



IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

B E T W E E N:

LEE CASTLETON

Claimant

- and -

(1) POST OFFICE LIMITED

(2) FUJITSU SERVICES LIMITED

Defendants

DEFENCE ON BEHALF OF THE FIRST DEFENDANT

INTRODUCTION

1. In this Defence:

- 1.1. Unless stated otherwise, references to paragraph numbers are to paragraphs in the Particulars of Claim;
- 1.2. The First Defendant (“**POL**”) joins issue with the Claimant on all matters and no admissions are made save where expressly stated herein;
- 1.3. POL adopts the definitions set out in the Glossary to the Particulars of Claim, save for “Common Issues”, “Horizon Issues” and “the Group Litigation” which are respectively termed “the Common Issues Judgment”, “the Horizon Issues Judgment” and “the GLO Action” herein. Where headings or definitions from the



Particulars of Claim are adopted, this is done for convenience only and no admissions are made thereby.

2. In accordance with the Court's Order dated 23rd January 2026 ("**the Directions Order**") directing a trial of certain preliminary issues ("**the Part A Trial**"), this Defence only responds to the Introduction and Part A of the Particulars of Claim, save for certain words and passages identified in Annex 2 to the Directions Order to which POL does not respond in this Defence.
3. POL is presently limited in its ability to plead fully to certain aspects of the Claimant's claims because it is unable to review certain documents disclosed in the GLO Action which may be subject to collateral use restrictions pursuant to CPR r.31.22. POL may seek to plead further to those aspects upon the resolution of such collateral use issues.
4. The summary of the layout of the Particulars of Claim in paragraph 1 is noted. POL pleads to underlying allegations in the relevant parts of this Defence below.
5. Paragraph 2 is admitted as the briefest of summaries of aspects of the First Defendant's business.
6. No admission is made in respect of paragraph 3, which concerns the Second Defendant.
7. Paragraph 4 is admitted.
8. As to paragraph 5:
 - 8.1. As to the first sentence:
 - 8.1.1. It is admitted that the Claimant was initially suspended by POL on 23rd March 2004 following an audit at the Marine Drive branch conducted by Helen Hollingworth (later Helen Rose) and Chris Taylor which disclosed an apparent shortfall in the Marine Drive accounts. The Claimant's contract was subsequently terminated on 17th May 2004. The Claimant appealed against the termination of his contract. That appeal was heard on 1st July 2004 by John Jones, who dismissed the appeal on 9th July 2004.
 - 8.1.2. Pursuant to Annex 2 of the Directions Order, POL does not plead to the words "*wrongfully and unlawfully*".



- 8.2. The second sentence is admitted. POL's civil claim against the Claimant was issued in the Scarborough County Court on 9th June 2005 with Claim No. 5SZ00651, and subsequently transferred to the High Court in London with Claim No. HQ05X02706 ("**the Marine Drive Claim**").
- 8.3. As to the third sentence, it is admitted that POL suspended the Claimant and appointed a temporary sub-postmaster (Mr Greg Booth) to operate the Marine Drive Branch.
- 8.4. Pursuant to Annex 2 of the Directions Order, POL does not plead to the remainder of paragraph 5.
9. As to paragraph 6:
- 9.1. The first sentence is admitted, save that the learned Judge was Queen's Counsel, not King's Counsel, at the relevant time when judgment was handed down ("**the 2007 Judgment**"). The trial took place on 6th, 8th, 11th to 13th December 2006 and 11th January 2007 ("**the 2006 Trial**"). The further hearing on 11th January 2007 was listed after the Claimant requested further disclosure from POL, which was voluntarily provided on 21st December 2006, and the Claimant was permitted to put further questions to two of POL's factual witnesses – Anne Chambers and Ruth Simpson – by way of cross-examination at that further hearing.
- 9.2. As to the second sentence, it is admitted that the Claimant acted as a litigant in person at the 2006 Trial. However, the Claimant was represented in the Marine Drive Claim by Rowe Cohen solicitors until at least mid-November 2006 and Mr Alexander Goold of counsel until at least 7th November 2006.
- 9.3. The third sentence is admitted.
- 9.4. Pursuant to Annex 2 of the Directions Order, POL does not plead to fourth and fifth sentences.
10. Paragraph 7 is admitted.
11. Paragraph 8 is admitted save that, to the extent it is alleged, it is denied that the Settlement Deed was confined to only settling "*all claims in the Group Litigation*". The true effect of



the Settlement Deed, properly construed, is wider and extends beyond claims actually advanced in the GLO Action, as further particularised below. It is further averred that the Horizon Issues Judgment was circulated in draft to the parties to the GLO Action on 28th November 2019, prior to the execution of the Settlement Deed.

PART A: THE SETTLEMENT DEED

(1) The Meaning and Effect of the Settlement Deed

(a) Response to the Claimant's case on the meaning and effect of the Settlement Deed

12. As to paragraph 9:

12.1. As to the paragraph generally:

12.1.1. It is assumed that the reference to “*sharp practice*” (as appears in the second sentence) and the reference to it being “*unconscionable*” for POL to rely on the general release in the Settlement Deed (as appears in the third sentence) are both intended to be references to 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 remainder of this Defence is pleaded on the basis of that assumption.

12.1.2. It is averred that the equitable doctrine of sharp practice has no role to play in the process of contractual interpretation. Accordingly, to the extent it is alleged by the second sentence that the doctrine of sharp practice affects the proper construction of the Settlement Deed, this is denied.

12.2. As to the first sentence:

12.2.1. It is assumed that the reference to “*Claimant's claims herein*” is intended to be a reference to the Claimant's claims set out in Part B and Part C of the Particulars of Claim that:

12.2.1.1. The Marine Drive Claim was an abuse of process (as particularised in Section B of the Particulars of Claim) (“**the Abuse of Process Claim**”); and



- 12.2.1.2. The 2007 Judgment was obtained by Paul and/or as part of an unlawful means conspiracy with the Second Defendant (as particularised in Section C of the Particulars of Claim) (“**the 2007 Judgment Claim**”).
- 12.2.2. The Abuse of Process Claim and the 2007 Judgment Claim are hereinafter collectively referred to as “the **Historic Claims**”.
- 12.2.3. It is denied that the Historic Claims are “*outside the terms of the Settlement Deed*”. POL’s case on the proper construction of the Settlement Deed is particularised in paragraphs 14-36 below.
- 12.2.4. The phrase “*as a matter of law*” is not understood, nor is any legal basis for the averment pleaded. POL reserves the right to plead further upon the Claimant providing clarification.
- 12.2.5. No admissions are made as to the effect of the Settlement Deed on the Claimant’s claims against the Second Defendant.
- 12.3. The second sentence is denied. It is averred as follows:
- 12.3.1. The Settlement Deed, properly construed, comprises a very wide range of claims including those in fraud and conspiracy, and whether known or unknown to the Claimant as at 10th December 2019, and irrespective of whether the Claimant could reasonably have been aware of a claim that was otherwise unknown to him as at 10th December 2019. POL’s case on proper construction of the Settlement Deed is particularised in paragraphs 14-36 below.
- 12.3.2. Further, it is averred that if the Claimant was unaware of the Historic Claims on 10th December 2019 (which is not admitted, and as to which the Claimant is put to proof), the Claimant could reasonably have been aware of the Historic Claims on 10th December 2019 such that the Claimant could have adequately pleaded those claims as at that date. In this regard, it is noted and averred that Part B and Part C of the Particulars of Claim make extensive reference to passages from the Common Issues Judgment and



the Horizon Issues Judgment (a draft of which had been circulated to the parties on 28th November 2019) in order to substantiate the Historic Claims. In particular, it is noted and averred that:

12.3.2.1. In respect of the Abuse of Process Claim, the GLO Claimants alleged in the GLO Action that POL had historically pursued subpostmasters for alleged shortfalls by way of civil proceedings, and that it had been wrong to do so because its true motivation for so doing was not financial recovery but rather to protect the reputation of Horizon, as set out more fully in paragraph 25 below.

