

**THE POST OFFICE GROUP LITIGATION**

**Claim Nos: HQ16X01238, HQ17X02637 AND HQ17X04248**

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**ROYAL COURTS OF JUSTICE**

**B E T W E E N:**

**ALAN BATES AND OTHERS**

**Claimant**

**V**

**POST OFFICE LIMITED**

**Defendant**

---

**CONSOLIDATED COMMON ISSUES**

---

*This document consolidates the Common Issues so that each sub-issue is shown below the relevant Common Issue. The additional sections are shown in italics.*

**Relational Contract**

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

[GPOC 63, Defence 103]

**Implied terms**

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

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

(a) *To provide adequate training and support (particularly if and when the Defendant imposed new working practices or systems or required the provision of new services) [GPOC 64.1]*

- (b) *To provide a system which was reasonably fit for purpose, including any or adequate error repellency [GPOC 64.1A, 24.1]*
- (c) *Properly and accurately to effect, record, maintain and keep records of all transactions effected using Horizon [GPOC 64.2]*
- (d) *Properly and accurately to produce all relevant records and/or to explain all relevant transactions and/or any alleged or apparent shortfalls attributed to Claimants [GPOC 64.3]*
- (e) *To co-operate in seeking to identify the possible or likely causes of any apparent or alleged shortfalls and/or whether or not there was indeed any shortfall at all [GPOC 64.4]*
- (f) *To seek to identify such causes itself, in any event [GPOC 64.5]*
- (g) *To disclose possible causes of apparent or alleged shortfalls (and the cause thereof) to Claimants candidly, fully and frankly [GPOC 64.6]*
- (h) *To make reasonable enquiry, undertake reasonable analysis and even-handed investigation, and give fair consideration to the facts and information available as to the possible causes of the appearance of alleged or apparent shortfalls (and the cause thereof) [GPOC 64.7]*
- (i) *To communicate, alternatively, not to conceal known problems, bugs or errors in or generated by Horizon that might have financial (and other resulting) implications for Claimants [GPOC 64.8]*
- (j) *To communicate, alternatively, not to conceal the extent to which other Subpostmasters were experiencing relating to Horizon and the generation of discrepancies and alleged shortfalls [GPOC 64.9]*
- (k) *Not to conceal from Claimants the Defendant's ability to alter remotely data or transactions upon which the calculation of the branch accounts (and any discrepancy, or alleged shortfalls) depended [GPOC 64.10]*
- (l) *Properly, fully and fairly to investigate any alleged or apparent shortfalls [GPOC 64.11]*
- (m) *Not to seek recovery from Claimants unless and until: (i) the Defendant had complied with its duties above (or some of them); (ii) the Defendant has established that the alleged shortfall represented a genuine loss to the Defendant; and (iii) the Defendant had carried out a reasonable and fair investigation as to the cause and reason for the alleged shortfall and*

*whether it was properly attributed to the Claimant under the terms of the Subpostmaster contract (construed as aforesaid) [GPOC 64.12]*

- (n) Not to suspend Claimants: (i) arbitrarily, irrationally or capriciously; (ii) without reasonable and proper cause; and/or (iii) in circumstances where the Defendant was itself in material breach of duty [GPOC 64.13]*
- (o) Not to terminate Claimants' contracts: (i) arbitrarily, irrationally or capriciously; (ii) without reasonable and proper cause; and/or (iii) in circumstances where the Defendant was itself in material breach of duty [GPOC 64.14]*
- (p) Not to take steps which would undermine the relationship of trust and confidence between Claimants and the Defendant [GPOC 64.15]*
- (q) To exercise any contractual, or other power, honestly and in good faith for the purpose for which it was conferred [GPOC 64.16]*
- (r) Not to exercise any discretion arbitrarily, capriciously or unreasonably [GPOC 64.17]*
- (s) To exercise any such discretion in accordance with the obligations of good faith, fair dealing, transparency, co-operation, and trust and confidence [GPOC 64.18]*
- (t) To take reasonable care in performing its functions and/or exercising its functions within the relationship, particularly those which could affect the accounts (and therefore liability to alleged shortfalls), business, health and reputation of Claimants [GPOC 64.19]*

