41 at [35] have any application to the present case. Without prejudice to the generality of that denial, Subpostmasters are not (and are not alleged to be) employees, and the Subpostmaster Contracts are “ordinary contracts” and/or “commercial contracts” that fall within the principles set out in **Autoclenz** at [20] to [21]. Further, it is not alleged that any of the terms of those contracts were not actually relied upon by Post Office and/or were

inserted into the written contracts for the sake of form only. Post Office will address **Autoclenz** in due course as and when appropriate.

111. Paragraph 70 is denied. Further

- (1) Under the NTC, the specified notice period was 6 months, not 3.
- (2) It is denied that termination of a Subpostmaster's appointment on notice would cause a Subpostmaster's goodwill and other investments to be forfeited. A Subpostmaster could not assign the benefit of his or her Subpostmaster Contract and this was not a saleable asset whether or not he or she was still appointed. Further, an ex-Subpostmaster could sell his business (including any investment therein) to a new buyer and the new buyer could apply to be a Subpostmaster in the usual way.
- (3) Post Office and Subpostmasters both intended that the parties' agreements be as set out in the written terms. If Claimants allege that they intended some other terms to govern their relationship with Post Office, it is for them to plead and prove such intention and the grounds on which they allege that it was shared by Post Office, providing particulars of the alleged terms and when and how it is said those terms were agreed. They have not done so.

112. Paragraph 71 is denied. Further:

- (1) Post Office notes that, on the Claimants' own case, there was no "true agreement" between the parties that Post Office would be entitled to terminate the Subpostmaster Contracts without cause on giving the 12 months' notice of termination that the Claimants apparently seek.
- (2) It is denied that the principle in **Autoclenz** (even if applicable) would permit the Claimants to rewrite the termination provisions in the Subpostmaster Contracts in the way that they wish to do. These are the sort of provisions one would expect to see in such contracts. The principle in **Autoclenz** is exceptional, and it cannot be used to circumvent the normal rules on construction and the implication of terms as the Claimants seek to do.

C. CONTRACTUAL TERMS – OTHERS

C.1. Crown Office Employees

Implied Terms

113. As to paragraph 72:

- (1) The implied term alleged in paragraph 72.1 is admitted.
- (2) Without knowing which “discretions” are referred to in paragraph 72.2, Post Office is unable to admit or deny the implied term alleged in that paragraph

114. As to paragraph 73, the Claimants have not identified the particular discretions on which the implied terms in paragraph 72 are said to have operated or the terms governing those discretions. Post Office reserves its right to plead to such discretions if and when the Claimants identify them with proper particulars. For the avoidance of doubt, however, it is denied (if it be alleged) that such implied terms applied to Post Office’s contractual or common law rights to terminate the relevant Claimants’ employments, whether summarily for cause or on notice without cause.

115. Paragraph 73A is denied.

C.2 Assistants

Rights of Third Parties

116. Paragraph 74 is denied. Section 1(b) of the Contracts (Rights of Third Parties) Act 1999 does not apply as alleged. Specifically:

- (1) On the true construction of the SPMC, Section 15.7.1 did not purport to confer a benefit on the Subpostmaster’s Assistants.
- (2) On the true constructions of the NTC, Clauses 2.3 to 2.7 did not purport to confer a benefit on the Subpostmaster’s Assistants.
- (3) The unexplained allegation that the alleged implied terms purported to benefit the Subpostmaster’s Assistants is denied.
- (4) Paragraph 74(d) is not a proper plea but its general thrust is denied.

C.3 Franchise Agreements

117. As to paragraph 75:

- (1) It is admitted that, where a corporate Franchisee was to be appointed which appeared to expose Post Office to financial risk, Post Office generally required a personal guarantee. Save as aforesaid, the first sentence is denied.
- (2) Regarding the second sentence, paragraphs [76 to 80XX] above are repeated, *mutatis mutandis*.

Express Obligations of the Defendant

118. The terms identified in paragraphs 76 and 77 are admitted. Post Office will rely on all the relevant terms of the Franchise Agreement for their true meaning and full effect.

Relational Contracts

119. Paragraph 78 is denied. In relation to the allegation that the Franchise Agreement is a relational contract, paragraph [103XX] above is repeated, *mutatis mutandis*.

Implied terms

120. Paragraph 78A is denied. In relation to the Supply of Goods and Services Act 1982, paragraph [104XX] above is repeated, *mutatis mutandis*.
121. Paragraph 79 (which Post Office assumes is intended to refer to paragraph 64) is denied. In relation to the implication of terms into the Franchise Agreement, paragraphs [103 to 107?XX] above are repeated, *mutatis mutandis*.

D. CONCURRENT DUTY IN TORT

122. As to paragraph 80, it is denied that Post Office assumed a tortious responsibility to the Claimants. Further:

Subpostmasters and Crown employees

- (1) Subparagraphs 80.1 and 80.2 are inadequately particularised. Insofar as they are understood, they are denied.

Assistants

- (2) Each and every allegation in subparagraphs 80.3 and 80.4 is denied. Without prejudice to the generality of this denial:

- (a) Assistants were under the control, supervision and guidance of the Subpostmasters who employed them, not Post Office, and they were in a proximate relationship with these Subpostmasters, not Post Office. Unlike Post Office, such Subpostmasters were in a position to assess their competence and to determine whether they needed training (or further training). Unlike Post Office, such Subpostmasters were ultimately responsible for providing the training they needed.
- (b) If Post Office understands the Claimants' case correctly, they allege that Post Office owed Assistants a duty to take care not to seek to enforce any rights it believed it had against any person if to do so might in any way affect or even raise a risk of affecting Assistants in any way. This would be extraordinary.
- (c) It would be would be unfair, unjust and unreasonable to impose the alleged duties of care on Post Office. To do so would be inconsistent with the contractual relationships between Post Office and Subpostmasters on the one hand and Subpostmasters and their Assistants on the other.

