

TRANSCRIPTION OF RECORDING

J – Judge
 Mr M - Mr Morgan
 LC – Lee Castleton

	Silence. Court rise.
	In matter of the Post Office Limited v Castleton Lee.
J	Yes Mr Morgan.
Mr M	Please your Lordship I appear in this trial on behalf of the Claimant the Post Office Limited and Mr Lee Castleton the Defendant.
J	Yes.
Mr M	Appears in person.
J	Yes.
Mr M	Now my Lord at the outset might I just say that Mr Castleton had a GRO GRO a couple of weeks ago for which he has received treatment.
J	Yes.
Mr M	But in the unlikely event that it were to occur we might need to have an adjournment at quite short notice.
J	Yes of course.
Mr M	So if your Lordship would bear with us on that.
J	Yes.
Mr M	And I wish to draw that to your Lordship's attention at the outset. In the briefest outline is I hope your Lordship may have seen my Skeleton.
J	Yes.
Mr M	This case concerns the sub-Post Office 14 South Drive, Bridlington in Yorkshire.
J	Yes.
Mr M	And we're going to call that Marine Drive.
J	Yes.
Mr M	The Claimant seeks to recover monies owed to it on the taking of a final account which monies were previously shown in large part as due to it in accounts

	prepared by Mr Castleton.
J	Yes.
Mr M	Whilst Mr Castleton seeks damages for alleged wrongful termination of his Agency Agreement.
J	Yes.
Mr M	The Claimant also seeks to recover a further small sum for National Lottery sales made by Mr Castleton on the last day of his retainer.
J	Yes.
Mr M	My Lord if I might start with a very brief chronology.
J	Yes.
Mr M	The relevant events all occurred between July 2003 and the same month in 2004.
J	Yes.
Mr M	From the 18 July 2003 until the 23 March 2004 Mr Castleton was sub Post-Master at the Marine Drive branch. From the business week ending Wednesday the 21 January 2004 until the 17 March 2004 Mr Castleton reported to the Post Office increasing losses of physical cash from the Marine Drive branch. Mounting from £4,230.97 in the first week and that's called week 43 in the Post Office business calendar.
J	What was the figure again?
Mr M	£4,230.97.
J	Right so these are all missing cash is that right?
Mr M	Yes.
J	...figures I've read your Skeleton but I wasn't I didn't quite appreciate what it was that was missing.
Mr M	Your Lord what what happens is Mr Castleton produces accounts.
J	Yes.
Mr M	That show a deficiency of cash from that which was expected from the trading figures.
J	Yes.
Mr M	And that figure rises to £22,963.34 in the final week.

J	Yes.
Mr M	Which is week 51 by the same system.
J	Yes.
Mr M	Now these losses were reflected in four accounts signed off by Mr Castleton each week and sent into the Post Office.
J	It would help if you just show me those now.
Mr M	Indeed my Lord that was where I was hoping to take your Lordship.
J	Yes.
Mr M	And if you if your Lordship would be kind enough to take out Bundle 9 which is has the title Primary Accounting Documents.
J	Thank you.
Mr M	And what we've done which I hope is convenient to your Lordship and to Mr Castleton is we've used in the tab numbers.
J	Yes.
Mr M	The week numbers as they correspond to.
J	Oh I see that's helpful yes.
Mr M	To Post Office weeks and that that's reflected in some of the other Bundles as well.
J	Yes.
Mr M	So if your Lordship would be kind enough to turn to week 42.
J	Yes.
Mr M	And in due course there may be an issue about week 42 but I needn't trouble your Lordship with it at the moment.
J	Yes.
Mr M	Your Lordship sees the formal document entitled Cash Account Final.
J	Yes.
Mr M	And if your Lordship would be kind enough to look right at the very top of the page your Lordship sees this text page one office code 2133377 that's the office code for the Marine Drive branch.

J	I see.
Mr M	The week number which is 42 week ending that gives the usual calendar date week ending 14 January 2004 the date it's produced 15 January 2004 time produced 7.46.
J	Right yes.
Mr M	You see it's produced from what's called the Horizon system you'll learn about that in more detail in a bit and its cash account final your Lordship sees below that is a signature and to the left of that it says to be signed before dispatch of cash account sub Postmaster Franchisee Branch Manager and that I take to Mr Castleton's signature.
J	Yes.
Mr M	Your Lordship sees on the left hand side its date stamped as the 15 January at the Bridlington branch.
J	Yes.
Mr M	Now it starts at the bottom of the page with a list of various shortages so right on the front of the page the Postmaster is obliged to disclose if there is anything missing unclaimed payments is the first box table 2. Table 2A authorised cash shortages.
J	Just a moment unclaimed payments why should that be something that's missing?
Mr M	Well my Lord it's just a missing part of the account but there's no issue in trial on unclaimed payments.
J	I see.
Mr M	Unauthorised cash shortages.
J	Authorised it says.
Mr M	Sorry authorised cash shortages.
J	Yes.
Mr M	Is to do with what's called a suspense account where there are deficiencies the sub Postmaster has identified to the Post Office and instead of having to repay them immediately he is authorised to put them into a suspense account whilst its seem whether they need to be worked out in some way.
J	I see.
Mr M	Table 3 uncharged receipts which I don't need to explain to your Lordship.