(ii) Reply, para. 96.1

- (a) The ability of the Defendant to recover and/or seek to recover any alleged shortfalls, whether while the relevant Claimant was a Subpostmaster or post-termination, was subject to an implied term requiring Post Office to do the same within a reasonable time of discovery or the date by which, with reasonable diligence, Post Office could have made such discovery [Reply 96.1]*

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

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

- (a) *To exercise any contractual, or other power, honestly and in good faith for the purpose for which it was conferred [GPOC 64.16]*
- (b) *Not to exercise any discretion arbitrarily, capriciously or unreasonably [GPOC 64.17]*
- (c) *To exercise any such discretion in accordance with the obligations of good faith, fair dealing, transparency, co-operation, and trust and confidence [GPOC 64.18]*
- (d) *To take reasonable care in performing its functions and/or exercising its functions within the relationship, particularly those which could affect the accounts (and therefore liability to alleged shortfalls), business, health and reputation of Claimants [GPOC 64.19]*

#### **Supply of Goods and Services Act 1982**

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

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

#### **Onerous or unusual terms**

5. Were any or all of the express terms in the GPOC paragraphs listed below onerous and unusual, so as to be unenforceable unless Post Office brought them fairly and reasonably to the Subpostmasters' attention? [GPOC, para 66; Defence, para. 108]

- (a) Para 51.1 and 51.3 (rules, instructions and standards);

- (i) SPMC

- *Section 1, paragraph 13: "SECTIONS 1-23 contain the general terms of a Subpostmaster's appointment. [The Defendant] issues the Subpostmaster with rules and Postal Instructions which deal with the various classes of Post Office Business to be transacted at his sub-office."*
- *Section 1, paragraph 5: "...Retention of the appointment as Subpostmaster is dependent on the sub-office being well managed and the work performed properly to the satisfaction of [the Defendant]."*

- Section 1, paragraph 14: *“The rules provided for the instruction and guidance of Subpostmasters must be kept up to date. They must be carefully studied and applied. No breach of rules will be excused on the grounds of ignorance.”*
- Section 1, paragraph 18: *“Changes in conditions of service and operational instructions, including those which are agreed with the National Federation of Sub-Postmasters, will appear from time to time in Counter News or by amendment to the Contract. Such changes and instructions are deemed to form part of the Subpostmaster’s contract.”*
- Section 1, paragraph 19: *“All instructions received from the Regional General Manager should be carried out as promptly as possible.”*

(ii) NTC

- Part 2, paragraph 1.1 *“The Operator agrees to operate the Branch on behalf of [the Defendant] in accordance with the terms of the Agreement (including for the avoidance of doubt the Manual)”, and the definition of Manual at Part 5 paragraph 1.1 as follows:*

*“The following list includes the manuals, guidelines and instructions which currently come under the definition of “Manual”:*

- *Local Post Office Operations Manual*
- *Horizon online administration and equipment operations manual*
- *National lottery operations manual (where branch offers this product)*
- *Ordering stock and operations manual*
- *Post Office outreach services operations manual (where applicable)*
- *Post Office paystation operations manual*
- *Security operations manual*
- *Horizon system user guide (online)*
- *Horizon online help (online)*
- *Branch Focus*
- *Post Office branch standards*
- *Post Office Ltd’s Accessibility Guide*
- *Branch Conformance Standards*
- *Post Office cash and secure stock remittance services manual (online)*
- *FOS project operations manual*
- *FOS project training workbook (x2)*

- *Mailwork specification (where applicable)*
  - *Any other instructions to operators or updates to such instructions issued by [the Defendant] from time to time”*
- *Part 5, paragraph 1.3: “[the Defendant] may amend the list of documents set out in this Part 5 and may amend the contents of any manual or documents on that list by giving written notification (which may be by electronic means) to the Operator. In the Agreement, unless otherwise specified, a reference to the Manual is a reference to it as amended, consolidated or extended by [the Defendant] from time to time.”*
  - *Part 5, paragraph 1.5: “In addition to the Manual, [the Defendant] may issue to the Operator instructions which deal with various classes of Products and Services to be transacted at the Branch and the design and operational standards required to run the Branch.”*
  - *Part 5, paragraph 1.6: “All such instructions must be complied with immediately (unless otherwise notified by [the Defendant]) and must be kept up to date by incorporation of updates issued by [the Defendant]. They must be carefully studied by the Operator, its Manager and Assistants. No breach of instructions will be excused on the grounds of ignorance.”*
  - *Part 2, paragraph 3.2.1, 3.2.2: “The Operator shall...” “maintain the highest standards in all matters connected with the Branch and Branch Premises, including implementing and maintaining the standards specified in the Manual” and “comply with all instructions given to it by [the Defendant] with regard to standards and quality in the operation of the Branch”.*