12.3.2.2. In respect of the 2007 Judgment Claim, the issues of “*Remote Access*”, “*PEAKs, PinICLs and the KEL*”, “*The ‘Callendar Square’ bug*” and “*Default attribution of ‘user error’*”, as identified at paragraph 1d of the Particulars of Claim, were extensively considered at the Horizon Issues Trial and were the subject of discussion and findings of fact in the Horizon Issues Judgment.

12.4. As to the third sentence:

12.4.1. Pursuant to footnote 1 of Annex 1 to the Directions Order, it is to be assumed for the purpose of the Preliminary Issue Trial (and without POL making any admissions) that (i) the Historic Claims are viable claims; and (ii) that POL knew this as at 10th December 2019.

12.4.2. It is denied that, on the basis of those assumptions, it is unconscionable for POL to rely on the general release in circumstances where:

12.4.2.1. It is not admitted that the Claimant was unaware of the Historic Claims as at 10th December 2019, and the Claimant is put to proof as to the same (as to which the first sentence of paragraph 12.3.2 above is repeated);



12.4.2.2. Further, if the Claimant was unaware of the Historic Claims, it is averred that the Claimant (whether personally, or via his legal advisors who were his agents and whose knowledge/belief was attributable to him for this purpose) could reasonably have been aware of them as at 10th December 2019 (as to which paragraph 12.3.2 above is repeated).

12.4.2.3. It is averred that POL would have reasonably believed that the Claimant was aware of the Historic Claims as at 10th December 2019 because of the contents of the Claim Forms and Generic Particulars of Claim in the GLO Action and the case advanced by the GLO Claimants at the Common Issues Trial and the Horizon Issues Trial.

12.4.2.4. The Settlement Deed, properly construed, settled unknown claims in fraud relating to Horizon for good consideration.

12.5. The fourth sentence is denied.

12.5.1. It is denied that the Settlement Deed was procured by fraud, and POL's case on the allegation that it was is particularised at paragraphs 39 to 61 below.

12.5.2. Further and in any event:

12.5.2.1. It is not open to the Claimant, being only one of the 557 parties to the Settlement Deed, to unilaterally avoid and rescind the Settlement Deed.

12.5.2.2. It is not open to the Claimant (or indeed all of the 556 other parties to the Settlement Deed) to rescind the Settlement Deed without having made or tendered counter-restitution of the full settlement sum of £52.25m paid under the Settlement Deed.

13. As to paragraph 10:

13.1. As to the first sentence thereof:



13.1.1. It is admitted that clause 4.1 of the Settlement Deed provides as quoted. The definition of “**Settled Claims**” in the said clause is adopted herein.

13.1.2. It is admitted that the clause provides for the release of claims and that aspects of it amount to a general release as further particularised below. To the extent it is alleged, it is denied that every aspect of the clause is properly described as a general release, and it is denied that the equitable doctrine of sharp practice applies to releases which are not general releases.

13.2. As to sub-paragraph 10.a., the definition of “**Claimants’ Claims**” is admitted and adopted herein, such definition appearing at clause 1.1 of the Settlement Deed, save for the inconsequential omission of the words “*shall mean*” from the original. The last sentence of the sub-paragraph is denied. POL’s case on the meaning and effect of “**Claimants’ Claims**”, properly construed, is further particularised below.

13.3. As to sub-paragraph 10.b., the definition of “**Like Claims**” is admitted and adopted herein, such definition appearing at clause 1.1 of the Settlement Deed. As to the last sentence of the sub-paragraph, it is admitted that Clause 4.2 does not directly apply to the Claimant’s claims in these proceedings, but it is averred that it is relevant to properly construing “**Like Claims**” and the meaning and effect of the Settlement Deed as a whole.

(b) POL’s case on the meaning and effect of the Settlement Deed

14. Clause 4.3 of the Settlement Deed provides as follows:

“4.3 Upon transfer by the Defendant of the Cash Settlement Sum pursuant to clause 2:

4.3.1 the Claimants shall for themselves and for any Related Party (insofar as they are able):

(A) fully and finally settle, release, acquit and forever discharge the Defendant from and against the Settled Claims; and

(B) covenant not to sue, pursue or proceed against the Defendant in relation to any claim, fact or matter arising from or connected to the Settled Claims;

....”

15. Clause 4.1 of the Settlement Deed provides as follows:



“Save as expressly set out in clause 4.2 below, this Agreement is in full and final settlement of the Action, the Claimants’ Claims, the Defendant’s Counterclaims and 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 (“the Settled Claims”).”

16. Accordingly, a Historic Claim will have been compromised if:

16.1. It comprised a part of the Action (as defined in paragraph 17 below);

16.2. It is a Claimants’ Claim (as defined in paragraph 18 below); or

16.3. It is a claim *“which arise[s] out of or [is] 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”* (hereinafter a **“Further Claim”**).

17. **“The Action”** is defined in the first recital to the Settlement Deed, such definition adopted herein, in the following terms:

“The Claimants have brought proceedings against the Defendant in the High Court of England and Wales under claim numbers HQ16X01238, HQ17X02637 and HQ17X04248 in connection with alleged breaches by the Defendant arising out of the operation of the Claimants’ electronic point of sale system, Horizon (the “Action”), as set out in the Claimants’ Claims...”

18. A **“Claimants’ Claim”** is defined in clause 1.1 of the Settlement Deed, such definition adopted herein, in the following terms:

*“**“Claimants’ Claims”** shall mean all and any of the claims or potential claims alleged by any of the Claimants in the Action and arising as a result of the PTA Application (including those made in the Generic Particulars of Claim, the Claimants’ Schedules of Information, the lead Claimants’ Individual Particulars of Claim (in each case including any amendments) and/or in any correspondence between the Parties in or relating to the facts and matters referred to in the Action including, without limitation, claims in respect of the losses and causes of action set out at Schedule 2. The Claimants’ Claims shall also include all claims for interest, costs and expenses (including the costs of the PTA Application) and any Like Claims.’*

19. A claim falling within the scope of the words *“shall mean all and any... referred to in the Action”* quoted above is hereinafter referred to as a **“GLO Action Alleged Claim”**.

20. Schedule 2 provides as follows:



“SCHEDULE 2

All claims howsoever arising, whether direct or indirect, relating to actual or alleged:

1. *Shortfalls*
2. *Loss of investment and capital losses of any type whatsoever including without limitation losses linked to the purchase, fit-out, stocking, refit, improvement and resale of premises, equipment and stock including those relating to the Claimants' retail and residential premises and including those relating to goodwill*
3. *All claims for loss of earnings including those arising from suspensions, from failure to give notice, or adequate notice, and for loss of earnings post termination*
4. *Damage to reputation or stigma including loss of trade, prejudice to future employment or business prospects, loss of credit*
5. *All personal injuries including anxiety, distress and inconvenience and disappointed expectations*
6. *Any and all losses related to bankruptcy and all other insolvency procedures*
7. *Claims for aggravated and exemplary damages*
8. *Claims for business interruption losses*
9. *Claims for the cost of litigation funding*
10. *Claims for restitutionary damages and/or any account of profit or other equitable remedies*
11. *All other consequential losses, whether direct or indirect*
12. *All other losses which could have been claimed in the Action*
13. *Interest, costs and expenses*
14. *The Defendant's Counterclaims*

Nothing in this Schedule shall be construed or taken to mean that a claim for Malicious Prosecution has been settled or compromised in any way.”

