IN THE HIGH COURT OF JUSTICE **Claim No. BL-2025-000341**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

Before: The Honourable Mr Justice Trower and Master Kaye

B E T W E E N:

LEE CASTLETON

Claimant

- and –

(1) POST OFFICE LIMITED

(2) FUJITSU SERVICES LIMITED

Defendants

FIRST DEFENDANT'S SKELETON ARGUMENT
FOR A DIRECTIONS HEARING ON 23 JANUARY 2026

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*References in the form [**Tab/Page**] are to the electronic hearing bundle*

A. INTRODUCTION

1. This skeleton argument is filed on behalf of the First Defendant ("**POL**") in advance of a directions hearing which has been listed on 23rd January 2026 with a time-estimate of 1 day.

2. Whilst the occasion for the listing of the hearing was the in-time applications of POL and the Second Defendant ("**Fujitsu**") (collectively "**Ds**") for extensions of time to file their defences to the Claim ("**the EOT Applications**"), the Court has also identified of its own initiative two additional issues which need to be considered at this hearing, and which may impact on the appropriate directions to be given:

    2.1. The question of whether certain issues should be determined as preliminary issues; and

2.2. The position of 555 other parties to a settlement agreement which the Claimant ("**C**") seeks to set aside (but who are not parties to these proceedings, and whose position is unknown).

3. In practice, the EOT Applications have become subservient to the preliminary issue question, since a case management timetable can only sensibly be determined after that question has been resolved.

4. The Claims, as pleaded, divide cleanly into two groups:

4.1. First, claims pertaining to the interpretation and/or enforceability of a settlement agreement entered into by POL, C, and 555 other parties (being the other claimants in the *Bates v Post Office* litigation ("**the GLO Action**")) on 10th December 2019 ("**the Settlement Deed**"). These are set out in Part A of the Particulars of Claim ("**the PoCs**"), and concern the interpretation of the Settlement Deed, and certain events during the course of the GLO Action in 2019 ("**the Part A Claims**").

4.2. Secondly, claims (which POL contends have been compromised by the Settlement Deed) pertaining to a civil claim brought by POL against C between 2005-2007. These are set out in Part B and Part C of the PoCs and, as pleaded, relate to events between c.1999 and c.2007 ("**the Historic Claims**").

5. POL's position in respect of the matters to be determined at this hearing is as follows:

5.1. **Split trial / preliminary issue:** There should be a split trial/preliminary issue trial, with the Part A Claims tried first in time. If Ds were to succeed at any such trial – i.e. if the Historic Claims have been compromised by the Settlement Deed, and Fujitsu can rely upon it – this would dispose of the entirety of the proceedings, thus saving the (likely very substantial) time and costs of a trial of the Historic Claims. POL is concerned not only to ensure that it does not incur unnecessary cost, but also that Mr Castleton does not have to either. Further, the Part A Claims are considerably less complex (both legally and factually) than the Historic Claims, so should be capable of being brought to trial more quickly, and with less required by way of disclosure/evidence. POL has proposed in correspondence by its solicitors,

Pinsent Masons LLP ("**PM**"), the following formulation of preliminary issues (with which Fujitsu, by its solicitors Morrison Foerster (UK) LLP ("**MoFo**"), agrees):[1]

1. *Whether, on its true construction, the Settlement Deed released the claims against POL pleaded in Part B and Part C of the POCs.*
2. *Whether, if on its true construction the Settlement Deed did release the claims against POL pleaded in Part B and Part C of the POCs it is also effective to release the Claimant's pleaded claims against Fujitsu.*
3. *Whether, if the Settlement Deed did release those claims against POL, POL is nonetheless precluded from relying on the effect of that settlement by reason of "unconscionability" (as alleged in paragraph 9 of the POCs).*[2]
4. *Whether:*

   a. POL fraudulently misrepresented the reasons for not calling Gareth Jenkins as a witness in the Horizon Issues Trial; and

   b. If so, whether any such fraudulent misrepresentation induced the GL Claimants to enter into the Settlement Deed; and

5. *If so, to what relief, if any, is the Claimant entitled.*

5.2. **EOT / Pleadings:** In advance of that split trial/preliminary issue trial, Ds should only be required to file defences in respect of the issues for that trial: i.e. to Part A of the POCs (save for a handful of sentences, identified in the draft order filed with this skeleton argument, which go to the substance of the Historic Claims rather than the Part A Claims). These defences could be produced in shorter order than a full defence – for its part, POL would suggest by 4pm on 20th February 2026.[3] Not only would defences to the Historic Claims take considerably longer to produce (and raise other issues, such as the overlap with what are understood to be ongoing criminal

[1] See PM's letter of 2nd December 2025 at paragraph 2 [**100/2262**], and MoFo's letter of 3rd December 2025 at paragraph 3 [**101/2264**].

[2] For the avoidance of doubt, and without making any admission, POL proposes that this issue is determined on the provisional assumptions, for the purposes of the preliminary issues trial only, that (i) the Historic Claims are viable claims; and (ii) that POL knew this on 10th December 2019. Thus the sub-issues for determination by way of preliminary issue would be (a) did C know of the Historic Claims on 10th December 2019; (b) if not, did POL know that C was unaware of the Historic Claims; and (c) can the doctrine of sharp practice apply given the terms and effect of the general release contained in the definition of Like Claims (as to which see paragraph 34 below)?

[3] This is in fact considerably earlier than the 31st March 2026 date originally proposed in POL's evidence: see Sheeley 2 at §19.1 **[19/244]**.

investigations into some of C's allegations which may make it unsuitable for POL to plead to them at this juncture), but critically if Ds were to succeed at any split trial/preliminary issue trial, the vast amount of work required to produce those defences (and indeed for C to respond to them) would have been wholly wasted. Instead, the time for defences to the remainder of the PoCs should be adjourned until after the conclusion of the split trial/preliminary issue trial.

5.3. **The other GLO Claimants:** While this is not strictly a point for POL, it is simply identified that C seeks rescission of the Settlement Deed to which 554 other GLO Claimants (as defined below) and Freeths LLP were parties. It is difficult to see how C might achieve that (even if he were otherwise entitled to it, which POL says he is not) without the other parties' involvement, or at least their having notice of the relief sought.

5.4. **Collateral Use:** The Claims all raise issues pertaining to previous legal proceedings, i.e. the Marine Drive Claim and the GLO Action. Documents disclosed in those proceedings will be relevant to the present case, but some will be caught by the collateral use restriction set out in CPR r.31.22. Whereas the disapplication of the prohibition should be capable of agreement in the case of the Marine Drive Claim, it is anticipated that a joint application from all three parties to the present claim will be needed in respect of the GLO Action (and the other parties to that action may also need to be given notice of any such application).