(b) Para 52.1 and 52.3 (classes of business);

(i) SPMC

- *Section 1, paragraph 6: "The Subpostmaster is informed at the time of his appointment of the classes of business he is required to provide. He must also undertake, if called upon to do so later, any other class of business not required at the time of his appointment but which [the Defendant] may subsequently and reasonably require him to do, except that [the Defendant] may not require him to undertake Mailwork where the Subpostmaster did not undertake to do so as part of the terms of his appointment."*

- Section 1, paragraph 7: "If [the Defendant] alters the services to be provided or withdraws a service the Subpostmaster has no claim to compensation for any disappointment which may result from the change."

(ii) NTC

- Part 2, paragraph 1.7: "[The Defendant] has the right to enter into contracts or arrangements with Clients for the handling of Products or the supply of Services by the Network (including the Branch) on such terms as [the Defendant] considers fit. [The Defendant] retains the discretion as to where within the Network particular products and services are offered"

(c) Para 54.1 and 54.3 (accounts and liability for loss);

(i) SPMC

- Section 12, paragraph 4: "The Subpostmaster must ensure that accounts of all stock and cash entrusted to him by [the Defendant] are kept in the form prescribed by [the Defendant]..."
- Section 12, paragraph 12: "The Subpostmaster is responsible for all losses caused through his own negligence, carelessness or error, and also for losses of all kinds caused by his Assistants. Deficiencies due to such losses must be made good without delay."
- Section 12, paragraph 13: "The financial responsibility of the Subpostmaster does not cease when he relinquishes his appointment and he will be required to make good any losses incurred during his term of office which may subsequently come to light."

(ii) NTC

- Part 2, paragraph 3.6.6: "The Operator shall: account for and remit to [the Defendant] all monies collected from Customers in connection with Transactions in accordance with the Manual. Any cash which [the Defendant] provides to the Operator or which the Operator collects as a result of Transactions does not belong to the Operator and shall be held by the Operator (at the Operator's risk) on behalf of, and in trust for, [the Defendant] and the Clients. Any such cash shall not form part of the assets of the Operator. The operator acknowledges it is expressly forbidden from making use of any such amount due to [the Defendant] for any purpose other than the operation of the Branch and it must on no account apply to its own private use, for however short a period, any portion of funds belonging to [the

*Defendant] entrusted to it. Any breach of this clause 3.6.6 and/or any misuse of [the Defendant's] cash by the Operator or its Personnel shall be deemed to be a material breach of the Agreement which cannot be remedied and may render the offender liable to prosecution."*

- *Part 2, paragraph 4.1: "The Operator shall be fully liable for any loss of or damage to, any Post Office Cash and Stock (however this occurs and whether it occurs as a result of any negligence by the Operator, its Personnel or otherwise, or as a result of any breach of the Agreement by the Operator) except for losses arising from the criminal act of a third party (other than Personnel) which the Operator could not have prevented or mitigated by following [the Defendant's] security procedures or by taking reasonable care. Any deficiencies in stocks of Products and/or any resulting shortfall in the money payable to [the Defendant] must be made good by the Operator without delay so that, in the case of any shortfall, [the Defendant] is paid the full amount when due in accordance with the Manual".*
- *Part 2, paragraph 4.2: "The Operator's responsibility for such items shall begin from the time at which the Post Office Cash and Stock are received by the Operator and shall end when the Post Office Cash and Stock are given to Customers in the proper conduct of the Branch or are returned to [the Defendant] or, in the case of cash or financial instruments are collected by a cash in transit provider or are paid into a bank. Whilst the Post Office Cash and Stock are in the Operator's possession, it shall keep them in a place of security."*
- *Part 2, paragraph 4.3: "The Operator shall retain financial responsibility (in accordance with the Agreement) following the termination of the Agreement, and it will be required to make good any losses (including losses arising from Transaction corrections and stock losses) incurred during its operation of the Branch which may subsequently come to light."*
- *Part 2, paragraph 13.1: "The Operator shall reimburse [the Defendant] in full on demand for all losses, claims, demands, proceedings, liabilities, costs and expenses (including reasonable legal costs and expenses) incurred by [the Defendant] as a result of: (13.1.1) any negligence or breach of the Agreement by the Operator or its Personnel; (13.1.2) any misuse or infringement of any Intellectual Property of any third party by the Operator or its Personnel; and/or (13.1.3) any claim brought under the EA and/or its regulations in respect of the Branch"..*