21. Like Claims is defined in sub-clause 1.1 of the Settlement Deed as follows (the effect of such sub-clause is hereafter referred to as “**the General Release**”):

*“**Like Claims**” shall mean any and all actual, alleged, threatened, potential or derivative claims, defences, actions, causes of action, lawsuits, counterclaims, set-offs, disputes, demands, charges, liabilities, complaints and matters of whatsoever nature (including any claims for interest, fees, expenses or costs), save for Malicious Prosecution as set out in clause 4.2, that the Claimants or the Defendant or any of their Related Parties have or may have against any other party to the Action or Related Party whether actual, contingent, in relation to past, present or future losses, whether or not presently known to the Parties or any Related Party, whether or not arising from any other change of circumstance of any sort and whether arising out of negligent, wilful or intentional conduct or otherwise. For the avoidance of doubt, the definition of Like Claims is subject always to Clause 4.2.’*

22. For the avoidance of doubt, it is averred that:



- 22.1. “Presently” refers to 10th December 2019;
- 22.2. Any claims involving allegations of dishonesty, fraud and/or deceit fall within the definition of Like Claims properly construed, and in particular by reason of the words “any and all”, “of whatsoever nature”, and “wilful or intentional conduct”.

(i) The Abuse of Process Claim

23. POL’s case is that the Abuse of Process Claim is

23.1. a Further Claim; and further or alternatively

23.2. a Claimants’ Claim by reason of being

23.2.1. a Like Claim; and/or

23.2.2. a claim in respect of losses or causes or action set out in Schedule 2

in each case as further particularised below, and has therefore been compromised by the Settlement Deed. Accordingly, the Abuse of Process Claim is res judicata whether by way of cause of action estoppel, issue estoppel or otherwise and/or it is an abuse of process and/or it is a breach of the terms of the Settlement Deed for the Claimant to advance the claim in all the circumstances.

24. POL is not presently able to plead as to whether the Abuse of Process Claim is a GLO Action Alleged Claim without reviewing materials from the GLO Action which may be subject to collateral use restrictions under CPR r.31.22. POL reserves the right to plead further in due course if permission to review those documents for this purpose is given pursuant to CPR r.31.22(1)(b).

25. POL’s case that the Abuse of Process Claim is a Further Claim is as follows:

25.1. By the Abuse of Process Claim it is alleged that POL pursued the Marine Drive Claim in the face of increasing challenge to the reliability and integrity of Horizon in order to protect the reputation of Horizon (which it is said served POL’s commercial interests), rather than because there would be a net financial recovery from that litigation.



25.2. Amongst the facts and matters alleged by the GLO Claimants in the GLO Action was the allegation that POL had historically pursued subpostmasters for alleged shortfalls by way of civil proceedings, and that it had been wrong to do so because its true motivation for so doing was not financial recovery but rather to protect the reputation of Horizon. Although POL will rely upon the GLO claim forms (in their original forms and as amended), the GLO Generic Amended Particulars of Claim (“**the GAPoCs**”), the GLO Individual Particulars of Claim (“**the IPoCs**”), the judgments in the GLO Action (and in particular the Common Issues Judgment and the Horizon Issues Judgment) and upon any other materials which inform the scope and content of the GLO Action (including correspondence, evidence and submissions) in their entirety at trial, particular reliance is placed upon the following, individually and collectively.

25.2.1. Paragraph 26 of the GAPoCs alleged as follows:

‘26. However, the Defendant has made public statements in the following terms:

26.1 “Horizon does not have functionality that allows Post Office or Fujitsu to edit or delete the transactions as recorded by branches” ...

26.2 “Transactions as they are recorded by branches cannot be edited”’

25.2.2. Sub-paragraph 31.5 of the GAPoCs alleged as follows:

“31.5 Investigators were instructed to disregard the possible problems with Horizon as a possible cause of apparent or alleged shortfalls and/or it was the organisational culture or practice to do so and/or investigators (or some of them) in fact did so”

25.2.3. Paragraph 98 of the GAPoCs alleged as follows:

“98. The Defendant failed properly and fairly to investigate alleged shortfalls before attributing them to the Claimants and/or seeking recovery from the Claimants...”

25.2.4. At paragraph 115 of the GAPoCs, the Claimant alleged that “...*the Defendant made the said representations knowing they were false*”. The “*representations*” referred to are particularised at paragraph 108, including the following:



“108.1. *that there were, in fact, shortfalls in the branch accounts and/or that they represented real losses to the Defendant (when there were not any such shortfalls or any shortfalls that did exist was materially overstated);*

...
108.5. *that defects, bugs or errors in Horizon were not a possible cause of apparent shortfalls (when in fact they were, as now admitted by the Defendant);*
...”

25.2.5. The Claimant’s Amended Schedule of Information in the GLO Action dated 1st December 2017 (“**the Claimant’s Schedule of Information**”) made express reference to the Marine Drive Claim.

25.2.6. Paragraph 75 of Mr Bates’ IPoCs alleged as follows:

“75. *The Claimant reasonably infers... that the Defendant knew:*
75.1 ...
75.2 *unlike many other Subpostmasters, the Claimant:*
a. *had not yielded to pressure from the Defendant; and*
b. *was prepared [to] defend his legal rights in relation to the Defendant’s demands for repayment in court, which would risk publicising flaws and/or shortcoming in Horizon, which the Defendant did not wish to become widely known.”*

25.2.7. The reputation of Horizon and the extent of any problems with it was the subject of consideration by Mr Justice Fraser in the Common Issues Judgment (including, but not limited to, at [10], [59], [575], [1115]) and the Horizon Issues Judgment (including, but not limited to, at [22], [37], [193], [233], [430], [518], [934], [946]).

25.2.8. Further POL also relies on the matters set out at sub-paragraph 30.2 below.

25.3. In the premises, the Abuse of Process Claim is a claim “*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 it is therefore a Further Claim compromised by the Settlement Deed.

26. The Abuse of Process Claim is a Claimants’ Claim by reason of being a Like Claim:

26.1. With respect to the identity of the parties:



26.1.1. The Claimant (in the present action) was a GLO Claimant in the GLO Action and is therefore a claimant within the scope of the definition of Like Claims; and

26.1.2. POL (being a defendant in the present action) was the Defendant in the GLO Action and is therefore a defendant within the scope of the definition of Like Claims.

26.2. With respect to the content of the claim, the Abuse of Process Claim:

26.2.1. Falls within the meaning of the words (properly construed) “*any and all actual... actions, causes of action... of whatsoever nature... whether or not presently known to the Parties..., whether or not arising from any other change of circumstance of any sort and whether arising out of negligent, wilful or intentional conduct or otherwise...*”; and

26.2.2. Does not fall within clause 4.2 of the Settlement Deed.

26.3. In the premises, the Abuse of Process Claim is a Like Claim and is therefore compromised by the Settlement Deed.

27. It is unclear which of the losses claimed at paragraphs (7) and (8) of the prayer to the Particulars of Claim are claimed in respect of the Abuse of Process Claim, but to the extent any of them are, the Abuse of Process Claim is also a Claimants’ Claim by reason of being a claim in respect of losses and causes of action set out in Schedule 2 as further particularised in paragraphs 34-36 below, and will therefore be res judicata and/or an abuse of process and/or brought in breach of the terms of the Settlement Deed as aforesaid.

(ii) The 2007 Judgment Claim

28. POL’s case is that the 2007 Judgment Claim is

28.1. a Further Claim; and further or alternatively

28.2. a Claimants’ Claim by reason of being

28.2.1. a GLO Action Alleged Claim; and/or

28.2.2. a Like Claim; and/or



28.2.3. a claim in respect of losses or causes of action set out in Schedule 2

in each case as further particularised below, and has therefore been compromised by the Settlement Deed. Accordingly, the 2007 Judgment Claim is res judicata whether by way of cause of action estoppel, issue estoppel or otherwise and/or it is an abuse of process and/or it is a breach of the terms of the Settlement Deed for the Claimant to advance the claim in all the circumstances.

29. POL is not presently able to plead fully to whether the 2007 Judgment Claim is a GLO Action Alleged Claim without reviewing materials from the GLO Action which may be subject to collateral use restrictions under CPR r.31.22. POL reserves the right to plead further in due course if permission to review those documents for this purpose is given pursuant to CPR r.31.22(1)(b).