Directors or guarantors of Franchisees

- (3) Paragraph 80.5 is denied and sub-paragraph [(2)] above is repeated, *mutatis mutandis*.

E. AGENCY

- 123. Paragraph 81 is admitted (save for its reference to paragraph 52.1, which appears to be an error). [CHECK]
- 124. Paragraph 82 is denied. Specifically:
 - (1) The Subpostmaster Contracts made clear that Subpostmasters were agents of Post Office, and they owed Post Office the contractual, fiduciary and other duties that accompany that status. They were under a duty to account to Post Office, not the other way around.
 - (2) Post Office did not agree to act as an agent of any of the Claimant Subpostmasters for any purposes. Nor did it agree to act as an agent of any Claimants who were Subpostmasters' Assistants or Franchisee directors or guarantors or Crown employees. Post Office notes that no such agreement is alleged by the Claimants.

- (3) Post Office did not hold or deal with cash or other assets on behalf of Claimants, and it did not effect transactions on their behalf or commit them to transactions with third parties. Post Office did not undertake any of the characteristic roles of an agent and did not agree to be subject to any of the characteristic duties of an agent.

125. Paragraph 83 is denied.

126. Paragraph 84 is denied. Post Office was not an agent and was under no such duties.

F. FIDUCIARY DUTIES

127. Paragraphs 85 is denied. The Horizon accounting system was operated on Post Office's behalf.

128. As to paragraph 86, it is admitted in general terms that Post Office provided information to Subpostmasters. However, the contexts in which they did so were so various and the allegations made in paragraph 86 are so generic that Post Office cannot meaningfully plead to them.

129. Paragraph 87 is denied.

130. Paragraph 88 is denied and paragraphs [XX] above are repeated.

131. Paragraph 89 is denied. Further, Post Office notes that the duties alleged in paragraph 84 cannot properly be characterised as fiduciary duties.

G. GENERIC BREACHES OF CONTRACT / TORT / FIDUCIARY DUTY

132. Regarding the generic allegations of breach set out in Section G of the GPoC:

- (1) These allegations are so general that it is in many instances impossible for Post Office to provide meaningful responses. Amongst other things, they overlook critical differences between Subpostmasters on the one hand and Assistants, Franchisee directors or guarantors and Crown employees on the other. Moreover, the facts relevant to various of the allegations of breach will have changed substantially over the relevant period.
- (2) As these allegations turn on matters of fact and degree that would need to be pleaded and proved in individual cases, Post Office can only address these breaches in the most general of terms.

- (3) In relation to any particular claims that may be asserted by any particular claimants, in appropriate cases Post Office will assert the generic defences referred to in Section N below.

133. Paragraphs 90 and 91 are denied.

134. The general thrust of paragraph 92 is denied:

- (1) Post Office provided adequate training and training materials to Subpostmasters, both initially on their appointment and thereafter (including in response to requests for training). Such training varied from time to time and from case to case but with the benefit of such training and the other assistance and support available to Subpostmasters, a reasonably competent and diligent Subpostmaster was able properly to discharge his or her obligations to Post Office.
- (2) The Operating Manuals referred to varied from time to time and from case to case but they were sufficient to enable compliance by a reasonably competent and diligent Subpostmaster.
- (3) If and to the extent that any Subpostmaster considered himself or herself unable properly to discharge the obligations to Post Office, it was incumbent on him or her to contact Post Office and seek further training and/or make use of the assistance offered by the Helpline.

135. Paragraph 93 is denied and paragraph [XX] below is repeated. With the benefit of the Helpline and the training and other assistance and support available to Subpostmasters, a reasonably competent and diligent Subpostmaster would have been able properly to discharge his or her obligations to Post Office.

136. As to paragraph 94:

- (1) Post Office does not know the transaction types to which the allegation in paragraph 94.1 relates. It reserves its right to plead to proper particulars of the allegation if and when they are provided.
- (2) Transaction data relating to the preceding 42 days or ~~60~~2 days (after the introduction of Horizon Online) was freely available to Subpostmasters. If further data was necessary in order to enable a Subpostmaster to respond to a Transaction Correction, such data was provided.

- (3) Post Office provided more extensive transaction data where this was necessary. The Claimants have not identified any circumstances in which more extensive data was requested, was denied and would, if provided, have protected any Claimant Subpostmasters from any alleged prejudice.
 - (4) Subparagraph 94.5 is admitted. However, Post Office would provide access to transaction data and other relevant records requested by a Subpostmaster where this was necessary. [TO BE CONFIRMED BY POL]
137. As to paragraph 94A, it is denied that the Horizon system was not reasonably fit for purpose. Regarding the reference to “adequate error repellency”, paragraph [XX] above is repeated.
138. Paragraph 95 is so vague that Post Office cannot plead to it, other than to repeat paragraphs [XX - INCLUDE THE PARAS WHERE WE DEAL WITH HORIZON’S ROBUST CHECKS AND CONTROLS AND THE PARA WHERE WE SAY NO SYSTEMIC FLAW ALLEGED ETC?] above.
139. As to paragraph 96, Post Office denies that it was under a duty to do all the things alleged therein. Further:
- (1) Regarding paragraph 96.1, it is denied that Horizon failed properly to record transactions. Post Office notes that Subpostmasters were under a duty to account to post office, not the other way around. Further, taking into account the matters pleaded in paragraph [XX – ASYMMETRY OF INFORMATION PARA AND BURDEN OF PROOF PARA?] above, if an explanation was required for any shortfall, in many cases it would be for the relevant Subpostmaster to advance possible reasons for it. Post Office further notes that, in cases where a Subpostmaster was guilty of false accounting as described in paragraphs [XX] above, it would often be impossible for anyone to do so.
 - (2) Paragraphs 96.2 and 96.3 are denied. Post Office provided such cooperation as was necessary and reasonable in the circumstances.
 - (3) Regarding 96.4, it is denied that, when forming a conclusion as to whether a Subpostmaster was or was not liable for a shortfall, Post Office did not give a reasonable and fair consideration to that question. It is also denied that Post Office was required to “investigate” the matters referred to in that paragraph. Post Office