6. It should be observed that POL is defending this claim not because C is not entitled to redress – he plainly is – but rather because POL considers that the correct route to that redress is through the compensation scheme designed specifically to support postmasters who were in the GLO Claimants group. POL has made every effort to engage with C to seek to set aside the Marine Drive judgment and it remains more than willing to do so, but it does not accept that C's claim in this litigation is a good one, and it has a duty to its shareholders to defend it. POL has repeatedly encouraged C to submit a compensation scheme claim and it does so again now.

7. Finally, C's solicitors have filed and served three further witness statements between 14th and 19th January 2026 without permission to do so. It is unclear whether they will make an application for permission to rely upon them, or what the relevance of these is to the

matters before the Court (and even this late evidence does not set out what C's position is with respect to those matters).

B. PRE-READING

8. The Court's order dated 25th November 2025 listing this hearing [**15/159**] provides for 1 day of pre-reading time. It is suggested that in the time available the court prioritises pre-reading the following documents:

    8.1. POL and Fujitsu's application notices dated 31st October 2025 [**1/7**] and [**2/12**];

    8.2. The Particulars of Claim [**6/28**];

    8.3. The First Witness Statement of Alan Sheely dated 31st October 2025 ("**Sheeley 1**") [**16/162**];

    8.4. The First Witness Statement of Benjamin Summerfield dated 31st October 2025 ("**Summerfield 1**") [**17/182**];

    8.5. The First Witness Statement of David Phillips dated 19th November 2025 ("**Phillips 1**") [**18/193**];

    8.6. The Second Witness Statement of Alan Sheeley dated 19th December 2025 ("**Sheeley 2**") [**19/229**];

    8.7. The Second Witness statement of Benjamin Summerfield dated 19th December 2025 ("**Summerfield 2**") [**20/258**].

C. BACKGROUND

(1) Horizon and the Marine Drive Claim

9. In 1999 POL introduced a computer system called Horizon ("**Horizon**"),[4] the purpose of which was, in broad terms, to automate certain accounting functions in Post Office branches for both postal and retail transactions. The Horizon system has at all material times been designed and administered by Fujitsu, or subsidiaries of Fujitsu. As is now widely known, Horizon has historically suffered from bugs and errors which undermined

[4] There have been three iterations of Horizon. The first (1999-2010) is now sometimes referred to as "Legacy Horizon"; the second (2010-2017) is known as "Horizon Online" or "HNG-X"; and the third (2017 – present) is known as "Horizon Anywhere" or "HNG-A".

its accuracy and rendered it liable to generate apparent – but in fact non-existent – shortfalls in branch accounts.[5]

10. C was formerly a sub-postmaster at a post office branch known as Marine Drive in Bridlington, Yorkshire between 2003 and 2004. His contract was terminated by POL on 17th May 2004 following the discovery of apparent discrepancies in the signed accounts for the Marine Drive branch in weeks 42 – 51 of the financial year 2003/2004: Sheeley 1, §5 [**16/163**].

11. Subsequently, on 9th June 2005, POL issued proceedings against C to recover the apparent shortfall ("**the Marine Drive Claim**"). In response, C issued a counterclaim for wrongful termination and consequential damages. The matter ultimately proceeded to trial and was heard in the High Court before HHJ Richard Havery QC (sitting as a Deputy Judge of the High Court) between 6th – 13th December 2006, with an additional day on 11th January 2007 ("**the Marine Drive Trial**"). On 22nd January 2007, HHJ Havery QC handed down judgment, with neutral citation number [2007] EWHC 5 (QB), finding in favour of POL on its claim and dismissing C's counterclaim ("**the Marine Drive Judgment**"): Sheeley 1, §6 [**16/163**].

(2) The GLO Action

12. Between 2016 – 2019, a large number of postmasters ("**the GLO Claimants**") were engaged in litigation with POL concerning Horizon which proceeded by way of a Group Litigation Order made by Senior Master Fontaine on 21st March 2017: i.e. the GLO Action. The GLO Action consisted of three separate claims with Claim Nos. HQ16X01238 [**26/1100**], HQ17X02637 [**28/1166**] and HQ17X04248 [**29/1169**]. C was a party to Claim No. HQ17X02637: Sheeley 1, §8 [**16/164**].

13. The pleadings in the GLO Action proceeded by way of both (i) generic pleadings; and (ii) six pleadings specific to six of the GLO Claimants. The Amended Generic Particulars of Claim ("**the GPoCs**") are at [**27/1103**]. The claims made, and the factual and legal issues raised, within the GLO Action were wide ranging, and are considered in more detail in Section D(2) below.

[5] See the Horizon Issues Judgment [968] [**32/1804**] and the Summary of Bugs, Errors and Defects at Appendix 2 to the Horizon Issues Judgment [**32/1931-1934**].

14. Two trials in the GLO Action took place before the assigned judge, Fraser J, in 2018 and 2019, to resolve a significant number of issues which were likely to be of application in the majority of the individual claims.

    14.1. The so-called "Common Issues Trial", which principally concerned contractual issues arising under different iterations of the sub-postmaster contracts in force from time to time, was heard in November and December 2018. On 15th March 2019 Fraser J handed down judgment with neutral citation number [2019] EWHC 606 (QB) ("**the Common Issues Judgment**"), a copy of which is at [**31/1184**].

    14.2. The so-called "Horizon Issues Trial", which was principally concerned with the integrity of the various iterations of Horizon (and aspects of POL/Fujitsu's knowledge of this) was heard between March and July 2019. On 16th December 2019 Fraser J handed down judgment with neutral citation number [2019] EWHC 3408 (QB) ("**the Horizon Issues Judgment**"), a copy of which is at [**32/1499**]. Several weeks earlier, on 28th November 2019, a draft of the Horizon Issues Judgment had been circulated to the parties. The GLO Claimants were successful on the vast majority of the Horizon Issues.

15. Further trials were anticipated to take place,[6] but on 10th December 2019 (after the circulation of the Horizon Issues Judgment in draft) the GLO Action was settled when POL, the 555 GLO Claimants, and Freeths LLP (the firm representing the GLO Claimants in the GLO Action) entered into the Settlement Deed, a copy of which is at Appendix 1 to the PoCs [**7/71-117**]. The provisions of the Settlement Deed are considered in more detail in Section D(2) below but, in short, the GLO Claimants released all claims – including claims not advanced in the GLO Action but "*in any way connected to, whether directly or indirectly, the claims or counterclaims made or the facts and matters alleged by any party in the [GLO] Action*", and claims unknown – in return for payment of a Cash Settlement Sum of £52.25m. The scope of what has been released is therefore very broad indeed.