(d) Para 56.1.a. and 56.2.a (assistants);



(i) SPMC (1994 to 2006)

- Section 15, paragraph 2: "Assistants are employees of the Subpostmaster. A Subpostmaster will be held wholly responsible for any failure, on the part of his Assistants, to apply Post Office rules, or to provide a proper standard of service to the public. He will also be required to make good any deficiency, of cash or stock, which may result from his assistants' actions."

(ii) SPMC (as amended in July 2006)

- Section 15, paragraph 2: "Assistants are employees of the Subpostmaster, and the Subpostmaster will consequently be held wholly responsible for any failure on the part of his Assistants to: (2.1) apply Post Office ® rules or instructions as required by [the Defendant]; (2.2) complete any training necessary in order to properly provide Post Office ® Services; and (2.3) comply with the obligations set out below. The Subpostmaster will also be required to make good any deficiency of cash or stock which may result from his Assistants' actions or inactions."

(e) Para 60.1 and 60.3 (suspension);

(i) SPMC

- Section 19, paragraph 4: "A Subpostmaster may be suspended from office at any time if that course is considered desirable in the interests of [the Defendant] in consequence of his: (a) being arrested, (b) having civil or criminal proceedings brought or made against him, (c) where irregularities or misconduct at the office(s) where he holds appointment(s) have been established to the satisfaction of [the Defendant], or are admitted, or are suspected and are being investigated."
- Section 19, paragraphs 5 and 6: "Where a Subpostmaster is suspended his remuneration in respect of any period of suspension will be withheld so long as such suspension continues"; "On the termination of the period of suspension whether by termination of contract or reinstatement, the Subpostmaster's remuneration in respect of the period may, after consideration of the whole of the circumstances of the case, be forfeited wholly or in part...".

(ii) NTC

- Part 2, paragraph 15.1: "[The Defendant] may suspend the Operator from operating the Branch (and/or, acting reasonably, require the Operator to

*suspend all or any of its Assistants engaged in the Branch from working in the Branch), where [the Defendant] considers this to be necessary in the interests of [the Defendant] as a result of: (15.1.1) the Operator and/or any Assistant being arrested, charged or investigated by the police or [the Defendant] in connection with any offence or alleged offence; (15.1.2) civil proceedings being brought against the Operator and/or any Assistant; or (15.1.3) there being grounds to suspect that the Operator is insolvent, to suspect that the Operator has committed any material or persistent breach of the Agreement, or to suspect any irregularities or misconduct in the operation of the Branch, the Basic Business or any other Post Office® branches with which the Operator and/or any Assistant is connected (including any financial irregularities or misconduct).”*

- *Part 2, paragraph 15.2: “During the period of any suspension, whether under clause 15.1 or otherwise, [the Defendant] may: (15.2.1) suspend payment of all sums due to the Operator under the Agreement; (15.2.2) with the agreement of the Operator appoint a temporary substitute for the Operator to operate the Branch from the Branch Premises, in which case any Fees in relation to Transactions carried out at the Branch will be paid by [the Defendant] direct to such temporary substitute; and (15.2.3) to the extent such costs have been agreed with the Operator, deduct its costs incurred in appointing a temporary substitute together with other costs and expenses incurred by [the Defendant] as a result of the suspension from any payments due to the Operator under the Agreement. [The Defendant] shall initially meet the cost of appointing the temporary substitute but shall be entitled to recoup some or all of such cost from the Operator in accordance with clause 15.2.3 or otherwise. Following the end of the period suspension, [the Defendant] may, in its discretion taking into account the relevant circumstances, agree to pay the Operator all or part of such sums as have been suspended in accordance with clause 15.2.1.”*
  