notes that, in cases where a Subpostmaster was guilty of false accounting as described in paragraphs [XX] above, it would often be impossible to “investigate” those matters.

140. As to paragraph 97, paragraph [XX] above is repeated. Post Office did not demand payment other than in accordance with the applicable Subpostmaster Contracts.
141. As to paragraph 98, paragraph [XX] above is repeated. The alleged duty of investigation is denied, as is the allegation that compliance with this duty was a precondition for exercising Post Office’s rights, whether to seek recovery of shortfalls from Subpostmasters, to suspend their appointments or to terminate their appointments. Further, Post Office notes that the contractual terms regarding suspension and termination pleaded in paragraph 60 expressly provided for the circumstances in which those rights applied (the right of suspension applied in cases of mere suspicion).
142. Paragraph 99 is so vague that Post Office cannot plead to it. However:
 - (1) As to the allegation that Post Office applied unspecified “pressure” to cause a Claimant to resign, Post Office notes that the alleged pressure is neither explained nor alleged to be illegitimate. Post Office further notes that, under the Subpostmaster Contracts, it was entitled to terminate those agreements without cause, on giving the same notice that Subpostmasters gave on resigning.
 - (2) As to paragraph 99.1, paragraphs [XX] above are repeated.
 - (3) As to paragraph 99.2, paragraphs [XX – INCLUDE OUR “REAL LOSS DENIAL PARA] above are repeated.
 - (4) Paragraph 99.3 is denied. Post Office complied with the Necessary Cooperation Term in carrying out reasonable enquiries, taking into account the material circumstances. Where a Subpostmaster failed to provide cooperation to Post Office and/or had failed to retain key records and/or had made false cash declarations and/or was guilty of false accounting and/or had otherwise acted dishonestly, this could have had an impact on the nature and extent of the cooperation required of Post Office.
 - (5) It is denied that Post Office’s allocation of the burden of proof was wrong as alleged at subparagraph 99.4. It allocated such burden of proof as was reasonable and

appropriate in the relevant case, taking into account all material circumstances, including the asymmetry in knowledge in favour of Subpostmasters, the cooperation that Post Office was able to obtain from the relevant Subpostmaster and/or his or her Assistants and the matters pleaded in paragraph [XX] above.

- (6) As to paragraph 99.5, it is denied that Post Office was required to establish “causative fault” by a Subpostmasters before it could form the conclusion that responsibility for shortfalls at their branches rested with them. Paragraphs [XX] above are repeated.
 - (7) As to paragraph 99.6, Post Office denies that, when it formed the conclusion that responsibility for shortfalls rested with Subpostmasters, it relied on flawed or unreasonable inferences.
143. As to paragraph 100, it is admitted that, in some instances, Post Office pursued civil and/or criminal proceedings in relation to shortfalls. As to the reference to paragraph 99, paragraph [XX] above is repeated.
144. As to paragraph 101:
- (1) As the Claimants admit in paragraph 62.4 *et seq.*, the Subpostmaster Contracts expressly provided that Post Office was entitled to decide for itself (and by reference to its own interests) whom to appoint as a new Subpostmaster and the premises from which he or she should operate. It was subject to no obligations or constraints in that regard.
 - (2) It is denied that, having regard to its own interests, Post Office acted unreasonably in relation to the appointment of new Subpostmasters.
145. Paragraph 102 is denied and paragraphs [XX] above are repeated. Post Office had no duty to disclose the matters set out in those paragraphs.
146. As to paragraph 103, paragraphs [XX] above are repeated.
147. Post Office cannot meaningfully plead to paragraph 104. For example, Post Office does not know: (1) which, if any, breaches are alleged to have been in bad faith or the basis of such allegation; (2) which, if any, of Post Office’s contractual discretions are alleged to have been exercised arbitrarily, capriciously or unreasonably or the basis of such allegation; (3) which, if any, steps taken by Post Office are alleged to have been in breach of an implied

duty of trust and confidence or the basis of such allegation; (4) which, if any, steps by Post Office are said to have been taken without reasonable care and skill or the basis for such allegation; or (5) what, if anything paragraph 104.5 is referring to. However, Post Office denies that it breached the Subpostmaster Contracts to which Claimants were party.

148. Paragraph 105 is noted. Save as set out above and below, Post Office was not subject to the pleaded duties and did not make the alleged misstatements or misrepresentations.

