

THE POST OFFICE GROUP LITIGATION

IN THE HIGH COURT OF JUSTICE

Claim Nos HQ16X01238 & HQ17X02637

QUEEN'S BENCH DIVISION

BEFORE THE HONOURABLE MR. JUSTICE FRASER

B E T W E E N :

ALAN BATES & OTHERS

– and –

POST OFFICE LIMITED



Defendant

ORDER

UPON the Court holding a Case Management Conference on 19 October 2017 and restoring that Case Management Conference on 25 October 2017

AND UPON HEARING Leading Counsel for the Claimants and Leading Counsel for the Defendant

IT IS ORDERED THAT:-

COMMON ISSUES TRIAL

1. There shall be a trial of common issues, to determine issues relating to the legal relationship between the parties, to be listed for 20 days, commencing Monday 5 November 2018.
2. The trial in paragraph 1 shall be of the issues set out in Schedule 1 to this Order (for the purposes of this Order, "the Common Issues").

Potential Lead Claimants

3. By 4pm on 23 November 2017, the Claimants' solicitors and the Defendant's solicitors shall each select up to 6 potential lead Claimants ("**Potential Lead Claimants**"), which will together form a pool of up to 12 Potential Lead Claimants, for the trial of the Common Issues. Only Claimants who are asserting claims as Subpostmasters (not including temporary Subpostmasters) shall be considered for selection as Potential Lead Claimants.

Individual Disclosure

4. In respect of each Potential Lead Claimant, by 4pm on 19 January 2018:
 - (a) The Defendant shall disclose:
 - i. Any application to be a Subpostmaster submitted by the Claimant to the Defendant.
 - ii. Any signed Confirmations of Appointment and/or signed Preface between the Defendant and the Claimant.
 - iii. Records of any assistants employed by the Claimant recorded in the Defendant's HR database.
 - iv. Transaction and event data recorded on Horizon for the Claimant's relevant branch(es) in respect of the period(s) specified for that Claimant (subject to a limit of 400 months of data in total and the parties will cooperate in selecting the most relevant months, which shall include as a minimum, where available, the last 3 months of each Claimant's appointment as a Subpostmaster).
 - v. Customer Account from POLSAP or Core Finance (as

applicable) for each Claimant's relevant branch(es).

- vi. Records of Transaction Corrections issued to each Claimant's relevant branch(es) as recorded in POLSAP.
- vii. Written logs of calls to the Defendant's NBSC helpline recorded in either the Defendant's Dynamics or Remedy systems (as applicable) as having come from the Claimant's relevant branch(es).
- viii. Audit Reports in relation to the Claimant's relevant branch(es).
- ix. Any suspension letter and any attachment thereto sent by the Defendant to the Claimant.
- x. Any termination or resignation letter and any attachment thereto sent between the Defendant and the Claimant.
- xi. Any hardcopy former agent debt file for the Claimant.

(b) The Claimants shall disclose:

- i. Any application to be a Subpostmaster submitted by the Claimant to the Defendant.
- ii. Any signed Confirmations of Appointment and/or signed Preface between the Defendant and the Claimant.
- iii. Any correspondence appointing or terminating the employment of an assistant of the Claimant.
- iv. Any accounting records held by the Claimant showing the payment of a sum of money to the Defendant in relation to a shortfall in relation to the Claimant's relevant branch(es).

- v. Any records of any calls from between the Claimant's relevant branch(es) and the Defendant's NBSC helpline.
 - vi. Any suspension letter sent by the Defendant to the Claimant and any attachments thereto.
 - vii. Any termination or resignation letter sent between the Defendant and the Claimant and any attachments thereto.
 - viii. Any letters of communications between the Claimant and the Defendant regarding the recovery of sum in relation to any shortfall.
5. The disclosure to be provided in accordance with paragraph 4(a) shall:
- (a) be provided on the basis of a reasonable and proportionate search;
 - (b) shall be required only insofar relates to the branch(es) named by the relevant Subpostmaster in his or her Schedule of Information and during the period for which the Schedule of Information indicates he or she was a Subpostmaster.
6. Inspection in respect of the documents at paragraph 4 above, shall be provided by the parties by 4pm on 26 January 2018.