30. POL's case that the 2007 Judgment Claim is a Further Claim is as follows:

30.1. The 2007 Judgment Claim is built upon four principal allegations particularised below. POL will rely upon the Claimant's Particulars of Claim in their entirety, but particular (non-exhaustive) examples are set out in respect of each characteristic.

30.1.1. Horizon did not operate properly and was liable to create apparent, but non-existent, shortfalls ("**the First 2007 JC Characteristic**");

30.1.2. POL, or POL and Fujitsu as alleged co-conspirators, knew that that was so at the time of the Marine Drive Claim ("**the Second 2007 JC Characteristic**");

30.1.3. POL had issued a civil claim against the Claimant in respect of an alleged shortfall (i.e. the Marine Drive Claim) which it pursued to judgment, ultimately resulting in the Claimant's bankruptcy ("**the Third 2007 JC Characteristic**"); and

30.1.4. POL, or POL and Fujitsu, concealed the problems with Horizon from the Claimant and the court at the 2006 Trial, and did so dishonestly ("**the Fourth 2007 JC Characteristic**").



30.2. Amongst the facts and matters alleged by the GLO Claimants in the GLO Action was the allegation that POL had historically pursued sub-postmasters for alleged shortfalls by way of civil proceedings, and that it had been wrong to do so because of the unreliability of Horizon of which POL was aware. Although POL will rely upon the GLO claim forms (in their original forms and as amended), the GAPoCs, the IPoCs, the judgments in the GLO Action (and in particular the Common Issues Judgment and the Horizon Issues Judgment) and upon any other materials which inform the scope and content of the GLO Action (including correspondence, evidence and submissions) in their entirety at trial, particular reliance is placed upon the following, individually and collectively, in addition to the matters set out at paragraph 25.2 above.

30.2.1. As to the First 2007 JC Characteristic (i.e. the allegation that Horizon did not work):

30.2.1.1. Paragraphs 23 to 25 of the GAPoCs alleged as follows:

“23. However, the Claimants aver that there were a large number of software coding errors, bugs or defects which required fixes to be developed and implemented. There were also data or data packet errors. There was a frequent need for Fujitsu to rebuild branch transaction data from backups, giving rise to the further risk of error being introduced into the branch transaction records. The Claimants understand that Fujitsu maintained a 'Known Error Log' relating to some or all of these issues which was provided to the Defendant but which has not been disclosed.

24. Further, the Claimants aver and rely upon the following:

24.1. Insufficient error repellency in the system (including sufficient prevention, detection, identification and reporting of errors), both at the data entry level and at the data packet or system level (including data processing, effecting and reconciling transactions, and recording the same);

24.1A. bugs and/or errors and/or defects in Horizon and any data or data packet errors had the potential to produce apparent shortfalls which did not represent a real loss to the Defendant;



- 24.2. *Horizon is imperfect and has the potential for creating errors (as the Defendant has admitted in pre-action correspondence, in the Letter of Response, dated 28 July 2016, at paragraph 1.3);*
- 24.3. *bugs and/or errors have on some occasions produced discrepancies and/or apparent shortfalls (as the Defendant has admitted in pre-action correspondence, in the Letter of Response, Schedule 6) and such shortfalls may also have arisen from data or data packet errors; and, further*
- 24.4. *the Defendant sought and/or recovered such alleged shortfalls from Subpostmasters (as is presently understood to be admitted by the Defendant in the Letter of Response, Schedule 6, paragraphs 4.1 to 4.5).*
25. *Further, the Defendant was, by itself and/or via its agent Fujitsu, able to alter branch transaction data directly and carry out changes to Horizon and/or transaction data which could affect branch accounts.”*
- 30.2.1.2. Paragraph 108 and sub-paragraph 108.7 of the GAPoCs alleged that POL represented “*that there was no ability remotely to alter transactions in branch accounts (which the Defendant now accepts to have been untrue).*”, such issue being referred to in the GLO Action as “**Remote Access**”.
- 30.2.1.3. The integrity of Horizon and the extent of any problems with it was the subject of consideration by Mr Justice Fraser in the Common Issues Judgments. For example, at paragraph [7] the learned judge recorded:
- “...this Group Litigation has at its core the Post Office’s use of the Horizon system and the way that system itself operated. ...the Claimants’ case is that the Horizon system contained, or must have contained, a large number of software coding errors, bugs and defects, and as a result of this threw up apparent shortfalls and discrepancies in the accounting of different branches. ...”*
- 30.2.1.4. Effectively the entirety of the Horizon Issues Judgment concerned the issue of Horizon’s “*robustness*”, that judgment



amounting to 1030 paragraphs, together with a “Technical Appendix” amounting to a further 452 paragraphs, and a “Summary of Bugs, Errors and Defects” identifying 29 such items.

30.2.1.5. The learned judge also expressly recorded at paragraph [544] of the Horizon Issues Judgment that Remote Access was integral to the GLO Action. He observed:

“Nor could it be said, in the Post Office’s and/or Fujitsu’s defence, that remote access was a side issue. It has been a very important central element of the whole dispute between SPMs and the Post Office over the Horizon system for many years.”

30.2.2. As to the Second 2007 JC Characteristic (i.e. the allegation that POL/Fujitsu knew Horizon did not work):

30.2.2.1. At paragraph 115 of the GAPoCs, the Claimant alleged that “...the Defendant made the said representations knowing they were false”. The “representations” referred to are particularised at paragraph 108, including the following:

“108.1. that there were, in fact, shortfalls in the branch accounts and/or that they represented real losses to the Defendant (when there were not any such shortfalls or any shortfalls that did exist was materially overstated);

...

108.5. that defects, bugs or errors in Horizon were not a possible cause of apparent shortfalls (when in fact they were, as now admitted by the Defendant);

...”

30.2.2.2. Fujitsu was not a party to the GLO Action, but the GLO Claimants alleged at paragraph 25 of the GPoCs that Fujitsu was POL’s agent as follows:

“25. Further, the Defendant was, by itself and/or via its agent Fujitsu, able to alter branch transaction data directly and carry out changes to Horizon and/or transaction data which could affect branch accounts.



30.2.2.3. Employees of Fujitsu gave witness evidence in the GLO Action, and were extensively cross-examined on the integrity of Horizon by counsel for the GLO Claimants.

30.2.2.4. The original claim forms in respect of Claim No. HQ16X01238 and Claim No. HQ17X02637 included a claim for “*unlawful means conspiracy*”.

30.2.2.5. The extent of POL and/or Fujitsu’s knowledge of faults with Horizon was the subject of consideration by Mr Justice Fraser in the Common Issues Judgment (including, but not limited to, at [541] and [542]), and of extensive consideration throughout the Horizon Issues Judgment (including, but not limited to, at [233], [458], [536], [545], [549], [606], [934], [995]).

30.2.3. As to the Third 2007 JC Characteristic (i.e. the bringing of the Marine Drive Claim):

30.2.3.1. The claim form in claim number H017X02637 alleged that the GLO Claimants had “*been subjected to unlawful treatment by the Defendant causing them significant financial losses...bankruptcy, prosecutions...*”, and that “*the Defendant...prosecuted them for theft, false accounting...; procured repayments and/or the settlement of claims by means of negligent misstatement and/or misrepresentation or deceit; ...*”.

30.2.3.2. Paragraph 100 of the GAPoCs provided that: “*The Defendant pursued civil and/or criminal proceedings in relation to alleged shortfalls in circumstances as set out at paragraph 99 above*” (which, it is averred, was a reference to the Marine Drive Claim amongst other things).

30.2.3.3. The GLO Claimants alleged that the bringing of civil claims (which, it is averred, included the Marine Drive Claim)



amounted to harassment, as to which paragraphs 117 and 119 of the GAPoCs provided as follows:

“117. Some or all of the Claimants further or alternatively pursue claims under section 3 of the Protection from Harassment Act 1997, on the grounds that the Defendant pursued a course of conduct, on more than one occasion, which amounted to harassment and which it knew or ought to have known amounted to harassment.