16. There have been a number of relevant subsequent developments, as explained in Sheeley 1 at §11 [**16/164-165**]:

[6] See for example paragraph [462] of the Common Issues Judgment [**31/1324**], paragraph [458] of the Horizon Issues Judgment [**32/1639**].

16.1. Four compensation schemes have been set up to provide financial redress for postmasters affected by Horizon. This includes the GLO Compensation Scheme, which is administered by the Department for Business and Trade, and makes *ex-gratia* payments to postmasters who submit claims to the scheme. It is understood that, to date, C has chosen not to make any claim in the GLO Compensation Scheme, although he has received an interim payment of £121,000 from that scheme [**33/2062**].

16.2. On 29th September 2020 a public inquiry was established by the government of the day; this was converted into a statutory inquiry on 1st June 2021 ("**the Inquiry**"). The Inquiry is chaired by Sir Wyn Williams and is ongoing. The Inquiry has received a massive quantity of written and oral evidence over several years, and has so far only delivered the first volume of its report (in which Sir Wyn expressly noted that C's case "*would be subject to further examination in a further volume of my report*"). It is anticipated that Volume 2 will be delivered later this year.

16.3. It is understood that the Metropolitan Police and the CPS are presently investigating whether there are grounds for bringing criminal charges in relation to the Horizon scandal. In this connection, it is notable that on 14th January 2020 Fraser J wrote to the DPP about evidence given by Anne Chambers, an employee of Fujitsu, during the trial of Marine Drive Claim, and about evidence given by Gareth Jenkins, another employee of Fujitsu, during criminal prosecutions. A copy of that letter is annexed to the PoCs at Annex 3 [**9/123**]. It is understood from reports in the media that no charging decisions will be made until after the completion of the Inquiry.[7]

(3) The Claimant's Claims

17. C's claim was issued on 14th March 2025, but was not served on POL (and, it is understood, Fujitsu) until 14th July 2025: Sheeley 1, §12 [**16/165**]. It followed a letter before action sent to POL's then solicitors, Herbert Smith Freehills Kramer LLP, dated 22nd January 2024 [**33/2061**].

18. The PoCs, pleaded by his lawyers rather than by him personally, are a jumbled and incoherent document (and which in certain instances seem to fall some way short of the

[7] https://www.theguardian.com/uk-news/2025/jun/27/police-identify-seven-as-main-suspects-in-post-office-horizon-scandal-inquiry .

onerous requirements when pleading claims in fraud). Nevertheless, as explained in Sheeley 1 at §16 [**16/166**], it seems to POL that the claims advanced consist of at least five separate claims (with Claims 1 – 3 constituting the Part A Claims, and Claims 4 and 5 constituting the Historic Claims):

18.1. Claim 1: A claim that, on its true construction, the Settlement Deed did not compromise Claims 4 and 5;

18.2. Claim 2: A claim that, if the Settlement Deed does compromise those claims, POL is nonetheless precluded from relying on that settlement by reason of "unconscionability";

18.3. Claim 3: A claim that the Settlement Deed was procured by way of fraudulent misrepresentations alleged to have been made (i) by a single paragraph contained in POL's written closing submissions during the Horizon Issues Trial (relating to the decision not to call Gareth Jenkins as a witness); and (ii) in a letter between solicitors which pre-dated it by a few months addressing the same issue, and thus the Settlement Deed is liable to be rescinded/set aside;

18.4. Claim 4: A claim that POL's pursuit of the Marine Drive Claim against Mr Castleton amounted to the tort of abuse of process;

18.5. Claim 5: A claim that POL, whether by itself or as part of an unlawful means conspiracy with Fujitsu, procured the Marine Drive Judgment by way of fraud.

(4) Procedural Background

19. Since service of the Claim, there has been ongoing correspondence between the parties. Although POL has sought via correspondence to discuss a number of important, substantive issues, this has not always proven fruitful. It may assist the Court to be familiar with the correspondence on the following issues.

20. Arbitration / Clause 16.2 of the Settlement Deed:

20.1. From July – September 2025, a significant topic of discussion was the applicability of an arbitration agreement, contained in Clause 16.2 of the Settlement Deed [**7/81**], to C's claims. Phillips 1 [**18/200/§§14-15**] seeks to suggest that POL lacked conviction in this argument, and insinuates that it was used to "*kick the can down*

the road". The reality is that the point is a complex and important one on which PM sought to engage with C's solicitors ("**SMB**") in an attempt to find a consensual and pragmatic solution to C's disregard of the arbitration agreement. Despite PM's best efforts, SMB's engagement was tardy and unproductive; the consequent delays may have been less had SMB adopted a more constructive approach.

20.2. POL's analysis of this issue is set out most fully in PM's letter of 21st August 2025 [**58/2158-2164**] ("**the 21st August Letter**"), which the Court is invited to read. (POL had first raised the issue in correspondence on 20th June 2025 [**46/2127-8**], prior to service of the Claim Form, and sent a detailed letter addressing the matter on 23rd July 2025 [**51/2141-3**], with which SMB's response of 24th July 2025 failed properly to engage [**52/2144-5**]). In short, POL's concern throughout has been to balance the fact that some or all of C's claims are plainly subject to the arbitration mechanism in Clause 16.2 of the Settlement Deed (which the other parties to the Settlement Deed are entitled to enforce) with C's stated desire to have his claims determined in open court.

20.3. It took SMB until 18th September 2025 to respond substantively to the 21st August Letter [**71/2192**]. Even that response did not attempt to advance any argument as to why Matters 2, 3 and 4 (as defined in the 21st August Letter) were not arbitrable – presumably because they plainly are.

20.4. Ultimately, on 3rd October 2025 PM wrote to SMB stating that, in circumstances where POL itself was happy for the case to proceed in open court, and had put C on notice of the risk that one of the other 555 parties to the Settlement Deed could seek an injunction to restrain C from continuing with his claims in court, it would not be issuing an application under s.9 of the Arbitration Act 1996 [**74/2205-7**].

21. <u>Other parties:</u>

21.1. PM's letter of 23rd July 2025 noted that the remedies sought by C had the potential to affect the other parties to the Settlement Deed, and asked if those parties had been informed that C was seeking to set aside the Settlement Deed / how SMB proposed to consider the position of those parties going forwards [**51/2142-3/§§12-14**]. SMB's response did not engage with this issue [**52/2144**].

