

Amended Reply and Defence to Counterclaim by Order of Master Turner dated 23<sup>rd</sup> October 2006  
Re-Amended Reply and Defence to Counterclaim by Order of Master Turner dated 23<sup>rd</sup> October 2006 and  
pursuant to the agreement of the Defendant

**IN THE HIGH COURT OF JUSTICE**

**Claim No. HQ05X02706**

**QUEEN'S BENCH DIVISION**

**BETWEEN:**

**POST OFFICE LIMITED**

**Claimant/Part 20 Defendant**

**-and-**

**LEE CASTLETON**

**Defendant/Part 20 Claimant**

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**RE-AMENDED REPLY AND  
DEFENCE TO COUNTERCLAIM**

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**Reply**

1. The Claimant continues to adopt the abbreviations defined in the Particulars of Claim.
2. On 23<sup>rd</sup> March 2004 the Claimant attended at the Marine Drive Branch with its audit team and an audit was conducted, which meant that it was not possible for the Marine Drive Branch to open or trade at all on that day. However the National Lottery terminal was located in the Defendant's shop area outside the Post Office area in the Marine Drive Branch and accordingly the Defendant and his staff continued to be able to transact lottery business and receive payment for National Lottery tickets throughout that day. The Defendant was suspended at around 14.00 hours on 23 March 2004 and from 24 March 2004 the Claimant did retain a new sub-postmaster who took over the Defendant's duties but did not acquire any liability for errors which occurred prior to the 24 March 2004. The remainder of Paragraph 2 is denied.
3. With respect to paragraphs 5 and 6 of the Defence, Fujitsu Services have looked at the Claimant's computer system and have confirmed that the losses recorded by the Defendant were caused by a difference between the physical transactions that actually occurred and were recorded on the system by the Defendant or his assistant as taking place and the cash in hand that was declared by the Defendant relating to those transactions, and accordingly those losses were not caused by the Claimant's system's software or hardware.
4. With respect to paragraph 7A of the Defence, the Cash Accounts (Final) leading up to and including that for week 51 signed by the Defendant, such Cash Accounts (Final) are final and binding acknowledgements by the Defendant, absent inadvertent mistake on his part proven by him, that the amounts there stated are due and owing. The amounts shown in those Cash Accounts (Final) were

the collation of entries made by the Defendant through each week on the Claimant's data base, which entries were adopted by the Claimant in its computer and other financial records (including its audited accounts) as being correct and final.

5. Similarly the amounts shown in the Cash Account (Final) for week 52 were produced by the Claimant's audit team from the daily entries in the Claimant's computer books and records made by the Defendant or by agents or employees of the Defendant for whose actions he is responsible and for the accuracy of which entries the Defendant has accepted responsibility. Further, those individual entries made by or on behalf of the Defendant on the Claimant's computer database are final and binding acknowledgements by the Defendant, absent inadvertent mistake on his part proven by him, that the amounts there entered and stated are due and owing.
6. If (which is denied) the Defendant is in any way able or entitled to challenge the accounts previously submitted or entries previously made by him, then the Claimant is entitled to and hereby claims by way of alternative relief to that sought in the Particulars of Claim a formal account entirely at the Defendant's expense of what sums are due and owing from him.
7. Except where the Defendant has made admissions and except as appears in this Statement of Case, the Claimant joins issue with the Defendant upon his Defence.

#### **Defence to Counterclaim**

8. The Claimant repeats its Particulars of Claim and its Reply above. If contrary to this Defence to Counterclaim the Claimant is found liable to the Defendant then the Claimant will seek to set off against any award in favour of the Defendant such amount as may be found to be due to the Claimant on its claim.
9. By clause 8 of Section 1 of the Contract the Defendant agreed that the terms of his appointment did not entitle him to any compensation for loss of office. By clause 10 of Section 1 of the Contract the Defendant agreed that the Contract could be determined by the Claimant at any time if the Defendant breached a condition or failed to perform his obligations, but otherwise that it was terminable on 3 months' notice.
10. The Claimant terminated the Defendant's appointment as a sub-postmaster, and was entitled to terminate that appointment, because the Defendant was in breach of the terms of his Contract (as pleaded in the Particulars of Claim), the Defendant had failed to make good losses for which he was responsible, and the sub-office was not being well managed and work was not being performed properly to the satisfaction of the Claimant in that the losses pleaded in the Particulars of Claim had occurred and were neither made good nor explained. In the circumstances paragraph 9 of the Counterclaim is denied, and it is specifically denied that any shortfall is attributable to the Claimant's computer system.
11. Without prejudice to this position, if contrary to its case the Claimant has not suffered the losses shown on the accounts produced and signed off by the Defendant and claimed in the Particulars of Claim, then it will be the Claimant's case that it was entitled to terminate the Defendant's contract by

reason of a breach of clause 3 of Section 22 of the Contract, in that the figures produced by the Defendant were (on his case, which is denied) inaccurate.

12. By reason of the matters aforesaid it is denied that the Defendant has suffered any loss, alternatively it is denied that the Defendant is entitled to recover any loss. In the circumstances paragraph 10 of the Counterclaim is denied.

13. If contrary to its Defence to Counterclaim the Claimant is liable for any loss:

- (1) The maximum loss the Defendant can recover is loss of 3 months' income as a sub-postmaster;
- (2) From the sales performance of the Marine Drive Branch over the period whilst the Defendant was in post, on average the Defendant received £3,335.21 per month;
- (3) Accordingly the maximum loss likely to have been suffered by the Defendant is £10,005.63, being 3 x £3335.21 ; and
- (4) The Claimant will contend that the Defendant has failed to mitigate his loss by seeking alternative employment, for which he would have earned more had he taken steps to secure such, alternatively that the Defendant has, or could have, made savings to a like amount in other businesses owned and/or operated run by him as a result of being available to work for those businesses.

14. It is denied that the Defendant is entitled to the relief claimed in paragraph 11 of the Counterclaim.

**RICHARD MORGAN**

**STATEMENT OF TRUTH**

- The Claimant believes the facts stated in this Statement of Case are true.
- I am authorised by the Claimant to sign this Statement.

Full name: *Stephen John Dilly*  
Signed: **GRO**

Name of Claimant's solicitors: Bond Pearce LLP

Position of office held: *Solicitor*  
(if signing on behalf of firm or company)

- delete as appropriate

Claimant's or Claimant's solicitors' address to which documents or payments should be sent, if different from overleaf, including (if appropriate) details of DX, fax or email:

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