H. ACTIONABLE MISREPRESENTATION AND DECEIT

149. Paragraphs 106 and 107 are noted. In relation to the “indicative” allegations of deceit, negligent misstatement, and misrepresentation set out in Section H of the GPoC, paragraph [132XX] above is repeated, *mutatis mutandis*. Post Office cannot meaningfully respond to “indicative” allegations of this sort. The facts relevant to the making of a representation to a Claimant, to the truth or falsity of the representation, and to the Claimant’s reliance on the representation will differ from one case to another.

H.1 Representations

150. As to paragraph 108:

- (1) Paragraph 108.1 is denied. The fact of a shortfall was apparent on the face of the accounts submitted by a Subpostmaster to Post Office. It was a matter which Post Office was entitled to have a view on and to discuss without making an actionable representation as alleged. .
- (2) Paragraph 108.2 is denied and sub-paragraph [11] above is repeated. Shortfalls were addressed in accordance with the parties’ obligations, including the Subpostmasters’ obligation to account to Post Office, not on the basis of representations made by Post Office to Claimants.
- (3) Paragraph 108.3 is denied. Post Office did not advise Subpostmasters on the true construction of the Subpostmaster Contracts. In any particular case, whether an explanation was required from the Subpostmaster was a matter which Post Office was entitled to have a view on and discuss without making an actionable representation as alleged.
- (4) If Post Office understands the Claimants’ case correctly, paragraph 108.4 relates to statements that some Helpline operators are alleged to have made to some Claimants

when they called the Helpline with particular problems. Post Office cannot meaningfully plead to this case without knowing when and by whom the relevant calls were made, the context and purpose of those calls, what problems were raised and how those problems are alleged to have been communicated. However, paragraph [XX – PARA WHERE WE SAY THEY WEREN'T INSTRUCTED TO LIE AND WERE NOT IN A POSITION TO SPEAK FOR THE WHOLE HELPLINE ETC] above is repeated.

- (5) Post Office cannot meaningfully plead to paragraph 108.5 without knowing the words alleged to have been used and context in which those words are alleged to have been said.
- (6) The first part of paragraph 108.6 is denied. As to the second part, paragraphs [XX – PARAS IN RELATION TO THE DIFFERENT TYPES OF INVESTIGATION] are repeated.
- (7) To the limited extent set out in paragraph [XX] above, paragraph 108.7 is admitted.

Reliance

151. In the absence of any details, Post Office cannot plead to the allegation of reliance made in 109. However, if (which as set out above is largely denied) any of the representations alleged in paragraph 108 were made to any particular Claimants, they would have been made in different contexts, for different purposes and at different times. For example, in relation to the only representation which is admitted (that alleged in paragraph 108.7), Post Office notes that the representations were made 2015, long after the vast majority of the claims asserted by the Claimants had arisen and long after many of the Claimants had left Post Office. Further and in any event, Post Office relies on the matters set out in paragraph [155XX] below.

H.2 Falsity

152. Regarding paragraph 110, Post Office's general case is as set out in paragraphs [XX – NEED TO INCLUDE ALL THE VARIOUS PARAS IN THE DEFENCE DEALING WITH THE MATTERS ALLEGED IN BRACKETS IN PARA 109 AND DEALING WITH PARAS 27 (REMOTE ACCESS) 31 (NO PROPER INVESTGATIONS] AND 55 [TRUE CONSTRUCTION OF SECTION 12.12 OF THE SPMC].

H.3 Lack of due care

153. The allegations in paragraph 111 are made at a very high level of generality. Responding at the same level of generality, the general thrust of paragraph 111 is denied. Specifically:

- (1) Post Office considered every shortfall and challenge to the same on their facts.
- (2) It is denied (if it be alleged) that Post Office acted without due care in attaching importance to the safeguards and other material factors pleaded in paragraphs [XX] above and/or in considering that, absent evidence to the contrary it was extremely unlikely that any particular shortfall had been caused by a bug or error in Horizon.
- (3) It is denied (if it be alleged) that Post Office acted without due care in drawing adverse inferences from a Subpostmaster's failure properly to account and/or to prepare or retain proper accounting records and/or his or her decision to falsify accounts or make false cash declarations and/or his or her failure to cooperate with Post Office's investigations and/or procure cooperation from his or her Assistants.
- (4) It is denied that Post Office's statements regarding the remote editing of branch data were negligent. The persons responsible for the making of the representations were not aware that Fujitsu privileged user rights could in theory be abused to circumvent the protections of the system as designed and edit or delete such data.

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H.4 Negligent Misstatement

154. As regards any representations that Post Office made to any particular Claimants paragraphs 112 and 113 are denied. Without prejudice to the generality of this denial, if and to the extent that Post Office made any of the representations alleged in paragraph 108 to any particular Claimants, it is denied that it made them in circumstances importing a duty of care owed to those particular Claimants.

H.5 Misrepresentation Act 1967

155. As to paragraph 114:

- (1) Save as expressly admitted above, it is denied that Post Office made any misrepresentations.