21.2. PM again identified the issue in the 21st August Letter [**58/2163/§28**]. On 4th September 2025, SMB replied asserting that the Settlement Deed is "*not a multi-party contract*", but could instead be set aside as between POL and C only, without affecting the other parties to it [**64/2177**]. PM queried this analysis on 9th September 2025 [**67/2184-6**] and 19th December 2025 [**104/2282-4**], but no meaningful further progress has been made on the issue. Indeed, SMB have rather bafflingly gone as far as to ask why "*other parties to the December 2019 Settlement Deed have an interest in whether or not the Deed is voidable…and what the nature of that interest is*" [**97/2257**].

22. Collateral use:

22.1. On 18th July 2025, PM wrote to SMB noting (amongst other things) that a significant number of documents disclosed in the course of both the GLO Action and the Inquiry were likely to be subject to collateral use restrictions under CPR r.31.22 and the Restriction Orders made in the Inquiry [**49/2134/§§7-10**]. The point was repeated on 25th July 2025 [**53/2147/§9.1**].

22.2. SMB's responses [**50/2135-6**] [**56/2155/§13(a)**] wholly failed to grapple with the issue, simply stating that an exception exists for documents which have been referred to at a public hearing, and stating that if any documents were not public they considered that there was a public interest in making collateral use of those documents.

23. Preliminary issue:

23.1. The possibility of the Part A Claims being determined as preliminary issues was first raised by Fujitsu's solicitors ("**MoFo**") on 25th July 2025 [**51/2152/§6(b)**] (and repeated on 27th August 2025 [**59/2167/§10(c)**]).

23.2. SMB's belated response to the 21st August Letter, on 18th September 2025, also stated that "*there are strong grounds…to invite the Court to direct the trial of a preliminary issue of construction of the scope of the 2019 Settlement Deed*" [**71/2198**].

23.3. PM's response to SMB on 22nd September 2025 expressed optimism that the parties might be able to reach agreement in correspondence on the principle of a preliminary

issue [**72/2202/§6**]. Unfortunately, that proved difficult, with SMB performing something of a *volte face* and beginning to query in correspondence whether a preliminary issue trial would in fact be appropriate / insisting that Ds should file complete defences to all of C's claims before considering that question: e.g. [**81/2218**] [**84/2228**] [**18/197/§11**].

23.4. Phillips 1 attempts to criticise POL and Fujitsu for not having formulated the preliminary issues as at the date of that statement (i.e. 19th November 2025) [**18/195/§10**]. There is nothing to this. It has been clear since July 2025 that Fujitsu was proposing a preliminary issue trial on the Part A Claims, a position which was also expressly adopted by POL in October 2025. SMB could have engaged with the substance of that suggestion at an earlier point in time. Instead, it is striking that even since Ds' proposed preliminary issue formulation was set out in PM's letter of 2nd December 2025 [**100/2262**], SMB has not engaged at all with this issue – there has simply been no reply to that letter.

24. Extensions of Time:

24.1. The agreed extensions of time to date have developed as follows:

24.1.1. On 25th July 2025 when serving copies of their acknowledgements of service, both POL [**53/2148/§§15-17**] and Fujitsu [**54/2152/§8**] wrote to SMB proposing that the parties agree to an initial extension of 28 days to 8th September 2025 for defences given the complexity of the claims and the desirability of making progress on the above issues (notably arbitration). This was agreed by SMB via email on 30th July 2025 [**55/2153**].

24.1.2. On 28th August 2025 SMB emailed PM and MoFo stating that the matters raised in the 21st August Letter "*require careful consideration*", that "*work commitments*" meant that they were not in a position to respond substantively but would do so by no later than 12th September 2025, and that the deadline for defences should be extended to 26th September 2026 to allow two weeks following that response [**60/2168**]. PM replied suggesting that a longer extension would be more pragmatic and would become necessary in due course [**61/2169/§3**] [**65/2180/§4**], but this could not be agreed. The shorter extension was ultimately embodied in the two

Consent Orders approved by Master Kaye dated 5th September 2025 [**11/151**][**12/153**].

24.1.3. PM's view that a longer extension would be required proved to be prophetic when SMB failed to respond by 12th September 2025 (its own proposed date, by reference to which the agreed extension had been fixed). As such, a further extension was agreed to 31st October 2025, embodied in the two Consent Orders approved by Master Teverson on 26th September 2025 [**13/155**][**14/157**].

24.1.4. On 17th October 2025, PM wrote to SMB suggesting that whilst discussions around a possible preliminary issue trial were ongoing (with it being anticipated that Ds would be able to serve defences to the Part A Claims within 28 days of such an order being made), the parties should seek to agree to a further extension for defences until 12th December 2025 [**77/2213/§§7-9**]. Unfortunately this could not be achieved as SMB sought (not for the first time) to attach various "*conditions*" to any such agreement [**81/2218-9**], absent which they would require Ds to apply to court for an extension.

24.1.5. On 30th October 2025, SMB wrote to PM requiring POL to make an application to Court, but at the same time (somewhat bizarrely) indicating C "*will not oppose such an application…*" [**86/2233-5**]

24.2. As such, on 31st October 2025, both POL and Fujitsu made the EOT Applications seeking to extend time to file and serve their defences until 31st March 2026.

24.3. By email dated 4th November 2025, the Court invited SMB to set out C's position in respect to the EOT Applications [**89/2241**]. SMB responded to the Court on 5th November 2025 [**91/2244-8**]. Somewhat bewilderingly, given the non-opposition as at 30th October 2025, that letter stated that C now opposed the extension sought.

24.4. Thereafter, the Court gave directions for the listing of this hearing by way of email on 17th November 2025 [**94/2253-4**] – identifying the additional issues of a preliminary issue trial and the position of the other parties to the Settlement Deed – and which are embodied in the Order of Trower J and Master Kaye dated 25th November 2025 [**15/159-161**].

24.5. Phillips 1 seeks to make tendentious points about the number of extensions which POL and Fujitsu have had to date. As will be clear from the above, there is nothing to this: one of the extensions was necessitated by SMB's own delays in responding to the 21st August Letter, and it has always been POL's position that the short, piecemeal extensions to which SMB was prepared to agree were impractically short.

D. SPLIT TRIAL / PRELIMINARY ISSUE TRIAL

25. The question of split trial / preliminary issue trial is addressed first because the consequential directions (including the appropriate order in respect of the EOT Applications) are very likely to be affected by whatever order is made is this regard.