...

119. The Defendant's course of conduct consisted of:

...

119.3. threatened or actual civil and/or criminal proceedings in relation to such alleged shortfalls; and/or

119.4. steps taken in the course of such civil and/or criminal proceedings in relation to the same.”

30.2.4. The Claimant’s Schedule of Information made express reference to the Marine Drive Claim.

30.2.5. Mr Justice Fraser made reference to POL bringing civil claims such as the Marine Drive Claim in his Common Issues Judgment (including, but not limited to, at [8], [12] and [19]), and expressly referred to the Marine Drive Claim itself at [843] – [850].

30.2.6. As to the Fourth 2007 JC Characteristic (i.e. the allegation that POL/Fujitsu concealed the problems with Horizon from the Claimant and/or the court in historic actions and did so dishonestly):

30.2.6.1. The claim form in claim number H017X02637 alleged that *“the Defendant... procured repayments and/or the settlement of claims by means of negligent misstatement and/or misrepresentation or deceit; ...”*.

30.2.6.2. The *“circumstances”* referred to in paragraph 100 of the GAPoCs and particularised at paragraph 99 thereof (as referred to and set out above) included taking steps against (amongst others) the Claimant:



- “99.2. *before the existence of a real loss to the Defendant, and if so the cause and reason for such loss, had been established after reasonable enquiry and analysis or at all;*
- 99.3. *without investigating and/or giving reasonable consideration to the circumstances giving rise to the same;*
- 99.4. *the Defendant’s approach (wrongly) put the burden of proof upon the Subpostmasters – a burden which they were frequently unable to discharge in all the circumstances;*
- 99.5. *without establishing causative fault by the Subpostmaster concerned and/or the Defendant’s contractual entitlement to recover alleged shortfalls; and/or*
- 99.6. *on the flawed and unreasonable basis that Claimants would only submit false accounts to cover up their own theft... and/or without taking into account the matters set out in Section H below, practical pressures and difficulties generated by the Defendant’s own systems and requirements and/or the practical realities faced by individual Claimants...”*

30.2.6.3. “Section H” of the GAPoCs, as referred to at paragraph 99.6 thereof, was entitled: “*Actionable Misrepresentation & Deceit*” and included the following allegations:

“106. *Some or all of the Claimants pursue claims against the Defendant for deceit negligent misstatement [sic], misrepresentation under section 2 of the Misrepresentation Act 1967 and/or deceit.*

...

108. *The Defendant, by its officers, Helpline operators, other employees, servants or agents, expressly or impliedly, by words and/or conduct, made representations:*

108.1. *that there were, in fact, shortfalls in the branch accounts and/or that they represented real losses to the Defendant (when there were not any such shortfalls or any shortfalls that did exist was materially overstated);*

...



108.5. *that defects, bugs or errors in Horizon were not a possible cause of apparent shortfalls (when in fact they were, as now admitted by the Defendant);*

...

H.6. Deceit

115. *The Defendant made the said representations: (i) recklessly as to their truth or falsity, (ii) having turned a blind eye to whether they were true or false and/or (iii) without an honest belief in their truth; alternatively, the Defendant made the said representations knowing that they were false.*

115.1. *By reason of the Defendant's knowledge of the flaws in the Horizon system particularised herein... the Defendant knew or was reckless as to whether apparent shortfalls were (i) not shortfalls.. (iv) were not properly, alternatively reliably, attributable to branch accounts and/or (v) were not truly the responsibility of the Claimants;*

...

115.5. *The Defendant knew that, or was reckless as to whether, defects bugs or errors in Horizon were a possible cause of apparent shortfalls (as now admitted by the Defendant); ...*

116. *The Claimants relied on the aforesaid misrepresentations and/or misstatements (and were induced thereby) in (i) accepting transaction corrections; ... and/or (iv) otherwise taking action or agreeing to take action to their detriment in respect of their engagement with the Defendant and/or in the course of defending civil or criminal proceedings”.*

30.2.6.4. Paragraph 96 of the GAPoCs alleged:

“96. *Further in relation to the attribution of apparent or alleged shortfalls, the Defendant:*

...

96.3. *failed to disclose possible causes of the appearance of alleged shortfalls (and the cause thereof) to the Claimants candidly, fully and frankly; and/or*

96.4. *failed to make reasonable investigation and fair consideration to whether the apparent shortfalls represented real loss to the Defendant, and if so the cause and/or reason such loss had arisen.”*

30.2.6.5. Paragraph 98 of the GPoCs alleged:



“98. *The Defendant failed properly and fairly to investigate alleged shortfalls before attributing them to the Claimants and/or seeking recovery from the Claimants...*”

30.2.6.6. Paragraph 102 of the GAPoCs alleged that: “*The Defendant concealed from the Claimant the matters at paragraph 23 to 25 above*”. Paragraph 28.3.1.1 above is repeated.

30.2.7. The Claimant’s Schedule of Information in the GLO Action stated in section 7 that the Claimant relied on the GAPoCs in relation to claims for (amongst other things) “*concealment*” and “*deceit*”.

30.2.8. The allegation that faults with Horizon were concealed by POL and/or Fujitsu was considered extensively in the Common Issues Judgment (including, but not limited to, at [10] and [117]) and the Horizon Issues Judgment (including, but not limited to, at [434], [544], [545] and [934]).

30.3. Accordingly, the 2007 Judgment Claim

30.3.1. “*arises out of... the facts and matters alleged... in the Action*”; and/or

30.3.2. is “*connected to, whether directly or indirectly, the claims or counterclaims made... in the Action*”; and/or

30.3.3. is “*connected to, whether directly or indirectly...the facts and matters alleged... in the Action*”

in each case so as to be a Further Claim.

31. The 2007 Judgment Claim is a Claimants’ Claim by reason of being a GLO Action Alleged Claim by reason of the facts and matters set out in paragraph 30 above.

32. The 2007 Judgment Claim is also a Claimants’ Claim by reason of being a Like Claim:

32.1. With respect to the identity of the parties:

32.1.1. The Claimant (in the present action) was a Claimant in the GLO Action and is therefore a claimant within the scope of the definition of Like Claims; and



32.1.2. POL (being a defendant in the present action) was the Defendant in the GLO Action and is therefore a defendant within the scope of the definition of Like Claims.

32.2. With respect to the content of the claim, the 2007 Judgment Claim:

32.2.1. falls within the meaning of the words (properly construed) “*any and all actual... actions, causes of action... of whatsoever nature... whether or not presently known to the Parties..., whether or not arising from any other change of circumstance of any sort and whether arising out of negligent, wilful or intentional conduct or otherwise...*”; and

32.2.2. does not fall within clause 4.2 of the Settlement Deed.

32.3. In the premises, the Abuse of Process Claim is a Like Claim and is therefore compromised by the Settlement Deed.

33. It is unclear which of the losses claimed at paragraphs (7) and (8) of the prayer to the Particulars of Claim are claimed in respect of the 2007 Judgment Claim, but to the extent any of them are, the 2007 Judgment Claim is also a Claimants’ Claim by reason of being a claim in respect of losses and causes of action set out in Schedule 2 as further particularised in paragraphs 34-36 below, and will therefore will be res judicata and/or an abuse of process and/or brought in breach of the terms of the Settlement Deed as aforesaid.

(iii) Schedule 2 Claims

34. A claim will be a Claimants’ Claim if it includes a claim for a loss where that loss is related to any of the 14 heads of loss set out in Schedule 2 above (“**a Prohibited Loss**”), provided that the claim is not a claim for Malicious Prosecution (as defined in the Settlement Deed). The Claimant does not advance a claim for Malicious Prosecution.