- (2) To the extent that it is the Claimants' case that they were bound by their acceptances of shortfalls and/or the accounts that many of them submitted to Post Office, that case is admitted and averred. Post Office will say that these acceptances and accounts amount or give rise to defences of accord and satisfaction and/or estoppels and/or compromises and/or accounts stated and/or settled accounts. Further, it is denied that the Claimants relied on the alleged misrepresentations when accepting those shortfalls and/or submitting those accounts to Post Office.
- (3) To the extent that it is the Claimants' case that they were bound by the various compromise and/or settlement agreements that several of them entered into with Post Office, that case is also admitted and averred. Those parties have settled and/or discharged and may not now bring any claims in relation to the matters covered by these agreements. Further:
- (a) It is denied that the Claimants relied upon any alleged misrepresentation by Post Office in entering into those agreements. The parties entered into commercial compromises in good faith.
- (b) In at least some of the agreements, the relevant Claimants acknowledged that they had not entered into the agreements in reliance on any assurances, statements, representations or misrepresentations by Post Office (without releasing any liability for fraud). Post Office relied on these acknowledgments in entering into these agreements. The relevant Claimants are not entitled to make and/or are estopped from making any claims for misrepresentation other than claims for deceit.
- (c) For the avoidance of any doubt, Post Office notes that most of the compromise and/or settlement agreements were entered into before the statements concerning the remote editing of branch transaction data referred to in paragraph 26 GPoC were made. [CORRECT?]
- (4) Save as aforesaid, paragraph 114 is denied. Further and in any event, if (which is denied) any Claimant has entered into any contract in reliance on any misrepresentation made by Post Office, Post Office reserves the right to contend that it had reasonable grounds to believe and did believe that the facts represented were true.

H.6 Deceit

156. Each and every allegation in paragraph 115 is denied. The Claimants have no proper basis to make allegations in deceit. Without prejudice to the generality of this denial:

- (1) It is denied that Post Office knew or was reckless as to the matters set out in paragraph 115.1. Post Office believed the shortfalls that it attributed to the relevant Subpostmasters were shortfalls, that such shortfalls were properly attributed to those Subpostmasters and that they were truly their responsibility.
- (2) Paragraph 115.2 is not understood.
- (3) It is denied that Post Office knew or should have known (which is not an allegation of knowledge) that it bore the (unparticularised) contractual burden. In these very proceedings Post Office denies that it bears the burden of showing the Subpostmaster's account to be mistaken and/or showing that a shortfall was caused by an Assistant or was caused by a Subpostmaster's error, negligence or carelessness. Paragraph 115.3 is denied.
- (4) Paragraph 115.4 is denied and paragraph [XX – PARA SAYING HELPLINE OPERATORS NEVER SAID YOU ARE NOT THE ONLY ONE ETC] above is repeated.
- (5) As to paragraph 115.5, whenever it concluded that a particular shortfall was attributable to a particular Subpostmaster, Post Office believed that this was the case. It would not have reached that conclusion in circumstances where it knew that, or was reckless as to whether, the shortfall was a Horizon-generated shortfall.
- (6) Subparagraph 115.6 is denied and paragraphs [XX] above are repeated.
- (7) Subparagraph 115.7 is denied and paragraphs [XX] above are repeated.
- (8) Subparagraph 115.8 is denied and paragraphs [XX] above are repeated.

H.7 Reliance

157. As to paragraph 116:

- (1) Paragraph [151? and 155?XX] above are repeated.

- (2) Regarding paragraph (i), it is denied that any of the alleged representations by Post Office would have been made in relation to or material to any decision to accept a Transaction Correction. It was incumbent on a Subpostmaster to accept or dispute a Transaction Correction as he or she considered appropriate taking into account information that was known to him and/or her or could be obtained from Post Office, the relevant Assistants or any other relevant third party. The Subpostmaster is bound by his acceptance and/or account in relation to any contention that a Transaction Correction was erroneous.
- (3) Paragraph (ii) is not understood.
- (4) As to paragraph (iii), paragraph [115(3)XX] above is repeated.
- (5) Paragraph (iv) is not understood.

I. HARRASSMENT

158. Paragraphs 117 and 118 are noted. In relation to the “indicative” acts set out in Section I of the GPoC, paragraph [132XX] above is repeated, *mutatis mutandis*. Post Office cannot meaningfully respond to “indicative” allegations of this sort.
159. Paragraph 119 is denied. Specifically:
 - (1) Post Office has not engaged in acts which amount to harassment.
 - (2) Post Office was entitled to make demands for payment, to propose Transaction Corrections, to seek admissions of liability for shortfalls, to give warnings of legal proceedings and to pursue such proceedings without being guilty of harassment.
 - (3) Post Office does not know what is the “pressure” referred to in paragraph 119.2 but avers that the matters of which the Claimants complain in paragraph 119 (i) are the ordinary incidents of commercial life and, in particular, an agent’s operation of a substantial business enterprise on behalf of its principal or (ii), in the case of criminal proceedings, resulted from the Claimant’s own wrongdoing and/or Post Office’s reasonable suspicion of such wrongdoing.
 - (4) Post Office acted in accordance with its own good faith assessment of its rights and obligations without knowing or believing that its conduct amounted to harassment.

J. DURESS & UNCONSCIONABLE DEALING

160. Paragraphs 120 is noted.

161. Post Office cannot meaningfully respond to generic allegations of the sort made in paragraph 121. However:

- (1) Paragraphs [XX – THE PARAS DEALING WITH ACUTE IMBALANCE, REplete WITH POWER AND DISCRETION, SPECIAL DISADVANTAGE, ERRORS AND BUGS] above are repeated.
- (2) Post Office was entitled to assert its rights as it understood them to be and to hold Subpostmasters to their contracts and to their duties as its agents.
- (3) Post Office can neither admit nor deny the general allegations as to the Claimants' own knowledge and situations in paragraphs 121.4, 121.5 and 121.8. It will respond if and when particular allegations are made by particular Claimants.
- (4) Post Office does know what pressure it is alleged to have applied to any Claimant but it specifically denies having taking unconscionable advantage of the Claimants and/or having put the Claimants in a position in which they acted under economic duress.
- (5) No basis for applying the concepts of economic duress or unconscionable dealings in this case has been articulated with sufficient clarity to allow meaningful response. However, it is denied (if it be alleged) that the Claimants may invoke these concepts so as to justify, avoid the consequences of or blame Post Office for any false accounting for which they may be responsible.