(1) The law

26. CPR r.3.1(2)(j) and r.3.1(2)(k) give the court the powers to direct a separate trial of any issue and to decide the order in which issues are to be tried. There is obviously considerable overlap between the rules, and the terms "preliminary issue trial" and "split trial" are often used interchangeably; insofar as there is a distinction, it appears to be that a preliminary issue trial will normally involve limited (if any) determinations of disputed facts, whereas split trials may involve substantial factual disputes: see *Jinxin Inc v Aser Media Pte Limited* [2022] EWHC 2431 (Comm) at [20]. However, the jurisdictions are united by the potential for the first hearing to obviate the need for the subsequent hearing to take place at all.

27. Although some guidance is provided by the case law, a decision as to whether to order a split trial, or a trial of preliminary issues, is ultimately a case management discretion to be exercised on the facts of each case in accordance with the overriding objective: *Hope Not Hate v Farage* [2017] EWHC 3275 (QB) at [36] per Nicklin J.

28. In *McLoughlin v Jones* [2001] EWCA Civ 1743; [2002] QB 1312, David Steel J (sitting in the Court of Appeal) gave the following guidance in relation to trials of preliminary issues (rather than split trials) at [66]:

> "*In my judgment, the right approach to preliminary issues should be as follows. (a) Only issues which are decisive or potentially decisive should be identified. (b) The questions should usually be questions of law. (c) They should be decided on the basis of a schedule of agreed or assumed facts. (d) They should be triable without significant delay, making full allowance for the implications of a possible appeal. (e) Any order should be made by the court following a case management conference.*"

29. In *Electrical Waste Recycling Group Ltd v Philips Electronics UK Limited* [2012] EWHC 38 (Ch), in the context of an application for a split trial on quantum and liability, Hildyard J gave the following guidance on the relevant considerations upon an application for a split trial at [5] – [7] (numbers in square brackets have been added, and the numbered factors are referred to hereafter as "**the Hildyard Considerations**"):

> *"5. Where the issue of case management that arises is whether to split trials the approach called for is an essentially pragmatic one, and there are various (some competing) considerations. These considerations seem to me to include [i] whether the prospective advantage of saving the costs… outweighs the likelihood of increased aggregate costs…; [ii] what are likely to be the advantages and disadvantages in terms of trial preparation and management; [iii] whether a split trial will impose unnecessary inconvenience and strain on witnesses who may be required in both trials; [iv] whether a single trial… will lead to excessive complexity and diffusion of issues, or place an undue burden on the Judge hearing the case; [v] whether a split may cause particular prejudice to one or other of the parties (for example by delaying any ultimate award of compensation or damages); [vi] whether there are difficulties of defining an appropriate split or whether a clean split is possible; [vii] what weight is to be given to the risk of duplication, delay and the disadvantage of bifurcated appellate process; [viii] generally, what is perceived to offer the best course to ensure that the whole matter is adjudicated as fairly, quickly and efficiently as possible.*
>
> *6. Other factors to be derived from the guidance given by CPR Rule 1.4, which reflect a common sense and a pragmatic approach, may include [ix] whether a split would assist or discourage mediation and/or settlement; and [x] whether an order for a split late in the day after the expenditure of time and costs might actually increase costs.*
>
> *7. All these sorts of factors seem to me to be potentially relevant and need to be taken into account in what is essentially a pragmatic balancing exercise in assessing how the case is likely to unfold according to whether there is or is not a split."*

30. Hildyard J's guidance has been adopted in subsequent cases, including *Jinxin* (at [22] thereof).

31. There are a number of judgments delivered following trials of preliminary issues to determine whether an underlying claim had been settled: see e.g. *Compagnie Noga D'Importation Et D'Exportation S.A v Abacha (No. 1)* (2001);[8] *Satyam Computer Services Ltd v Unpaid Systems Ltd* [2008] EWHC 31 (Comm);[9] *Cantor Index Ltd v Thomson* [2008] EWHC 1104 (QB);[10] *Bellway Homes v Blackwell* [2009] EWHC 3511 (Ch);[11]

[8] [22] of the judgment refers to the order of Moore-Bick J giving directions for a trial of preliminary issues as to whether "*any claims…have been settled and, if so, which of the claims and on what terms*".
[9] [2] of the judgment refers to the Order by which the judge, Flaux J, had directed a trial of several preliminary issues including whether the claims had been compromised.
[10] [1] of the judgment refers to a preliminary issue trial having been ordered.
[11] [1] of the judgment refers to the order of Briggs J directing the issue of whether the action had been settled to be tried as a preliminary issue.

Officeserve Technologies Ltd v Anthony-Mike [2017] EWHC 1920 (Ch); [2017] B.C.C. 574.[12] Although each decision will have been case-specific, the fact that those orders were made illustrates that this course is not infrequently adopted in suitable cases where a claim is alleged to have been settled. It also accords with the obvious good case management sense of using the split trial / preliminary issue mechanisms to determine that question at an early stage.

(2) Submissions

32. In the present case, the relevant considerations plainly point towards a split trial / preliminary issue trial being the most appropriate course.

33. First, the Part A Claims are factually and legally distinct from the Historic Claims: the time-periods covered are different; the factual allegations are unrelated; and the causes of action are distinct. There is therefore a natural divide in the Claims which lends itself to a split trial. The present case is different to, for example, an application such as that in *Electrical Waste Recycling* itself for a split trial on liability and quantum where there was likely to be at least some overlap between the issues (although such split trials are not infrequently ordered nonetheless). There are thus no difficulties in formulating an appropriate split, nor is there any risk of duplication: Hildyard Considerations [vi] and [vii].

34. As such, it is not presently anticipated that there will be any overlap in disclosure between the two trials, nor that any witnesses would be required to give evidence at both trials (with the possible exception of C himself): Hildyard Consideration [iii].

35. Secondly, if Ds succeed on Part A, this will dispose of the proceedings in their entirety: the Historic Claims will have been settled, and will not proceed to trial. The cost savings in that eventuality would be very significant: Hildyard Consideration [i].

    35.1. For the reasons explained in Sheeley 2 at §11 [**19/232-235**], disclosure, witness evidence, expert evidence, and trial in respect of the Historic Claims is likely to be a lengthy, complex, and expensive process. The attempts made in Phillips 1 to minimise the complexity and cost of a trial of the Historic Claims are detached from reality: cf. Sheeley 2, §12 [**19/235-6**] and Summerfield 2, §22-31 [**20/264-7**].

[12] [5] of the judgment refers to an order for a preliminary issue trial having been made by consent.