35. The Claimant claims 17 heads of loss by paragraphs (7) and (8) of the prayer for relief to the Particulars of Claim but does not plead whether each of those losses arises from the Abuse of Process Claim or the 2007 Judgment Claim. However, in respect of each of the 17 heads of loss, if it is a Prohibited Loss then the claim alleged to give rise to that loss (whether it be the Abuse of Process Claim or the 2007 Judgment Claim) will be a



Claimants' Claim and will be res judicata and/or an abuse of process and/or brought in breach of the terms of the Settlement Deed as aforesaid.

36. Each of the 17 heads of loss set out in the prayer for relief to the Particulars of Claim is a Prohibited Loss, as particularised below. References to sub-paragraph numbers below are to sub-paragraphs of the prayer for relief to the Particulars of Claim.

36.1. In respect of alleged "*Mental distress*" (at sub-paragraph (7)a.), Schedule 2, paragraph 5 encompasses "*All personal injuries including... distress*" which, it is averred, encompasses the claims alleged in the quoted part of sub-paragraph (7)a.;

36.2. In respect of alleged "*Stigma and damage to reputation*" (at sub-paragraph (7)b.), Schedule 2, paragraph 4 encompasses "*Damage to reputation or stigma*" which, it is averred, encompasses the losses alleged in the quoted sub-paragraph (7)b.;

36.3. In respect of alleged "*Harassment*" (at sub-paragraph (7)c.), whilst the Particulars of Claim themselves do not provide any particulars of acts said to amount to harassment, two particulars appear in the "Schedule of Damages and Future Loss" that accompanied them ("**the Schedule of Damages**"):

36.3.1. In respect of alleged lack of "*effective help or assistance*" in the first unnumbered paragraph on page 3 of the Schedule of Damages – Schedule 2, paragraph 5 encompasses "*All personal injuries including anxiety, distress and inconvenience and disappointed expectations*" which, it is averred, encompasses the first unnumbered paragraph on page 3 of the Schedule of Damages and therefore encompasses the claims alleged in the quoted part of sub-paragraph (7)c.;

36.3.2. In respect of allegedly compelling the Claimant "*to petition for his own bankruptcy*" in the second unnumbered paragraph on page 3 of the Schedule of Damages, reliance is placed on Schedule 2, paragraph 5 as quoted above; and further Schedule 2, paragraph 6 encompasses "*Any and all losses relating to bankruptcy...*" which, it is averred, encompasses the second unnumbered paragraph on page 3 of the Schedule of Damages and therefore encompasses the claims alleged in the quoted part of sub-paragraph (7)c.;



- 36.4. In respect of alleged “*Loss of congenial occupation*” (at sub-paragraph (7)d.), being a species of personal injury loss arising from the alleged emotional suffering from losing a job the Claimant enjoyed, Schedule 2, paragraph 5 encompasses “*All personal injuries including... disappointed expectations*”; and further Schedule 2, paragraph 11 encompasses “*All other consequential losses, whether direct or indirect*”; and further Schedule 2, paragraph 12 encompasses “*All other losses which could have been claimed in the Action*”, each of which, it is averred, encompasses the losses alleged in the quoted part of sub-paragraph (7)d.;
- 36.5. In respect of alleged “*Damages for fraud in connection with the Settlement Deed*” (at sub-paragraph 7e), Schedule 2, paragraph 11 encompasses “*All other consequential losses, whether direct or indirect*” which, it is averred, encompasses the claims alleged in the quoted sub-paragraph (7)e.;
- 36.6. In respect of alleged “*Aggravated damages for post-trial abuse of process*” (at sub-paragraph (7)f.), Schedule 2, paragraph 7 encompasses “*Claims for aggravated and exemplary damages*” which, it is averred, encompasses the claims alleged in the quoted part of sub-paragraph (7)f.;
- 36.7. In respect of alleged “*Exemplary damages for post-trial abuse of process*” (at sub-paragraph (7)f.), reliance is placed on Schedule 2, paragraph 7 as quoted above which, it is averred, encompasses the claims alleged in the quoted part of sub-paragraph (7)f.;
- 36.8. In respect of alleged “*Damages for maliciously causing Mr Castleton’s bankruptcy*” (at sub-paragraph (7)h.), reliance is placed on Schedule 2, paragraph 6 as quoted above which, which, it is averred, encompasses the claims alleged in the quoted part of sub-paragraph (7)h.;
- 36.9. In respect of alleged “*Aggravated damages for fraud and conspiracy to injure*” (at sub-paragraph (7)i.), reliance is placed on Schedule 2, paragraph 7 as quoted above which, it is averred, encompasses the claims alleged in the quoted part of sub-paragraph (7)i.;
- 36.10. In respect of alleged “*Exemplary damages for fraud and conspiracy to injure*” (at sub-paragraph (7)j.), reliance is placed on Schedule 2, paragraph 7 as quoted above



which, it is averred, encompasses the claims alleged in the quoted part of sub-paragraph (7)j.;

- 36.11. In respect of alleged “*Past loss of earnings*” (at sub-paragraph (8)a.), Schedule 2, paragraph 3 encompasses “*All claims for loss of earnings...*” which, it is averred, encompasses the losses alleged in the quoted part of sub-paragraph (8)a.;
- 36.12. In respect of alleged “*Past loss of rental profits*” (at sub-paragraph (8)b.), reliance is placed on Schedule 2, paragraphs 11 and 12 as quoted above; and further Schedule 2, paragraph 2 encompasses “*Loss of investment and capital losses of any type whatsoever including without limitation losses linked to the purchase, fit-out, stocking, refit, improvement and resale of premises, equipment and stock including those relating to the Claimants’ retail and residential premises and including those relating to goodwill*”, each of which, it is averred, encompasses the losses alleged in the quoted part of sub-paragraph (8)b.;
- 36.13. In respect of alleged “*Past property losses*” (at sub-paragraph (8)c.), reliance is placed on Schedule 2, paragraphs 2, 11 and 12 as quoted above, each of which, it is averred, encompasses the quoted part of sub-paragraph (8)c.;
- 36.14. In respect of alleged “*Past pension losses*” (at sub-paragraph (8)d.), reliance is placed on Schedule 2, paragraphs 2, 11 and 12 as quoted above each of which, it is averred, encompasses the losses alleged in the quoted part of sub-paragraph (8)d.;
- 36.15. In respect of alleged “*Other past losses*” (at sub-paragraph (8)e.), these appear to be particularised in the Schedule of Damages as follows:
- 36.15.1. In respect of alleged “*Expenses incurred in relation to legal proceedings*” on page six, reliance is placed on Schedule 2, paragraphs 11 and 12 as quoted above; and further Schedule 2, paragraph 13 encompasses “*Interest, costs and expenses*”, each of which, it is averred, encompasses these alleged losses;
- 36.15.2. In respect of alleged “*Expenses incurred in connection with bankruptcy proceedings*” on page six, reliance is placed on Schedule 2, paragraph 6 as quoted above which, it is averred, encompasses these alleged losses;



36.16. In respect of alleged “*Loss from sale of business*” (at sub-paragraph (8)f.), reliance is placed on Schedule 2, paragraphs 2, 11 and 12 as quoted above each of which, it is averred, encompasses the losses alleged in the quoted part of sub-paragraph (8)f.;

36.17. In respect of alleged “*Future loss of earnings*” (at sub-paragraph (8)g.), Schedule 2, paragraph 3 encompasses “*All claims for loss of earnings including... loss of earnings post termination*” which, it is averred, encompasses the losses alleged in the quoted part of sub-paragraph (8)g..

(2) Unconscionability

37. Pursuant to Annex 2 of the Directions Order, POL does not plead to paragraphs 11 and 12.

38. In any event, pursuant to footnote 1 in Annex 1 to the Directions Order, it is to be assumed for the purpose of the Preliminary Issue Trial (and without POL making any admissions) that (i) the Historic Claims are viable claims and (ii) that POL knew this as at 10th December 2019. It is nevertheless denied that it is unconscionable for POL to rely on the General Release for the reasons set out in paragraph 12 above.