162. Paragraph 122 is denied. Further, (1) the "transactions" that the Claimants seek to rescind on the basis of duress and/or unconscionable dealing are not properly identified and it is not clear to Post Office that there are any transactions which the Claimants can properly claim to rescind; and (2) the Claimants are not entitled to and cannot claim damages for economic duress or unconscionable dealing.

K. MALICIOUS PROSECUTION

163. Paragraphs 123 and 124 are noted. For the avoidance of doubt, Post Office will deny all claims for malicious prosecution, which it will contend are made without any proper basis.

Post Office also notes that most Claimants seek to claim malicious prosecution in relation to proceedings that were determined in Post Office's favour.

L. UNJUST ENRICHMENT

164. Paragraph 125 is noted.
165. Post Office cannot meaningfully respond to generic allegations of the sort made in paragraphs 126 and 127. However, the Claimants' entitlement to claim in unjust enrichment is denied. The matters relied upon in support of that claimed entitlement are denied as pleaded in the relevant parts of this Generic Defence.
166. Further, in appropriate cases, Post Office will rely upon the following defences:
- (1) Post Office will rely upon its right to treat acceptances of shortfalls and accounts rendered by Claimants as final and binding and/or as giving rise to defences of accord and satisfaction and/or estoppels and/or compromises and/or accounts stated and/or settled accounts.
 - (2) Post Office will if necessary assert that it would be inequitable in all the circumstances to allow a Claimant to re-open the accounts that they have rendered.
 - (3) Post Office will rely on the defence of change of position in circumstances where (for example) Post Office resolved its transactions with third parties in reliance on any acceptances or accounts as rendered.

M. LOSS AND DAMAGE

167. As to paragraph 128:
- (1) The Claimants must each properly particularise any loss and damage that they claim to have suffered.
 - (2) The Claimants must each quantify that loss and damage (which they have not done so in pre-action correspondence and only done in a haphazard manner in the Schedules of Information).
 - (3) The Claimants must each properly particularise that such loss and damage resulted from specific breaches of contract or other legal wrongs on Post Office's part.

- (4) Until these matters are properly particularised, Post Office reserves the right (amongst other things) (a) to deny in any or all cases that the alleged loss and damage was suffered by the relevant Claimant; (b) to deny that such loss and damage was the result of the alleged breaches of contract or other legal wrongs; (c) to assert that all or some of such loss and damage is irrecoverable as a result of failures to mitigate; and (d) to assert all or some of such loss and damage is too remote.

168. Paragraph 129 is noted. In relation to the “indicative” types of loss and damage set out in Section M of the GPoC, paragraph [132XX] above is repeated, *mutatis mutandis*. It is not possible meaningfully to respond to the pleaded heads of loss for the following reasons:

- (1) The Claimants have not identified the particular breaches or legal wrongs which is said to give rise to liability for the pleaded losses. It may be that the Claimants are in some instances seeking losses that are not available for particular breaches or wrongs as a matter of law (for example, neither damages for pure stigma/reputational harm nor damages for distress falling short of a genuine psychiatric illness are available for breaches of contract such as those at issue in these proceedings).
- (2) The Claimants have failed to identify the causal connection between the alleged breaches and the alleged losses.
- (3) The types of loss are pleaded at a very high level of generality. It may be that liability for some of the types of loss covered by each heading are irrecoverable in law or for reasons of causation and / or remoteness (for example, non-pecuniary loss such as mental ill-health consequent on a breach of contract is not ordinarily within the contemplation of parties to contracts such as those at issue in these proceedings and is highly likely to be too remote, and financial losses alleged to arise from stigma/reputational harm are, in the circumstances addressed in these proceedings, highly unlikely to pass the contract law tests of causation and remoteness).
- (4) Beyond this, issues such as causation in fact, remoteness and quantification of loss cannot meaningfully be addressed in the absence of pleaded facts of individual claims.

169. In the premises, Post Office pleads back to Section M of the GPoC in general terms and without prejudice to its right to address such particularised allegations of loss as may be

brought against it (including by raising such affirmative allegations and defences as are available in fact and law).

M.1 Financial loss

170. Paragraph 130 is noted.

171. As to paragraphs 131:

- (1) The claims for loss of business investment and consequential losses appears to be based on the premise that, but for the breaches for which Post Office is alleged to be liable, the Claimants' appointments as Subpostmasters would have continued indefinitely. However, Post Office will rely upon its express right to terminate the Subpostmaster Contracts without cause on notice and upon the principle of minimum legal obligation.
- (2) By reason of this right and this principle, the only losses that a Subpostmaster may claim in relation to the termination of his or her appointment (including by resignation) would be the losses he or she would not have suffered if Post Office had given the contractual notice of termination (namely, 3 months' notice under the SPMC, 6 months' notice under the NTC and 7 days' notice under the Temporary SPMC). In all or almost all cases, the Subpostmaster would be entitled to no more than the net profits he or she would have earned during this notice period. Where Post Office in fact terminated the Subpostmaster's appointment on giving this notice, or the Subpostmaster resigned on giving this notice, the Claimant would be entitled to claim nothing.
- (3) Further and in any event, as regards the allegation that Claimants have suffered losses of their business investments, paragraph [XX – THE PARA WHERE WE SAY THAT THEY COULD ALWAYS SELL THEIR BUSINESSES AND THE PURCHASER CAN ALWAYS APPLY TO BE A SUBPOSTMASTER] above is repeated.