Lead Claimants

7. By 4pm on 23 February 2018 the parties shall seek to agree 6 Lead Claimants from the pool of Potential Lead Claimants, and in default of such agreement, the parties shall each select 3 Lead Claimants.

Individual Statements of Case

8. In respect of each Lead Claimant and in relation to the Common Issues:

- (a) the Lead Claimants shall file and serve individual Particulars of Claim by 4pm on 29 March 2018;
- (b) the Defendant shall file and serve individual Defences by 4pm on 4 May 2018;
- (c) the Lead Claimants shall file and serve individual Replies by 4pm on 1 June 2018.

Agreed Statement of Facts

- 9. The parties shall, by 4pm on 29 June 2018, file an agreed Statement of Facts in relation to the Common Issues.

Witness statements

- 10. In respect of each Lead Claimant and in relation to the Common Issues, the parties shall file and serve witness statements by 4pm on 11 August 2018.

EARLY DISCLOSURE

E-Disclosure Questionnaires

- 11. The parties shall exchange e-disclosure questionnaires, in accordance with paragraphs 10-12 of PD 31B, by 6 December 2017.
- 12. The parties shall notify the Managing Judge within 14 days of exchange of the e-disclosure questionnaires whether a date for a disclosure CMC is required and if so suggesting 5 dates in January and February 2018 (but excluding the period 12 – 16 February 2018) for the CMC, time estimate of half a day. In default of agreement by the parties as to a date, the Court will fix a date before 28 February 2018.

Initial Disclosure

13. By 4pm on 25 January 2018, the Defendant shall:

- (a) Disclose and make available for inspection the documents regarding the Horizon system architecture listed in Schedule 2 hereto.
- (b) Use reasonable endeavors to arrange for the Claimants' IT expert, Jason Coyne, to be given access to inspect at the office of Fujitsu in Bracknell of the Known Error Log and the documents listed in Schedule 3 hereto.
- (c) Give standard disclosure of, and make available for inspection, all of the documents delivered up to the Defendant by Second Sight Support Services Ltd (**Second Sight**) following the end of Second Sight's work in the Post Office Complaint Review and Mediation Scheme, save where these are subject to legal advice privilege.

14. The disclosure/inspection provided for in paragraphs 13(a) and 13(b) above shall be conditional on the Claimants' IT expert first entering into a Non-Disclosure Agreement with Fujitsu.

FURTHER DIRECTIONS

Extension to Cut-off Date

15. The cut-off date provided for in paragraph 37 of the GLO be extended to 4pm on 24 November 2017. The final date on which claims must be entered on to the Group Register is 4pm on 8 December 2017. The Lead Solicitors shall serve an electronic copy of the updated Group Register on the Defendant by 22 December 2017.

16. All Claimants who, after the date of this Order, issue proceedings to which

the GLO applies (by virtue of paragraph 1 of the GLO), shall serve on the Defendant as soon as reasonably possible and in any event by no later than 4pm on 15 December 2017, a completed Schedule of Information in the form set out in Schedule 3 of the GLO, such information to be provided to the best of each Claimant's knowledge and belief and be verified by a statement of truth signed by or on behalf of each Claimant, without prejudice to the Claimant seeking, and the Defendant agreeing (such consent not to be unreasonably refused) any extension of time pursuant to paragraph 38 of the GLO.

Rejoinder

17. The Defendant has permission to file a Generic Rejoinder and Reply to Defence to Counterclaim by 4pm on 10 November 2017.

Expert Evidence

18. Each party has permission to rely on an expert in the field of IT in relation to the operation and accuracy of the Horizon system ("**IT expert evidence**").