(3) Misrepresentation

39. The pleading of the Claimant’s case on fraudulent misrepresentation as it appears from paragraphs 13 to 31 of the Particulars of Claim is confused and poorly structured. As such, POL sets out its overarching response to what it understands to be the Claimant’s allegations as contained within those paragraphs, before responding to each paragraph individually.

(a) POL’s case as to the alleged fraudulent misrepresentation

(i) The Representation

40. The Claimant alleges that POL made a representation (defined as “**the Representation**” at paragraph 17 of the Particulars of Claim, although the appropriateness of that definition is denied) in “*written submissions*” to the Court in the Horizon Issues Trial in the following terms:



“144.1 ... Mr McLachlan's evidence specifically addressed things said or done by Mr Jenkins in relation to the Misra trial, Post Office was concerned that the Horizon Issues trial could become an investigation of his role in this and other criminal cases.

144.2 Moreover, Post Office was conscious that if it only adduced first hand evidence in the trial, it would end up having to call more witnesses than could be accommodated within the trial timetable.”

41. As to this:

- 41.1. It is admitted that POL’s written closing submissions in the Horizon Issues Trial, which ran to 545 pages and the full contents and effect of which POL will rely upon as necessary at trial, contained the statement quoted, save that the written closing submissions referred at paragraph 144.1 to “*Professor McLachlan*” rather than to “*Mr McLachlan*”. It is noted that the statement quoted is only a partial quotation from paragraph 144 of POL’s written closing submissions.
- 41.2. It is denied that any claim can lie in respect of the statement quoted, to which the core immunity from suit for any statement spoken or written in court (as explained in *Chief Constable of Sussex v XGY* [2025] EWCA Civ 1230) applies.
- 41.3. Further, or in the alternative to paragraph 41.2 above, it is denied that the statement quoted is capable of amounting to an actionable representation in all the circumstances in which it was made, which include (but are not limited to) the following (“**the Circumstances**”):
 - 41.3.1. The Representation was made as part of an argument in the course of litigation, being an adversarial environment;
 - 41.3.2. The Representation was addressed to the court;
 - 41.3.3. There was no evidence verified by a statement of truth adduced in support of the Representation.
- 41.4. It is denied that POL intended the Claimant to act upon the Representation, or alternatively that it intended the Claimant to enter into the Settlement Deed or any settlement agreement in reliance upon the Representation. It is further denied that it would have been reasonable for the Claimant in the Circumstances to rely upon it for the purpose of entering into the Settlement Deed.



- 41.5. It is denied that the statement quoted purported to set out ~~the reason~~” (as alleged at paragraph 17) why Mr Jenkins was not called by POL as a witness. Instead, the statement quoted, when read in its proper context and including the words of paragraph 144 omitted from the Claimant’s quotation, merely purported to meet a complaint made by the GLO Claimants about the fact that parts of Mr Godeseth’s evidence in his second witness statement for the Horizon Issues Trial were second-hand.
- 41.6. To the extent that the statement did purport to set out reasons why POL did not call Mr Jenkins as a witness, it is denied that any reasons given therein were false or materially false. The meaning of that statement, objectively interpreted and with due regard to the Circumstances and the context in which it was made, was that POL believed that (i) calling Mr Jenkins would not assist POL in its efforts to successfully defend the GLO Action because POL was concerned that Mr Jenkins’ conduct in the Misra trial and other criminal cases could become the subject of scrutiny during the course of his cross-examination which could make him an unfavourable witness for POL; and (ii) calling witnesses in addition to Mr Godeseth would in practice prejudice the trial timetable. It is averred that that meaning was true, or true in all material respects.
- 41.7. If, contrary to the foregoing, the statement objectively interpreted was untrue, it is not admitted that POL made the statement dishonestly. The Claimant has failed to identify which individual or individuals, whose knowledge and belief is attributable to POL, understood the statement to be untrue but nonetheless dishonestly caused it to be made on POL’s behalf. POL reserves the right to plead further in the event that any proper particulars of dishonesty are provided.
42. No admission is made as to whether the Representation induced the Settlement Deed, such causation presently being beyond the knowledge of POL, and the Claimant is put to strict proof as to the same. With respect to the reasons as to why the Settlement Deed was entered into, POL may seek to rely upon (without limitation):
- 42.1. The knowledge, position and reasoning of each of Freeths LLP, the GLO Claimants, and any litigation funders providing actual, or potential future, financial support to the GLO Claimants in respect of the GLO Action. For the avoidance of



doubt, this knowledge includes, but is not limited to, the contents of the draft Horizon Issues Judgment, which was circulated to the parties on 28th November 2019.

42.2. Any advice provided to Freeths LLP, the GLO Claimants, and any funder as to their prospects of success in the remainder of the GLO Action at any time prior to 10th December 2019.

42.3. The terms of any contractual agreement or other obligations between Freeths, the GLO Claimants, and any litigation funder concerning the conduct of GLO Action (including as to settlement).

(ii) The Further Representation

43. The Claimant also alleges that POL made another representation, defined as “**the Further Representation**”. The Further Representation is pleaded as a hearsay account (recorded in a memorandum produced by Womble Bond Dickinson dated 14th November 2019) of the contents of a letter purportedly sent by Womble Bond Dickinson to Freeths LLP on 12th February 2019.

44. The Further Representation is said to consist of words written in the said letter, but those words have not been pleaded. Further, the Claimant has not pleaded that the Further Representation induced the Settlement Agreement. In the premises, the part of the Claim relating to the Further Representation is liable to be struck out. POL will plead to the Further Representation in the event that the Claimant properly particularises the relevant words actually used in any letter sent by Freeths on 12th February 2019 (as to which no admissions are made), and properly particularises inducement.

(b) POL’s response to the Claimant’s case as to the alleged misrepresentation

45. As to paragraph 13:

45.1. As to the first sentence:

45.1.1. It is admitted that Mr Jenkins was a senior software engineer employed by Fujitsu.



- 45.1.2. It is admitted that Mr Jenkins was not called ~~(by any party)~~ as a witness during the Horizon Issues Trial.
- 45.1.3. It is denied that POL dishonestly misrepresented the reasons why it did not call Mr Jenkins. Paragraphs 40 to 44 above are repeated.
- 45.2. As to the second sentence, save that the use of the word “*true*” is denied to the extent it is implied that the Representation was false for the reasons aforesaid, it is admitted and averred that POL’s belief as at the time of the Horizon Issues Trial that Mr Jenkins may have previously given inaccurate evidence was a material reason for POL deciding not to call Mr Jenkins as a witness.
- 45.3. As to the third sentence:
- 45.3.1. It is admitted that POL brought private prosecutions against postmasters, and that some of these prosecutions resulted in convictions.
- 45.3.2. It is assumed that the case referred to is *R (Nunn) v Chief Constable of Suffolk* [2014] UKSC 37, not [2014] UKSC 14 as stated in the Particulars of Claim. It is unclear for what proposition of law this case is relied upon by the Claimant, or what its relevance is to the claims advanced by the Claimant in these proceedings, and POL reserves the right to plead further upon the Claimant providing clarification.
- 45.3.3. To the extent it is alleged that POL withheld information from postmasters in private prosecutions, the relevance of this to the present claims is not understood.
- 45.4. As to the fourth sentence:
- 45.4.1. The relevance of the treatment of Convicted Claimants (of which the Claimant was not one) under the Settlement Deed to the present claims is not understood.
- 45.4.2. In any event, it is denied that, on the true construction of the Settlement Deed, Convicted Claimants “*surrendered all their claims against the First Defendant for no payment/consideration...*”.