172. As to paragraph 132, where Post Office suspended or terminated a Subpostmaster's appointment without notice, it had the express right to do so under the applicable Subpostmaster Contracts. As regards the right to suspend, Post Office notes that, in many cases of suspension, temporary Subpostmasters are appointed to run the relevant branch,

and that these temporary Subpostmasters typically pay the suspended Subpostmasters for the right to do so.

173. As to paragraph 133, no admissions are made as to whether, and if so on what basis and to what extent, the Claimants' residential arrangements may result in claims for consequential losses.

M.2 Stigma and/or reputational damage

174. As to paragraph 134:

- (1) It is denied that damages for pure stigma/reputational harm are recoverable for breaches of contracts such as those at issue in these proceedings. Further, the pleaded losses appear unlikely to pass the contract law tests of causation and remoteness.
- (2) As to remoteness, stigma and/or reputational harm was not in the parties' contemplation as a not unlikely consequence of any of the pleaded breaches of contract and/or Post Office cannot reasonably be assumed to have undertaken responsibility for any stigma / reputational harm that might result were it to breach its contractual obligations to Subpostmasters. The pleaded losses are too remote and/or are irrecoverable because they do not satisfy the test stated by Lords Hoffmann and Hope in **Transfield Shipping Inc v Mercator Shipping Inc** [2009] 1 A.C. 61.
- (3) The contract law test for remoteness (including the test in **Transfield Shipping v Mercator**) is also to be applied in relation to any concurrent duty in tort. It is not passed.
- (4) The reference to "other similar treatment" is vague and embarrassing. Post Office does not speculate as to what is intended by these words.
- (5) Post Office will also rely on the matters set out in paragraph [175XX] below.

175. As to paragraph 135:

- (1) It is denied that the claimed loss is attributable to any breach or other legal wrong on the part of Post Office.

- (2) It is denied that Post Office suspending or terminating a Subpostmaster (or requiring the exclusion of an Assistant) would itself create the impression of dishonesty on their part. Post Office was entitled to take those steps in the absence of dishonesty (and, as regards termination, without any cause). If, which is unclear, it is alleged that Post Office acted so as to publicise or otherwise generate stigma and/or the impression of dishonesty, such allegation is denied.
- (3) Where Post Office believes or suspects that a Subpostmaster or Assistant has behaved dishonestly, it does not publicise this fact. The Claimants are required to explain how any stigma or reputational harm is attributable to any step taken by Post Office, rather than to a failure to mitigate on their part and/or to the intervening act of a third party that would break any chain of causation.

M.3 Distress and related ill-health

176. As to paragraph 136:

- (1) It is denied that damages for distress are recoverable for breaches of contracts such as those at issue in these proceedings.
- (2) It is denied that damages for distress are recoverable for the pleaded torts, save for harassment.
- (3) Ill-health resulting from distress was not in the parties' contemplation as a not unlikely consequence of any of the pleaded breaches of contract and/or Post Office cannot reasonably be assumed to have undertaken responsibility for any such harm as may result were it to breach its contractual obligations to Subpostmasters. The pleaded loss is therefore too remote and/or is irrecoverable because they do not satisfy the test stated by Lords Hoffmann and Hope in **Transfield Shipping Inc v Mercator Shipping Inc**.
- (4) The contract law test for remoteness (including the test in **Transfield Shipping v Mercator**) is also to be applied in relation to any concurrent duty in tort.

M.4 Bankruptcy

177. As to paragraph 137:

- (1) Post Office is aware that some Claimants entered into bankruptcy or individual voluntary arrangements. It is unable to admit or deny the causes of, or reasons for, any particular bankruptcy or voluntary arrangement.
- (2) Post Office denies that is liable for any of the alleged losses. It is unable to admit or deny the implicit allegation that the relevant Claimants have the right to recover such losses.
- (3) Further and in any event, Post Office does not admit and requires the relevant Claimants to plead and prove their title to sue Post Office.

M.5 Prosecutions

178. Paragraphs 138 and 139 are noted. As the Claimants have elected not to plead particulars of (and are thus not currently proceeding with) their claims for malicious prosecution, Post Office does not plead to these paragraphs.

M.6 Exemplary Damages

179. The claim in paragraph 140 is denied. It is denied that exemplary damages are recoverable for breaches of contracts such as those at issue in these proceedings. Further and in any event, no particulars of deliberate and/or cynical disregard of the Claimants' rights have been pleaded. Post Office denies that it acted so as to justify any claim for exemplary damages.

M.7 Interest

180. Paragraph 141 is noted.

N. GENERIC DEFENCES

181. As against the various claims brought by the various Claimants, Post Office anticipates that it will raise some or all of the following points or defences.

N.1 Burden of proof and associated points

182. If and insofar as Claimants are alleging that Post Office attributed to them to or sought to or did recover from them shortfalls in branch accounts for which they were not liable, they bear the burden of proving those allegations.

183. If and insofar as Claimants are alleging that branch accounts that they have rendered to Post Office are incorrect, they bear the burden of proving those allegations.