Medical Records

19. By 2 February 2018, any Claimant who has served a Schedule of Information identifying a claim for damages for personal injury, shall take necessary steps to request their existing relevant personal medical records.

Bankrupt and Deceased Claimants

20. The Claimants identified in Schedule 4 and 5 (or their representatives) shall, by 14 December 2017 serve on the Defendant the evidence on which they intend to rely to show that they have standing to bring the claims they advance in these proceedings.

Quantum

21. The Defendant do identify to the Claimants' Lead Solicitors by 4pm on 3 November 2017 the names of Claimants that have not provided an approximate value to points 8.1, 8.3, 8.4 and/or 8.5 in their Schedules of Information. Those Claimants' shall provide those details in the form of amended Schedules of Information by 4pm on 8 December 2017.

Amendment to Claim Forms

22. The Claimants shall amend Claim Forms HQ16X01238 & HQ17X02637 by consent to remove the averment of misfeasance in public office by 4pm on 27 October 2017.

Application to Strike Out

23. Any Application by the Defendant to strike out the claims of conspiracy and contravention of the ECHR to be issued by 10 November 2017 and to be heard by the Managing Judge on a date to be fixed.

ADR

24. At all stages, the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging in any such means proposed by another must serve a witness statement giving reasons within 21 days of that proposal; such witness statement must not be shown to the trial judge until questions of costs arise.

Costs Management

25. The parties shall regularly report their costs to each other and to the Court, as they pass the following milestones: £500,000, £750,000, £1 million and any increment of £250,000 thereafter.

Part 36 and Costs

26. In respect of any claims that are within the pool of potential lead claims and/or are agreed or selected as lead claims in this Group litigation, pursuant to paragraphs 2 and 5 of this Order or further order, and without prejudice to the effect of any offers which may have been made prior to the date of this Order, in relation to any offers to settle which are made by either party after the date of this Order, the following approach shall be applied. In considering whether it is just to make an order of the kind referred to in CPR 36.17(3) or (4), the court will take into account, in addition to the matters specifically identified in CPR 36.17(5), the extent to which pursuing the case to a judgment has or may reasonably be expected to have assisted the just and efficient disposal of other cases in the Group litigation.

Electronic Litigation Bundles

27. The parties shall utilise the Magnum Opus II platform for the purposes of the Common Issues trial and any other substantive hearing, in accordance with the Guide to Electronic Trial Bundles and Electronic Presentation of Evidence.

COSTS ORDERS

28. The costs of the Defendant's Application dated 26 July 2016, reserved by the Consent Order dated 14 February 2017, are common costs in the case.

29. Costs of the Claimants' Application dated 20 September 2017 for an extension of time for filing the Generic Reply are common costs in the case.

30. Costs in respect those Claimants that have filed Notices of Discontinuance identified at Schedule 6 are reserved.

31. Costs of this CMC are common costs in the case.

SECOND CMC

32. The parties to seek to agree proposals for the issues to be heard at the hearing in paragraph 34 below before 20 July 2018. Either a single set of proposed issues, or a set of proposed issues on behalf of the Claimants and the Defendant, to be lodged with the Court by 27 July 2018.
33. There shall be a CMC listed for 1 day on 19 September 2018 (**"the Second CMC"**) before the Managing Judge to consider any matters arising prior to the Common Issues trial, to give further directions on any such matter as may be required, and to order such further issues as may be agreed (or not agreed) under paragraph 32 for the hearing referred to in paragraph 34 below.
34. There to be a further trial of substantive issues between the parties in the Group Litigation to be set down on to be listed for 20 days, commencing Monday 11 March 2019.
35. The Claimants and Defendant to lodge skeleton arguments and draft order(s) by 12pm, 2 clear days before the Second CMC, setting out what order(s) are sought by them at the Second CMC.
36. The parties to liaise with one another and co-operate regarding documents that it will be necessary to put before the Court for the Second CMC, such documents to be contained in a separate hearing bundle, and to be lodged by 4.30pm, 2 clear days before the Second CMC.