35.2. In contrast, Claims 1 and 2 are discrete legal points which are unlikely to raise significant disputes of fact requiring much by way of disclosure/evidence (if any), and should only require a few days of argument.

35.3. It is accepted that Claim 3 is likely to require some disclosure and/or witness evidence. However, the disclosure and witness evidence required is likely to be relatively circumscribed (and certainly when compared to the Historic Claims). Claim 3 as pleaded really turns on just two factual allegations pertaining to two events said to have occurred in discrete time-periods in 2019: (i) that POL dishonestly mispresented its reasons for not calling Gareth Jenkins as a witness during the Horizon Issues Trial and (ii) that this alleged misrepresentation induced the GLO Claimants to enter into the Settlement Deed. A trial of those issues should only require a few further days of hearing time.

35.4. Even if Ds were to be unsuccessful at the first trial on the Part A Claims, those (more modest) costs would not have been wasted. The Part A Claims appear on the face of the pleadings and would therefore have always have had to be incurred *in any event*. It makes greater sense to do so in a manner which may avoid the need to incur the far higher costs of a full trial on all of C's claims.

36. POL also considers that this potential upside is one that is very likely to eventuate. This course therefore has a very real chance of providing a quick resolution to the proceedings: Hildyard Consideration [viii]. Whilst it is of course recognised that on an application for a split trial the court will not conduct a mini-trial, it is clear even at this preliminary stage that Ds have much the better of the arguments on each of Claims 1-3.

36.1. Claim 1: The releases contained in the Settlement Deed are extremely broad: the Court can be taken through the relevant clauses of the Settlement Deed in such detail as might be helpful during the hearing.[13] Broadly, however, and as explained in Sheeley 2 at §14 [**19/237-8**], they include: (i) a Specific Release, which compromised not only the claims actually advanced in the GLO Action itself (and

[13] In brief, the Settlement Deed operates as follows: Clause 4.3 settles "**Settled Claims**", which are defined at Clause 4.1 to include "**Claimants' Claims**" and "further claims" ("**Further Claims**"). Claimants' Claims, as defined in Clause 1.1, consist of (i) claims brought in the GLO Action (ii) claims falling within Schedule 2; and (iii) "**Like Claims**". Broadly, Further Claims are those in any way connected to the claims, facts and matters in/of the GLO Action. Like Claims is very broadly drafted to operate as a general release of all conceivable claims between parties to the GLO Action.

correspondence pertaining to that action), but also "*any further claims which arise out of or are in any way connected to, whether directly or indirectly, the claims or counterclaims made or the facts and matters alleged by any party in the Action*" [**7/73-4**]; and (ii) a General Release of "*any and all actual, alleged, threatened, potential or derivative claims…of whatsoever nature…that the Claimants…may have…whether or not presently known…*" [**7/72**]. As to each of these:

36.1.1. Specific Release: The central theme of the Historic Claims is that POL and/or Fujitsu knew between 1999-2007 that Horizon was defective, but concealed that and nonetheless brought the Marine Drive Claim. It is hard to see how these cannot be further claims which "*arise out of or are in any way connected to,…facts and matters alleged*" in the GLO Action which, of course, had the integrity of Horizon (and POL's knowledge of this and its attempts to recover apparent shortfalls from postmasters) at its heart, a point well illustrated by the Horizon Issues Judgment which considered that question over some 1,030 paragraphs plus a lengthy Technical Appendix. POL can address the matters alleged in the GLO Claim Forms and the GPoCs in greater detail orally at the hearing, if this would assist the Court.[14]

36.1.2. Furthermore, the Specific Release expressly releases claims for the causes of action and categories of loss set out in Schedule 2 to the Settlement Deed [**7/103**]. Even a cursory comparison of Schedule 2 and the prayer for relief in the PoCs discloses a very significant degree of overlap. Again, the extent of this overlap can be addressed more fully in oral submissions, if that would assist the Court.

36.1.3. General Release: It is also hard to see how the Historic Claims would not come within the all-encompassing definition of "*any and all*" claims which C may have had on 10th December 2019, "*whether or not presently known*".

36.2. Claim 2: This claim appears to be based on the equitable doctrine of "sharp practice", as described by Lord Nicholls in *BCCI v Ali (No. 1)* [2001] UKHL 8; [2002] 1 AC 251 at [32]. The doctrine is only relevant to the General Release.[15] The

[14] But, by way of example, reference is made to paragraphs 23 - 26, 31.5, 96, 98-100, 102 and 115 of the GPoCs [**27/1103**].

[15] It is unclear whether the PoCs are so confined, as the pleading of this claim is particularly sparse, consisting of (at most) the second and third sentences of paragraph 9 thereof. Whilst the third sentence does appear to only refer

doctrine is also extremely narrow in its application. As Phillips LJ observed in *Maranello Rosso Ltd v LOHOMIJ BV* [2022] EWCA Civ 1667 at [67], "*where a release is construed as covering unknown claims in fraud…that would seem to leave little scope for a finding that one of the parties was guilty of sharp practice*".[16] In those circumstances:

36.2.1. If POL succeeds on the Specific Release, the applicability of the doctrine will not arise;

36.2.2. If POL fails on the Specific Release, but succeeds on the General Release, the applicability of the doctrine will arise, but there is likely to be "*little scope*", if frankly any, for it to operate.

36.3. Claim 3: Even if POL's written closing submissions did dishonestly misrepresent the reason for not calling Mr Jenkins as an expert witness during the Horizon Issues Trial (which for the avoidance of doubt is not accepted by POL), it is hard to see how that could have causatively induced the GLO Claimants to enter into the Settlement Deed when they would not otherwise have done so. The Settlement Deed was entered into on 10th December 2019, by which time (following circulation of the draft judgment on 28th November 2019) the GLO Claimants knew that they had been substantially successful at the Horizon Issues Trial notwithstanding Mr Jenkin's absence. Further, it is likely that the litigation funder who was funding the GLO Action – Therium Litigation Funding IC ("**Therium**") – would have had (as is common in such arrangements) at least some control over whether to settle and if so on what terms, and it seems somewhat unlikely that Therium would have been influenced by the reasons given for not calling Mr Jenkins when making any such decision (nor is it pleaded that it was).

37. Thirdly, from a case management perspective:

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to it being "*unconscionable*" for POL to rely on the general release, the second sentence refers *en passant* to "s*harp practice*" at the conclusion of a sentence about the construction of the Settlement Deed as a whole. If the intention is to suggest that the doctrine applies to the Specific Release, that is wrong. In any event, the premise of the sentence is misconceived – as was made clear in *BCCI v Ali (No. 1)* at [71], the doctrine of sharp practice is distinct from the process of construing the release.