N.2 False accounting and failure to maintain records

184. In appropriate cases, Post Office will contend as follows:

- (1) where a Claimant has rendered false accounts to Post Office (including false cash declarations) or has failed to maintain proper records or keep proper accounting records, in relation to the matters covered by the relevant accounts or records, the Court should make all presumptions of fact against that Subpostmaster as are consistent with the other facts as proven or admitted;
- (2) further or alternatively, adverse inferences should be drawn against a Claimant from any false accounts rendered to Post Office or any other failure to maintain proper accounts or to keep proper accounting records as were required from time to time under the relevant Subpostmaster Contracts and/or the relevant manuals and/or instructions;
- (3) if (which is denied) Post Office owed any Claimant a duty to investigate to identify the root cause(s) of any discrepancy or shortfall, the Claimant may not allege or rely on any breach of that duty in circumstances where an investigation has been rendered impossible or impractical by his or her false accounts and/or failure to maintain proper accounts or keep proper accounting records; and
- (4) in rendering false accounts and failing to maintain and keep proper accounts and records as aforesaid, the responsible Subpostmasters committed breaches of their Subpostmaster Contracts entitling Post Office to terminate them summarily, both pursuant to the terms of the contracts and at common law.

N.3 Estoppel, accord and satisfaction, account stated, and other defences

185. In appropriate cases, Post Office will rely upon the following defences:

- (1) Post Office may assert an estoppel to prevent a Subpostmaster denying the truth of any Transaction Corrections or shortfalls that he or she has accepted or of any accounts (including cash declarations) that he or she has rendered to Post Office.

- (2) Post Office may assert that, where a Subpostmaster has accepted any Transaction Corrections or shortfalls or has rendered of any accounts to Post Office, this amounts to an accord and satisfaction and/or a binding compromise and/or an account and/or a settled account that a Subpostmaster may not re-open.

N.4 Settlement agreements

186. In appropriate cases, Post Office will say that the Claimants' claims have been settled and/or compromised and or discharged and/or satisfied by agreement between the parties.

N.5 Res judicata, issue estoppel and abuse of the process

187. Where Claimants have been involved in other proceedings with Post Office in relation to the matters of which they seek to complain herein which have been brought to judgment, Post Office will say that their claims are barred by res judicata and/or issue estoppel and it is an abuse of the process for them to seek to reopen the judgment and/or to bring claims that they could and should have brought in the course of these other proceedings.

N.6 Limitation

188. Post Office will where appropriate rely upon the expiry of the applicable limitation periods as barring the Claimants' claims. In particular, Post Office will rely upon:

- (1) The six-year limitation periods in relation to claims in tort and contract under Sections 2 and 5 of the Limitation Act 1980 and in respect of all unjust enrichment claims and in respect of all similar equitable claims.
- (2) The three-year limitation period in relation to claims for personal injury under Section 11 of the Limitation Act 1980.

N.7 Reflective loss

189. Where a claim is brought by a Claimant in respect of losses he or she has suffered as a shareholder in a company which has suffered losses as a result of Post Office's actions or omissions (for example, a company which was a Subpostmaster or a Franchisee), Post Office will where appropriate contend that the claim is barred by the principle of reflective loss.

N.8 Set off

190. Against any amounts for which Post Office may be found liable to any Claimant, Post Office will set off in law and/or equity such amounts as are due from such Claimant to Post Office, including the amounts for which such Claimant is found to be liable to Post Office on the Counterclaims referred to below.
191. Save as aforesaid, the GPoC is denied.
192. The Claimants are not entitled to the relief sought or any relief.

GENERIC COUNTERCLAIM

193. The Generic Defence is repeated.
194. Where any Claimants are liable for a shortfall which Post Office has not to date recovered from the Claimant in full, Post Office claims the amounts of such shortfalls or the unrecovered portion thereof as debts in accordance with its contractual rights as pleaded above. Post Office relies upon the following terms in relation to the payment of shortfalls after the termination of the relevant agreements, namely Section 12.13 of the SPMC, Clause 6.5 of the Temporary SPMC, and Clause 4.3 of the NTC.
195. Further or alternatively, depending on the circumstances of a particular Claimants' case, Post Office claims the value of unrecovered shortfalls and/or of lost cash and/or stock on the following grounds:
 - (1) As damages for breach of the above contractual provisions.
 - (2) In restitution where a Claimant has been unjustly unenriched by receiving the benefit of the shortfall and/or stock.
 - (3) As damages and/or compensation in equity where a Claimant has committed a fraud or breach of contract or breach of trust or fiduciary duty.
 - (4) In cases where cash has been stolen by or with the consent of a Claimant Subpostmaster, reconstitution of the trust fund and/or compensation in equity for breach of trust.

(5) In cases where cash and/or stock has been stolen by or with the consent of Claimant, reconstitution of the trust fund and/or compensation in equity for breach of trust and/or damages for conversion.

196. In relation to Claimants who are guarantors of Franchisees, Post Office claims the debts due under or indemnities in respect of or damages for the amounts due under the terms of their guarantees.

197. Post Office will claim interest on all amounts found to be due to it in accordance with s. 35A of the Senior Courts Act 1981 at such rates and for such periods as the Court shall think fit. It will claim compound interest in respect of its claims in unjust enrichment.

AND POST OFFICE CLAIMS:

- (1) The amounts of any relevant shortfalls, as a debt.
- (2) Damages for breach of contract, fraud and conversion.
- (3) An order for reconstitution of any trust fund and/or compensation in equity for breach of trust and/or fiduciary duty.
- (4) Restitution of any amounts or benefits in respect of which Claimants have been unjustly enriched.
- (5) The amounts due under and/or all necessary indemnities and/or damages in respect of any relevant guarantees.
- (6) Interest thereon as aforesaid.

Anthony de Garr Robinson QC

Owain Draper

[statement of truth]