- 45.5. As to the fifth sentence:
- 45.5.1. The relevance of this to the present claims is not understood.
- 45.5.2. The sentence contains no particulars of (i) the “*relevant information*”; or (ii) POL’s “*concern*” to keep any such information concealed. As such POL is unable to plead to it. POL reserves the right to plead further upon the Claimant providing proper particulars.
46. Paragraph 14 is not admitted, as to which paragraphs 42 and 44 above are repeated. POL reserves the right to plead further in the event that the Claimant provides proper particulars of the alleged inducement.
47. Paragraph 15 is admitted. The words “*principal technical expert witness of fact*” are understood to mean that, whereas Mr Godeseth was a technical expert with respect to the field in which he operates, his status as a witness at the Horizon Issues Trial was as a witness of fact rather than an expert witness within CPR Part 35.
48. As to paragraph 16:
- 48.1. It is admitted that at paragraph [514(2)] of the Horizon Issues Judgment, Fraser J described Mr Jenkins as “*a central person so far as the operation, efficacy and robustness of Horizon is concerned*” (not, as is stated in paragraph 16 of the Particulars of Claim, “*efficiency*”).
- 48.2. It is admitted that Mr Jenkins was not called as a witness (by any party) during the Horizon Issues Trial.
- 48.3. It is denied, if it is averred, that Fraser J held that Mr Jenkins should have been called as a witness. Instead, the learned judge expressly held at paragraph [514(1)] of the Horizon Issues Judgment that “*it is for each party to decide whom to call as a witness*”, and noted at paragraph [515] that certain evidence “*would not be given the same weight*” as if it had been given by Mr Jenkins himself.
- 48.4. It is averred that the GLO Claimants did not seek to summons Mr Jenkins as a witness of fact at the Horizon Issues Trial, but could have done so.
49. As to paragraph 17:



- 49.1. It is admitted that the GLO Claimants complained to Fraser J about the absence of Mr Jenkins.
- 49.2. It is not admitted that POL submitted to the Court that Mr Jenkins might have been a better witness. No source of such a submission is pleaded, and POL reserves the right to plead further in the event that proper particularisation is provided.
- 49.3. It is admitted that POL's written closing submissions (the full meaning and effect of which POL will rely upon at trial) contained at paragraph 144 the words quoted, save that the written closing submissions referred at paragraph 144.1 to "*Professor McLachlan*" rather than to "*Mr McLachlan*".
50. As to paragraph 18, paragraphs 40-42 above are repeated. In the premises:
- 50.1. It is admitted that POL's written closing submissions in the Horizon Issues Trial contained the Representation.
- 50.2. It is admitted that POL intended the Representation to be accepted by the court, in the context of the Circumstances, as an aspect of its argument as to why it did not call Mr Jenkins.
- 50.3. There is no particularisation of the purpose for which it is said POL intended the GLO Claimants or the court to "*rely*" upon the Representation. However, for the avoidance of doubt, it is denied that POL intended the GLO Claimants to rely upon the Representation for the purpose of inducing them to enter into the Settlement Deed. It is further denied that it would have been reasonable for the GLO Claimant to rely upon it for that purpose.
51. As to paragraph 19:
- 51.1. The statement that Mr Jenkins "*could not*" be called as a witness is not understood, and POL reserves the right to plead further in the event that the Claimant provides clarification.
- 51.2. To the extent it is alleged, it is denied that POL had any obligation to disclose to the Claimant any reasoning as to why it might or might not call any witness, including Mr Jenkins.



- 51.3. Paragraphs 40-42 above are repeated.
52. Paragraph 20 is denied and paragraphs 40-42 above are repeated.
53. Paragraph 21 is not admitted and paragraphs 40-42 above are repeated.
54. Paragraph 22 is admitted insofar as Womble Bond Dickinson's memorandum dated 14th November 2019 contained the words quoted. The relevance of this is not understood in circumstances where the GLO Claimants were successful on substantially all of the issues at the Horizon Issues Trial, notwithstanding Mr Jenkins' absence.
55. As to paragraph 23:
- 55.1. It is denied that paragraph 144 of POL's written closing submissions was false and misleading, or intended to mislead for the reasons set out above, and paragraphs 40-42 above are repeated.
- 55.2. The "*Particulars of Falsity*" set out in the remainder of paragraph 23 are not proper particulars of falsity and instead appear to be a summary of observations made in an advice produced by Simon Clarke of Cartwright King LLP dated 15th July 2013 ("**the Clarke Advice**"). Although it is admitted that the summary is broadly accurate, POL will rely at trial on the Clarke Advice in its original form should it be relevant.
56. As to paragraph 24:
- 56.1. It is assumed that the reference to "*the Defendant*" is intended to be a reference "*the First Defendant*", i.e. POL.
- 56.2. It is denied that the explanation given in paragraph 144 of POL's written closing submissions was false, or that POL knew it to be false, for the reasons set out above, and paragraphs 40-42 above are repeated.
- 56.3. Paragraphs 24(a) – 24(d) are admitted as high-level summaries of parts of the Memorandum, the full contents of which POL will rely upon at trial. It is denied that the quotations and summaries set out in those paragraphs are particulars of any "*knowledge of falsity*" on the part of POL (the existence of which is in any event denied as aforesaid).



57. In the premises, paragraphs 25 and 26 are denied. In the alternative, even if a right of rescission had arisen by reason of any fraudulent misrepresentation (which is denied), the Claimant is barred from exercising any such right by reason of the matters set out in paragraphs 59 and 60 below. Accordingly, the Settlement Deed is not rescinded, and remains in full force and effect.

58. As to paragraph 27:

58.1. It is denied, to the extent it is alleged, that the relevant legal test with respect to inducement is what the GLO Claimants would have done had POL told them “*the true reason*” for not calling Mr Jenkins (which it is in any event denied POL did not do for the reasons set out above). Instead, the correct test is whether the GLO Claimants would have entered into the Settlement Deed had the alleged misrepresentations not been made. POL reserves the right to plead further in the event that the Claimant properly particularises any case on inducement by reference to the correct legal test. Paragraph 42 above is repeated.

58.2. Otherwise, the meaning of first sentence is too vague to plead to, there being no particularisation of the ways in which it is alleged that “*the character of the litigation would have assumed an entirely different complexion*”. POL reserves the right to plead further upon the Claimant providing any proper particulars. However, it is noted that the GLO Claimants succeeded on substantially all of the issues at the Horizon Issues Trial, and is averred that they were aware of that fact from 28th November 2019, and in any event when entering into the Settlement Deed on 10th December 2019.

58.3. The remainder of paragraph 27 is irrelevant to the claims advanced in these proceedings.

59. As to paragraph 28:

59.1. It is denied that the Claimant is entitled to a declaration that the Settlement Deed has been rescinded for the reasons set out above.

59.2. Further, it is denied that the Settlement Deed is capable of rescission at the instance of the Claimant alone as aforesaid. The Settlement Deed is a contract between POL,



the 555 GLO Claimants, and Freeths LLP. Insofar as the Claimant's case is that the GLO Claimants were induced to enter into the Settlement Deed by a fraudulent misrepresentation, it is averred that any election to rescind the Settlement Deed must be made by all the GLO Claimants jointly. If any of the GLO Claimants do not expressly seek rescission, it is averred that this operates as an effective bar to rescission.

60. Paragraph 29 is noted. It is denied, if it is averred, that the sum of £28,500 is sufficient counter-restitution. In order for the Settlement Deed to be rescinded, the appropriate measure of counter-restitution is the full Settlement Sum paid under the Settlement Deed. If counter-restitution of the full Settlement Sum cannot be given, it is averred that this operates as an effective bar to rescission.
61. It is denied that the Claimant is entitled to the relief sought in paragraphs 30 and 31, or to any relief.

JAMES BAILEY KC

DANIEL PETRIDES

Statement of Truth

Post Office Limited (the First Defendant) believes that the facts stated in this Defence are true. Post Office Limited (the First Defendant) understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: Mark Donnelly, Chief Operating Officer

Dated: 18 February 2026