- *Part 2, paragraph 15.3: “Following the Operator’s suspension, whether under clause 15.1 or otherwise, the Operator shall at its own cost and expense promptly take all reasonable steps to enable [the Defendant] to maintain access for Customers during the period of suspension to Products and Services.”*

(f) Para 61.1 and 61.3 (termination);

(i) SPMC

- Section 1, paragraph 10: “... The Agreement may be determined by [the Defendant] at any time in case of Breach of Condition by [the Subpostmaster], or non-performance of his obligation or non-provision of Post Office Services, but otherwise may be determined by [the Defendant] on not less than three months notice.”

(ii) NTC

- Part 2, paragraph 16.1: “Following the Commencement Date the Agreement will continue until: (16.1.1) either Party gives to the other not less than 6 months’ written notice (unless otherwise agreed between the Parties in writing), which cannot be given so as to expire before the first anniversary of the Start Date; or (16.1.2) it is terminated at any time in accordance with its terms.”
- Part 2, paragraph 16.2: “In addition to any other rights of termination contained in other Parts, [the Defendant] may terminate the Agreement immediately on giving written notice to the Operator if the Operator:

16.2.1 commits any material breach of the provisions of the Agreement or any other contract or arrangement between the Parties and fails to remedy the breach (if capable of remedy) within 14 days of a written notice from [the Defendant] specifying the breach and requiring the same to be remedied. Any references in these Standard Conditions to a breach of a particular obligation by the Operator being deemed to be material and/or irremediable are not intended to be exhaustive and shall not prevent [the Defendant] from exercising its rights under this clause in respect of any other breach of the Agreement which is material and/or irremediable;

16.2.2 fails to provide the Products or Services to the standards required by [the Defendant] as set out in the Manual and fails to remedy the failure (if capable of remedy) within 14 days of a written notice from [the Defendant] specifying the failure and requiring the same to be remedied;

...

16.2.16 fails to pay any sum due to [the Defendant] under the Agreement by the due date”.

- (g) Para 62.1 and 62.3 (no compensation for loss of office).

(i) SPMC

- *Section 1, paragraph 8: "The terms of the appointment of Subpostmaster do not entitle the holder to be paid sick or annual leave, pension or to compensation for loss of office."*

(ii) NTC

- *Part 2, paragraph 17.11: "The Operator acknowledges that he shall not be entitled to receive any compensation or other sums in the event of the termination or suspension of the Agreement."*

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

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

### **Unfair Contract Terms**

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

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

### **Liability for Alleged Losses**

8. What is the proper construction of section 12, clause 12 of the SPMC?

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

*"The Subpostmaster is responsible for all losses caused through his own negligence, carelessness or error, and also for losses of all kinds caused by his Assistants. Deficiencies due to such losses must be made good without delay."*

9. What is the proper construction of Part 2, paragraph 4.1 of the NTC?

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

*"The Operator shall be fully liable for any loss of or damage to, any Post Office Cash and Stock (however this occurs and whether it occurs as a result of any negligence by the Operator, its Personnel or otherwise, or as a result of any breach of the Agreement by the Operator) except for losses arising from the criminal act of a third party (other than Personnel) which the Operator could not have prevented or mitigated by following [the Defendant's] security procedures or by taking reasonable care. Any deficiencies in*

*stocks of Products and/or any resulting shortfall in the money payable to [the Defendant] must be made good by the Operator without delay so that, in the case of any shortfall, [the Defendant] is paid the full amount when due in accordance with the Manual”*

## **Agency and Accounts**

### Post Office as agent

10. Was Post Office the agent of Subpostmasters for the limited purposes at GPOC paragraphs 82 and 83? [Defence, paras 124-125]

(a) *For the purpose of rendering and making available accounts and/or was under an equitable duty to render accounts [GPOC, para 82]*