GENERALLY

37. The parties to be permitted to extend, by agreement, the dates for any steps ordered by the Court in this litigation with the exception of paragraphs 1 and 34 (trials of issues), paragraph 33 (the Second CMC) or paragraphs 35 and 36 (documents to be lodged at Court for the Second CMC). However,

such extension by agreement to be subject to the following restrictions:

1. Any date may only be extended on one occasion;
2. Such extension is to be for a maximum extension of 5 working days;
3. Such extension must not prejudice any other dates, or steps, ordered by the Court.

38. Any documents lodged by the parties with the Court for either the Second CMC or any other hearing must be lodged in a paginated numbered bundle in the same form to be utilised by the parties at the relevant hearing. Documents are not to be sent by post to the Court. Any hard copy documents that require insertion into the hearing bundles are to be provided in hard copy by the parties or their solicitors and, if produced too close to the hearing date (for unavoidable reasons) should be provided to the Court in the quickest method practicable, bearing in mind that the Court cannot print large and/or multiple attachments to e mails to the Clerk to the Managing Judge.

39. The Defendant's application to vacate the trial date in November 2018 in paragraph 1 for reasons of counsel's availability is refused.

LIBERTY TO APPLY

40. Liberty to apply.

Dated this 25th day of October 2017

SCHEDULE 1

COMMON ISSUES

References to Subpostmasters in this Schedule are to Subpostmasters who were subject to either (1) the Subpostmaster Contract ("the SPMC"), or (2) the Network Transformation Contract (local branch or main branch types) ("the NTC").

Relational Contract

- (1) Was the contractual relationship between Post Office and Subpostmasters a relational contract such that Post Office was subject to duties of good faith, fair dealing, transparency, co-operation, and trust and confidence (in this regard, the Claimants rely on the judgment of Leggatt J in Yam Seng Pte v International Trade Corp [2013] EWHC 111)?

[GPOC 63, Defence 103]

Implied terms

- (2) Which, if any, of the terms in the paragraphs listed below were implied terms (or incidents of such implied terms) of the contracts between Post Office and Subpostmasters?

(i) GPOC, para 64 [Denied at Defence, paras 104-106]

(ii) Reply, para. 96.1

(For the avoidance of doubt, the implied terms admitted at Defence para 105 are agreed)

- (3) If the terms alleged at GPOC, paras 64.16, 64.17, 64.18 and/or 64.19 are to be implied, to what contractual powers, discretions and/or functions in the SPMC and NTC do such terms apply?

Supply of Goods and Services Act 1982

- (4) Did Post Office supply Horizon, the Helpline and/or training/materials to Subpostmasters (i) as services under "relevant contracts for the supply of services" and (ii) in the course of its business, such that there was an implied term requiring Post Office to carry out any such services with reasonable care and skill, pursuant to section 13 of the Supply of Goods and Services Act 1982?

[GPOC para 63A, Defence, para. 104]

Onerous or unusual terms

- (5) Were any or all of the express terms in the GPOC paragraphs listed below onerous and unusual, so as to be unenforceable unless Post Office brought them fairly and reasonably to the Subpostmasters' attention?
- (i) para 51.1 and 51.3 (rules, instructions and standards);
 - (ii) para 52.1 and 52.3 (classes of business);
 - (iii) para 54.1 and 54.3 (accounts and liability for loss);
 - (iv) para 56.1.a. and 56.2.a (assistants);
 - (v) para 60.1 and 60.3 (suspension);
 - (vi) para 61.1 and 61.3 (termination).
 - (vii) Para 62.1 and 62.3 (no compensation for loss of office)

[GPOC, para 66; Defence, para. 108]

- (6) If so, what, if any, steps was Post Office required to take to draw such terms to the attention of the Subpostmaster?