[16] And subsequently cited with approval by the Court of Appeal in *Riley v National Westminster Bank Plc* [2024] EWCA Civ 833 at [77] – [79].

37.1. Any CMC for a trial of the Part A Claims is likely to be considerably less cumbersome than an equivalent CMC for all of the Claims (in particular in relation to disclosure, which may be a particularly complex exercise in respect of the Historic Claims because of the long time period covered by the claims and the fact that the relevant events happened decades ago): Hildyard Consideration [ii].

37.2. Progressing the Part A Claims circumvents some of the issues which arise in relation to the Historic Claims, as identified in Sheeley 1, in particular at §61-64 [**16/176-177**].

37.3. Whilst POL does not suggest that a trial of the Part A Claims and the Historic Claims together would place an "*undue burden*" on the Judge hearing such a trial, a full trial of the Claims would be a complex and unwieldy exercise, spanning different causes of action across different time-periods. The proposed delineation would make each trial more streamlined: Hildyard Consideration [iv].

37.4. In the event that C was to be successful on the proposed preliminary issues, POL would be content for Part B and Part C to proceed in parallel with any appeal POL might bring so as to minimise delay: Hildyard Consideration [vii].

37.5. There is no reason to believe that the prospects of settlement will be adversely affected if a split trial were to be ordered: Hildyard Consideration [ix].

37.6. The suggestion of a split trial / preliminary issue trial is not being made late in the day: Hildyard Consideration [x].

38. Finally, to the extent it is relevant, two of the three parties to the litigation are positively in favour of there being a split trial / preliminary issue trial of the proposed issues, whilst Phillips 1 states that C "*does not in principle object to the possibility of a preliminary issue being determined*" [**18/195/§10**]. Whilst the question is of course ultimately one for the Court, the fact that there seems to be some significant measure of agreement that the preliminary issue mechanism might be usefully applied – and certainly no cogently articulated opposition to POL and Fujitsu's suggestion – ought to be given some weight.

E. THE EXTENSION OF TIME APPLICATIONS / DIRECTIONS

39. Subject to the points raised in Sections F and G below, POL proposes the following directions (which are embodied in the draft order filed with this skeleton argument):

39.1. Ds to file defences to the Part A Claims only by 20th February 2026.[17] These defences should be confined to the issues for determination at the split trial / preliminary issue trial, i.e. Claims 1 – 3. Whilst Summerfield 2 suggested at [**20/260/§7(2)**] that Fujitsu could file such a defence within 7 days, this is unrealistic for POL as any defence will need to go through several layers of approval (including government stakeholders).

39.2. Time for Ds to file defences to the remainder of the PoCs should be adjourned to the consequential hearing after the handing down of judgment following the split trial / preliminary issue trial, at which point (if required) further directions can be given by the court.

39.2.1. This would avoid the very expensive and time-consuming task of pleading to the Historic Claims having been wasted in the event that Ds succeed on the Part A Claims at a split trial.

39.2.2. As explained in Sheeley 1 at §61-64 [**16/176-177**] and Sheeley 2 at §11 [**19/232-235**], due to both the complexity and historic nature of the Historic Claims pleading properly to Part B and Part C will require considerably more investigation that pleading to Part A. The consequence of, as SMB suggest, requiring POL to plead to those claims before ordering any split trial / preliminary issue trial would therefore be to delay the first split trial / the preliminary issue trial.

39.2.3. It would also avoid some additional complications which cast into doubt whether it is desirable, or even appropriate, for Ds to plead to parts of the Historic Claims at this juncture. The PoCs make express allegations of perjury against two individuals: Anne Chambers and Helen Rose.[18] It is not known if those individuals are under active investigation, but given Fraser J's letter to the DPP it is conceivable that Mrs Chambers may be. It may be that other matters in Part B and Part C of the PoCs are also the subject of

[17] There is a small, but very important, distinction between pleading to "the Part A Claims" (i.e. Claims 1, 2 and 3) and pleading to "Part A" of the PoCs. This is because there are a small number of substantive references to Claims 4 and 5 in Part A of the PoCs, as identified in POL's draft order which is filed with this skeleton argument. It is not suggested that they be pleaded to at this stage (which would necessarily result in incurring the time and cost of responding to Claims 4 and 5, the postponement of which is the very purpose of a split trial).

[18] See in particular paragraphs 104 and 107-109 in respect of Anne Chambers [**6/60**]; and paragraph 90 in respect of Helen Rose [**6/57**].

criminal/regulatory investigation. Where there is a real risk that the continuation of civil proceedings could prejudice criminal proceedings, the court may stay the civil proceedings (*Snoras v Antonov* [2013] EWHC 131 (Comm) at [18]) or order the civil proceedings to proceed subject to restrictions / *in camera* (*AG of Zambia v Meer Care & Desai* [2006] EWCA Civ 390 at [27] – [32]). It is not suggested that the court need determine any of these matters as this hearing; they are merely raised as potential issues if Ds are required to plead to the substance of the Historic Claims.

39.3. C to file Replies (if so advised) by 20th March 2026.

39.4. A CMC for the first trial / preliminary issue trial to be listed on the first open date after 20th April 2026. Whilst the Claim was issued just a few days before PD51ZG1 came into force,[19] it is suggested that costs budgeting might perhaps be dispensed with.

F. THE OTHER PARTIES TO THE SETTLEMENT DEED

40. POL and C are not the only parties to the Settlement Deed. Instead, as explained above, the other 554 GLO Claimants, and Freeths LLP, are also parties to, and have rights under, it.

41. By way of Claim 3, C seeks rescission of the Settlement Deed. Indeed, paragraph 26 of the PoCs purports to "*hereby*" effect rescission of it. The consequence of rescission would, axiomatically, be that the rights and obligations created by the Settlement Deed are extinguished, and the parties to it are returned to the position they were in prior to their entry into Settlement Deed (and if that were not to be possible, it would operate as a bar to rescission).

42. It is well-established that a multi-party contract cannot be rescinded where rescission would destroy the rights of other, innocent parties to it: *Re Metal Constituents Limited* [1902] 1 Ch 707; *Snell's Equity* §15-015. In the case of the Settlement Deed, there are several obvious adverse impacts of rescission on other of the GLO Claimants:

[19] The new Practice Direction came into force on 6th April 2025, while the Claim was issued on 25th March 2025.

42.1. The setting aside of the Settlement Deed could potentially result in the reactivation and continuation of the GLO Action.

42.2. For rescission to take place, the counterparties to the Settlement Deed would need to repay the entirety of the Cash Settlement Sum (as defined in Clause 2.1) of £52.25m.