(b) *Further or alternatively, for the specific purpose of effecting, reconciling and recording transactions initiated by the Claimants, the Defendant acted for itself and, simultaneously, for the Claimants, as their agent [GPOC, para 83]*

11. If so, was the Defendant thereby required to comply with any or all of the obligations at GPOC paragraph 84? [Defence, para 126]

(a) *Properly and accurately to effect, execute, record, and/or maintain and keep records of all transactions which the Claimants initiated using Horizon or for which the Claimants were potentially responsible [GPOC, para 84.1]*

(b) *To render and make available to the Claimant accounts (in accordance with paragraph 84.1) [GPOC, para 84.2]*

(c) *Further or alternatively, where the Defendant alleged shortfalls to be attributed to the Claimants, to comply with the duties averred at paragraphs 64.3 to 64.11 above [GPOC, para 84.3]*

### Subpostmasters as agents

12. Was the extent and effect of the agency of Subpostmasters to Post Office such that the principles of agency alleged at Defence 91 and 93(2) and (3) applied as Post Office contends? [Defence paras 90-91; Reply, paras 59-60]

- (a) *Post Office notes that, as its agents: (i) Subpostmasters owed fiduciary duties to Post Office, including a duty to act in Post Office's interests in relation to the functions they undertook on Post Office's behalf (which functions included holding and dealing with Post Office cash and stock, effecting and recording Post Office transactions, generating liabilities for Post Office, maintaining proper and accurate records and preparing and rendering accounts); (ii) Subpostmasters owed a duty to account to Post Office [Defence para 91]*
- (b) *Where an agent renders an account to his or her principal, he is bound by that account unless and to the extent that he discharges the burden of demonstrating that there are mistakes in the account that he should be permitted to correct [Defence, para 93(2)]*
- (c) *Where an agent deliberately renders a false account to his or her principal, in relation to the matters covered by the account the Court should make all presumptions of fact against that Subpostmaster as are consistent with the other facts as proven or admitted [Defence, para 93(3)]*

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

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

## **Suspension and Termination**

### Suspension

14. On a proper construction of the SPMC and NTC, in what circumstances and/or on what basis was Post Office entitled to suspend pursuant to SPMC Section 19, clause 4 and Part 2, paragraph 15.1 NTC? [GPOC, paras 32-3, 49, 60, 64.13 and 99; Defence, paras 66-72, 99 and 142]

- (i) SPMC
  - "A Subpostmaster may be suspended from office at any time if that course is considered desirable in the interests of [the Defendant] in consequence of his: (a) being arrested, (b) having civil or criminal proceedings brought or made against him, (c) where irregularities or misconduct at the office(s) where he holds appointment(s) have been established to the satisfaction of [the Defendant], or are admitted, or are suspected and are being investigated."

(ii) NTC

- “[The Defendant] may suspend the Operator from operating the Branch (and/or, acting reasonably, require the Operator to suspend all or any of its Assistants engaged in the Branch from working in the Branch), where [the Defendant] considers this to be necessary in the interests of [the Defendant] as a result of: (15.1.1) the Operator and/or any Assistant being arrested, charged or investigated by the police or [the Defendant] in connection with any offence or alleged offence; (15.1.2) civil proceedings being brought against the Operator and/or any Assistant; or (15.1.3) there being grounds to suspect that the Operator is insolvent, to suspect that the Operator has committed any material or persistent breach of the Agreement, or to suspect any irregularities or misconduct in the operation of the Branch, the Basic Business or any other Post Office® branches with which the Operator and/or any Assistant is connected (including any financial irregularities or misconduct).”

Summary Termination

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

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

(i) SPMC

- Section 1, clause 10: “... The Agreement may be determined by [the Defendant] at any time in case of Breach of Condition by [the Subpostmaster], or non-performance of his obligation or non-provision of Post Office Services, but otherwise may be determined by [the Defendant] on not less than three months notice.”