[GPOC, para. 66; Defence, para. 108(2)]

Unfair Contract Terms

- (7) Were any or all of the terms at paragraph (5) above unenforceable pursuant to the Unfair Contract Terms Act 1977?

[GPOC, paras. 67-68; Defence, para. 109; Reply, para. 49]

Liability for Alleged Losses

- (8) What is the proper construction of section 12, clause 12 of the SPMC?
- (9) What is the proper construction of Part 2, paragraph 4.1 of the NTC?

[GPOC paragraph 49 and 55; Defence, paras 93-94]

Agency and Accounts

Post Office as agent

- (10) Was Post Office the agent of Subpostmasters for the limited purposes at GPOC paragraphs 82 and 83?

[Defence, paras 124-125]

- (11) If so, was the Defendant thereby required to comply any or all of the obligations at GPOC paragraph 84?

[Defence, para 126]

Subpostmasters as agents

- (12) Was the extent and effect of the agency of Subpostmasters to Post Office such that the principles of agency alleged at Defence 91 and 93(2) and (3) applied as Post Office contends?

[Defence paras 90-91; Reply, paras 59-60]

- (13) Did Subpostmasters bear the burden of proving that any Branch Trading Statement account they signed and/or returned to Post Office was incorrect?

[Defence, paras 69(3) 183; Reply, paras 64 and 92]

Suspension and Termination

Suspension

- (14) On a proper construction of the SPMC and NTC, in what circumstances and/or on what basis was Post Office entitled to suspend pursuant to SPMC Section 19, clause 4 and Part 2, paragraph 15.1 NTC?

[GPOC, paras 32-3, 49, 60, 64.13 and 99; Defence, paras 66-72, 99 and 142]

Summary Termination

- (15) On a proper construction of the SPMC and NTC, in what circumstances and/or on what basis was Post Office entitled summarily to terminate?

[GPOC, paras 34-37, 61, 64 and 99; Defence, paras 66-72, 100, 104-106 and 142]

Termination on Notice

- (16) On a proper construction of the SPMC and NTC, in what circumstances and/or on what basis was Post Office entitled to terminate on notice, without cause?

[GPoC, paras 49, 61 and 64, Defence para. 100]

True Agreement

- (17) Do the express written terms of the SPMC and NTC between Post Office and Subpostmasters represent the true agreement between the parties, as to termination (in this regard, the Claimants rely on *Autoclenz v Belcher* [2011] UKSC 41)?

[GPOC, paras 50, 69-71; Defence, paras 86, 110-112]

- (18) If not, was the “true agreement” between the parties as alleged at GPOC, para. 71?

[GPOC, para. 71; Defence, para. 112]

Compensation for loss of office

- (19) On a proper construction of the SPMC and NTC, where Post Office lawfully and validly terminated a Subpostmaster's engagement, on notice or without notice for cause, was the Subpostmaster entitled to any compensation for loss of office or wrongful termination?

[See GPOC, para. 62; Defence, para. 101]

- (20) On a proper construction of the SPMC and NTC, in what, if any, circumstances are Subpostmaster's breach of contract claims for loss of business, loss of profit and consequential losses (including reduced profit from linked retail premises) limited to such losses as would not have been suffered if Post Office had given the notice of termination provided for in those contracts?

[GPOC, para. 131; Defence, para. 171; Reply, paras 81-82]

Subsequent appointments

- (21) On a proper construction of the SPMC and NTC, what if any restrictions were there on Post Office's discretion as to whether or not to appoint as a Subpostmaster the prospective purchaser of a Subpostmasters' business?

[GPOC, para. 62; Defence, para 102]

Assistants

- (22) Did SPMC section 15, clause 7.1; NTC, Part 2, clauses 2.3 and 2.5 and/or any of the implied terms contended for by the parties and found by the Court purport to confer a benefit on Assistants for the purposes of section 1 of the Contracts (Rights of Third Parties) Act, and if so which of these terms did so?