42.3. The Settlement Deed also gives non-monetary rights to various groups of the GLO Claimants. Examples include: (i) by Clause 7.2 POL agreed to postpone the running of limitation for claims in malicious prosecution by Convicted Claimants[20] until any conviction was overturned; and (ii) by Clause 11.1.1(A) POL agreed to withdraw any claim or proof of debt in respect of "unpaid shortfalls" arising from 2000.

43. In correspondence, SMB have sought to argue that the Settlement Deed is not a multipartite contract, but rather "*a settlement of each claimant's claim severally not jointly*" [**64/2176**]. This is difficult to understand, if not plainly wrong. The Settlement Deed [**7/70**] provides for the payment of a single indivisible Cash Settlement Sum to the GLO Claimants, with the precise apportionment of that sum as between different GLO Claimants left to a steering committee (by Clause 2 [**7/73**]). There is no mechanism for apportionment in the Settlement Deed.

44. As such, POL's position is that:

44.1. Insofar as C has purported to unilaterally rescind the Settlement Deed at law by way of paragraph 26 of the PoCs, that rescission is ineffective in the absence of the other 555 parties to the Settlement Deed.

44.2. If C in fact seeks a court order rescinding the Settlement Deed in equity, this should be refused in the absence of the other 555 parties to the Settlement Deed.

45. For its part, POL does not seek any order in respect of the other parties at this juncture (subject to the collateral use considerations, as addressed below). Given that their absence is – on POL's case – a roadblock to C's rescission claim, POL considers it to be a matter for C to address (should he wish to do so). However, POL thought it appropriate to bring the point to the attention of C and the court.

[20] "Malicious Prosecution" is defined in Clause 1.1; "Convicted Claimants" is defined in Clause 7.1.1.

G. COLLATERAL USE

46. All of the Claims raise issues pertaining to the conduct of previous legal proceedings: i.e. the Marine Drive Claim and the GLO Action. Plainly, documents disclosed by the parties within those proceedings are likely to be of relevance.

47. This potentially engages CPR r.31.22, which provides as follows:

> ***"31.22***
>
> *(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where –*
>
> *(a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;*
>
> *(b) the court gives permission; or*
>
> *(c) the party who disclosed the document and the person to whom the document belongs agree."*

48. The prohibition on collateral use applies not only to documents themselves, but also to information derived from documents: *IG Index Ltd v Cloete* [2014] EWCA Civ 1128; [2014] C.P. Rep. 44 at [24(ii)].

49. For the purpose of r.31.22(a), a document will be deemed to have been read or referred to in court if it was pre-read by the judge or referred to in a skeleton argument: *SmithKline Beecham Biologicals SA v Connaught Laboratories Inc* [1999] 4 All E.R. 498.[21]

50. The case law on r.31.22 takes a very expansive view of the meaning of "*use*". It has been held that not only will actually deploying the documents (or information derived therefrom) outside the original proceedings constitute a breach, but that even merely reviewing the documents to ascertain whether they are relevant to different proceedings can also constitute a breach: *Tchenguiz v Grant Thornton UK LLP* [2017] EWHC 310 (Comm); [2017] 1 WLR 2809 at [31]; *Lakitamia Shipping Co Ltd v Su* [2020] EWHC 3201 (Comm); [2021] 1 W.L.R. 1097 at [57] and [92]-[93]. As Cockerill J explained in the latter case at [59] (following a helpful review of the authorities), the correct course where a party suspects that documents disclosed in one set of proceedings may be relevant to a different set of proceedings is to (i) apply to court for permission to review the

[21] The decision related to the pre-CPR RSC Ord.24 r.14A, but was approved in relation to r.31.22 by the Court of Appeal in *Lilly ICOS Ltd v Pfizer Ltd (No.2)* [2002] EWCA Civ 2; [2002] 1 W.L.R. 2253 at [7]-[8].

documents for relevance; and (ii) then, later, make an application to deploy any relevant documents.

51. The somewhat cumbersome consequences of this have been criticised: *Hollander on Documentary Evidence* takes the view at §28-08 that "*The lamentable drafting of CPR r.31.22 has led to unexpected consequences in every direction and it plainly wins the prize for the worst drafted section of the CPR*", and suggests that the rule may need to be reconsidered by the Rules Committee, or the literalist interpretation reversed by the Court of Appeal. Nevertheless it remains the law. Nor is the rule one to be trifled with; the consequence of breach can be contempt: *Harman v SSHD* [1983] 1 AC 280.

52. In the case of the Marine Drive Claim, there is a straightforward practical solution. The only parties to that claim were POL and Mr Castleton (although some documents may have been disclosed by, or belonged to, Fujitsu). As such, it should be possible for POL, Fujitsu and Mr Castleton to mutually agree that documents disclosed in the Marine Drive Claim can be reviewed and deployed for the purpose of these proceedings.

53. The position in respect of the GLO Action is somewhat more complex:

    53.1. At over six years removed from the conclusion of the GLO Action, POL simply does not know which documents disclosed in those proceedings come within the exception in r.31.22(a). Whilst, given the length of the trials and the judgments, it seems likely that a very considerable volume of documents will come within the r.31.22(a) exception, this will not necessarily encompass the entirety of the documents in the trial bundles. The identification of documents within the trial bundles which were pre-read or referred to in open court is likely to be a very time-consuming process, carried by reference to the entirety of the written submissions and transcripts.

    53.2. Further, there may be documents relevant to the Part A Claims which do not come within the r.31.22(a) exception. A notable example is correspondence pertaining to the GLO Action, which expressly referred to the definition of "*Claimant's Claims*" in the Settlement Agreement, and which may well contain information derived from disclosed documents to which the r.31.22 prohibition applies, but which were not put before the court.

53.3. It is unclear what the position of the 554 other GLO Claimants will be to disclosed documents (or information from those documents) which have not yet entered the public domain being reviewed for the purpose of, and potentially deployed within, these proceedings. But it is conceivable that they may object.

54. As such, POL proposes the following:

54.1. The parties to endeavour to agree to release one another from any collateral use restrictions in relation to the Marine Drive Claim.

54.2. The parties make a joint application for permission to review the materials from the GLO Action, to be heard at the CMC (which may require notice to be given to the other GLO Claimants and/or Freeths LLP).

54.3. In the meantime, POL pleads its defence to the Part A Claims as best it can without access to those documents, but in the expectation that it would be permitted to amend (without liability for the costs of and occasioned by any amendments) in the event that further relevant materials emerge following the review.

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