(ii) NTC

- Part 2, paragraph 16.2: “In addition to any other rights of termination contained in other Parts, [the Defendant] may terminate the Agreement immediately on giving written notice to the Operator if the Operator:

16.2.1 commits any material breach of the provisions of the Agreement or any other contract or arrangement between the Parties and fails to remedy the breach (if capable of remedy) within 14 days of a written notice from [the Defendant] specifying the breach and requiring the same to be remedied. Any references in these Standard Conditions to a breach of a particular

*obligation by the Operator being deemed to be material and/or irremediable are not intended to be exhaustive and shall not prevent [the Defendant] from exercising its rights under this clause in respect of any other breach of the Agreement which is material and/or irremediable;*

*16.2.2 fails to provide the Products or Services to the standards required by [the Defendant] as set out in the Manual and fails to remedy the failure (if capable of remedy) within 14 days of a written notice from [the Defendant] specifying the failure and requiring the same to be remedied; ...*

*16.2.16 fails to pay any sum due to [the Defendant] under the Agreement by the due date”.*

### Termination on Notice

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

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

(i) SPMC

- *Section 1, clause 10: “... The Agreement may be determined by [the Defendant] at any time in case of Breach of Condition by [the Subpostmaster], or non-performance of his obligation or non-provision of Post Office Services, but otherwise may be determined by [the Defendant] on not less than three months notice.”*

(ii) NTC

- *Part 2, paragraph 16.1: “Following the Commencement Date the Agreement will continue until: (16.1.1) either Party gives to the other not less than 6 months’ written notice (unless otherwise agreed between the Parties in writing), which cannot be given so as to expire before the first anniversary of the Start Date; or (16.1.2) it is terminated at any time in accordance with its terms.”*

### **True Agreement**

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



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

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

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

### **Compensation for loss of office**

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

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

(i) SPMC

- *Section 1, clause 8: “The terms of the appointment of Subpostmaster do not entitle the holder to be paid sick or annual leave, pension or to compensation for loss of office.”*

(ii) NTC

- *Part 2, paragraph 17.11: “The Operator acknowledges that he shall not be entitled to receive any compensation or other sums in the event of the termination or suspension of the Agreement.”*

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

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

### **Subsequent appointments**

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

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

- (i) SPMC
  - Section 1, Clause 9: “If on resignation of his appointment the Subpostmaster disposes of his private business and/or premises in which the sub-office is situated, the person acquiring the private business and/or the premises or exchanging contracts in connection with the purchase of the private business and/or premises will not be entitled to preferential consideration for appointment as Subpostmaster.”
- (ii) NTC
  - Part 2, paragraph 19: “...On termination of the Agreement, the appointment of any New Operator shall be entirely at the discretion of [the Defendant]. [The Defendant] may, but shall not be obliged to, consider any application for the operation of a Post Office branch at the Branch Premises made by a genuine prospective purchaser of the Basic Business and the property interest at the Branch Premises, but any such prospective purchaser shall not be given preferential treatment in the application or appointment process.”

## **Assistants**

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

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

- (i) SPMC (as amended in July 2006)
  - Section 15, clause 7.1: “[The Defendant] will: (7.1.1) provide the Subpostmaster with relevant training materials and processes to carry out the required training of his Assistants on the Post Office ® Products and Services; (7.1.2) inform the Subpostmaster as soon as possible where new or revised training will be necessary as a result of changes in either the law or Post Office ® Products and Services; and (7.1.3) where appropriate ... update the training materials (or processes) or provide new training materials (or processes) to the Subpostmaster. However, it is the Subpostmaster’s responsibility to ensure the proper deployment within his Post Office ® branch of any materials and processes provided by [the Defendant] and to ensure that his Assistants receive all the training which is necessary in order to be able to properly provide the Post Office ® Products and Services and to

*perform any other tasks required in connection with the operation of the Post Office ® branch.”*

(ii) NTC

- *Part 2, paragraphs 2.3: “Where [the Defendant] considers it necessary, it shall initially train the first Manager and such number of Assistants as [the Defendant] shall determine, in the operation of the System at the Branch.”*
- *Part 2, paragraphs 2.5: “[the Defendant] may require the Manager and/or the Assistants to undertake further training at any reasonable location and time during the Term if [the Defendant] (2.5.1) reasonably considers such training to be essential; or (2.5.2) wishes to train them in new and improved techniques which have been devised and which the Operator will be required to use in operating the System.”*

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

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