[See GPOC, para. 74; Defence, para. 116; Reply, para. 92]

- (23) What was the responsibility of Subpostmasters under the SPMC and the NTC for the training of their Assistants?

[See GPOC, para. 56; Defence, para. 95(4); Reply, para. 92]

SCHEDULE 2
TECHNICAL DOCUMENTS

- 1) Horizon Core Audit Process dated 30 January 2014
- 2) Horizon Online Data Integrity for Post Office Ltd dated 28 November 2013
- 3) Horizon Data Integrity dated 3 December
- 4) High level architectural overview of Horizon Online reference document (undated)

SCHEDULE 3
FURTHER DOCUMENTS

The technical documentation regarding Horizon and Horizon Online identified in paragraph 87 of the Fourth Witness Statement of Andrew Paul Parsons dated 9 October 2017.

SCHEDULE 4
CLAIMANTS WITH BANKRUPTCIES

Isabella Armstrong-Wall (No.9)	Manjit Kaur (No. 348)
Thomas Brown (No. 32)	Donna Marie Lanaghan (No. 359)
Deirdre Connolly (No. 45)	Martin Holgate Legat (No. 362)
Joanne Foulger (No.60)	Deborah Mann (No. 372)
Donna Gosney (No. 65)	Gordon Martin (No. 374)
Francis Maye (No.114)	Jacqueline McDonald (No. 377)
Dominic Savio (No. 160)	Lewis Lavern McDonald (No. 378)
Hughie Noel Thomas (No. 177)	Doreen Anne McQuillam (No. 384)
Elizabeth Barnes (No. 219)	Senapathy Narenthiran (No. 395)
Chris Dawson (No. 265)	Carl Page (No. 410)
David Charles Blakey (No. 225)	Suzanne Lesley Palmer (No. 412)
Gillian Blakey (No. 226)	James Richards (No. 440)
Lisa Brennan (No. 229)	Sandra Richardson (No. 441)
Lee Castleton (No. 240)	Balvinder Singh Gill (No. 473)
Julie Dell (No. 270)	Rita Threlfall (No. 498)
Lesley Dunderdale (No. 275)	Gail Lesley Ward (No. 506)
Tracey Ann English (No. 282)	Penelope Jane Williams (No. 511)
Richard Andrew Finlow (No.293)	James Withers (No. 514)

SCHEDULE 5
DECEASED CLAIMANTS

Claimant No 75 - Marion Holmes the personal representative of Peter Holmes (deceased)
Claimant No 122 – Jacqueline Barr the personal representative of Enid Mummery (deceased)
Claimant No 130 - Wendy Ann Owen the personal representative of John Owen (deceased)
Claimant No 215 - Jasvinder Barang the personal representative of Rajbinder Singh Barang (deceased)
Claimant No 195 – Karen Wilson the personal representative of Julian Wilson (deceased)
Claimant No 296 - Menna Garland-Ellis and Jonathan Garland the personal representatives of Mr Michael Garland (deceased)
Claimant No 477 - Janet Smith the personal representative of David Smith (deceased)
Claimant No 488 - Sonya Sultman the personal representative of David Graham (deceased)
Claimant No 497 - David Thornton the personal representative of Amy Thornton (deceased)

SCHEDULE 6
DISCONTINUED CLAIMANTS

Conrad Chau (No.41)
Vijay Parekh (No. 132)
Sarah Javed (No.86)
Usman Kiyani (No. 101)
Mario Lummi (No. 109)
Dermot Lynch (No. 110)
Chelsea News Limited (No. 244)
Anil Kumar (No. 358)
Hums Group Ltd (No. 325)
Ling Ma (No. 368)
Nalin Patel (No. 418)
Potential Estates Limited (No.429)