	Discrepancies table at the bottom of the page are any discrepancies arising in that week's cash account. Now the ordinary care is sub Postmaster is obliged to make up discrepancies or losses immediately. Similarly he's entitled to drawdown on the gains that he's made so surplus or shortage a surplus would entitle him to remove money a shortage obliges him to make good a deficiency.
J	Yes that's fine. So that's 60 pence short.
Mr M	That's 60p short shown for that week.
J	Yes that's fine.
Mr M	Over the page my Lord page 2599.
J	Yes.
Mr M	We get into what what might usually be considered to be a balance sheet it it shows cash stock in hand and so on and so forth about halfway down the left hand column.
J	Yes.
Mr M	And there's a listing for cash and then unclear: 09:06 items, postage stamps and so on and so forth my Lord I will be coming back to how this is all prepared but I just wish to show your Lordship at this stage the format.
J	Yes.
Mr M	And then over the page at page 2600 we have the report on the trading for the week so that's receipts and it identifies balance brought forward from a previous week the amount in item 05 in the left hand column for National National Saving * Insurance deposits Giro in payments and so on and so forth.
J	Uh huh.
Mr M	And that's the trading figures for receipts for that week.
J	Yes so it ends up with a.
Mr M	And then it continues over the page to 2601 and it gives a total receipts at the bottom of the left hand column £176,591.
J	I see.
Mr M	And in the right hand column.
J	The biggest items are Giro in payments of £56,000 I'm not talking about the balance brought forward.
Mr M	And if your Lordship

J	And then REMs which I understand to be something to do with a computer is that right?
Mr M	Well my Lord no.
J	Unclear: 10:25.
Mr M	It it's a slang abbreviation used in the Post Office for remittances and your Lordship sees it correctly identifies the figure of £51,520.
J	Yes.
Mr M	Now that's that we can tell is a cash figure because if your Lordship turns over to page 2601.
J	Yes.
Mr M	Your Lordship sees in the right hand column Table 6 remittances from ADC.
J	I see.
Mr M	And so that column continues 6 and 6A it's got cash in the in the first box and then the second box it's got stamps and so on and so forth.
J	I see.
Mr M	So it could be made up either of cash or of stock or of both.
J	And the numbers in this column are just identification numbers?
Mr M	My Lord as I understand it yes.
J	So there's no there seems to be no sterling figures at all in the top half of the table 6A on 2601.
Mr M	In Table 6A not but indeed your Lordship is correct there were no stamps or self-adhesive stamps received that week there were.
J	Yeah.
Mr M	Some Postal Order receipts.
J	What does ADC stand for?
LC	Area. Sorry my Lord Area Distribution Centre.
J	Thank you.
Mr M	My Lord I should also say that Mr Castleton as a Litigant in Person is unrepresented but I'm pleased to say that we have built up something of a

	working relationship in the two weeks that he has been on the record.
J	Yes.
Mr M	And I hope that the atmosphere will be friendly in your Lordship's Court.
J	So far so good.
Mr M	So that's the receipts area of the accounts.
J	Hmm.
Mr M	Over the page your Lordship starts to find the payments area of the accounts and your Lordship sees on page 2602 that the principle outgoings for the week in question are some £67,779.26 in pensions.
J	Yes.
Mr M	And then.
J	And then there's a balance of 92 to give the same total.
Mr M	So that the payments total equals the receipts total.
J	Yes.
Mr M	There's a figure there of £92,375.34.
J	Yes.
Mr M	And if your Lordship compares the figure on 2602.
J	Yes.
Mr M	With the figure on page 2599 this is the figure for total stock your Lordship will find that there's a difference there.
J	I see.
Mr M	Which should be 60p but in fact it is 60p it is 60p.
J	And that's the.
Mr M	And that's the deficiency in the account.
J	Which we saw somewhere.
Mr M	Which we saw on the very first page on the bottom left hand corner.
J	I see. I'll just make a cross reference here that's the difference really between

	£92,375.34 on 2602 and £92,37...
Mr M	It's the difference between.
J	...5.74.
Mr M	Indeed.
J	On 2599.
Mr M	Yes now my Lord I'll come back to the mechanism as to how this account is created later in my opening but if I may I'll just carry on through the Bundle so you can see how it builds up.
J	Yes.
Mr M	If your Lordship turns on to the next tab.
J	Yes.
Mr M	Tab 43.
J	Yes.
Mr M	Your Lordship sees cash account final for week 43 in the bottom left hand corner your Lordship sees the discrepancy of £4,230.97.
J	Yes.
Mr M	And then if I might take you relatively quickly through.
J	Yes.
Mr M	The tabs to tab 44 your Lordship sees it increasing to £6,754.
J	Yes.
Mr M	Tab 45 your Lordship sees that in fact there's been a gain the position has improved by £25 odd.
J	Sorry where's that tab 45?
Mr M	Tab 45.
J	Oh just a moment I've been looking at the wrong thing. 2 page 2629 going back to tab 44.
Mr M	Indeed.
J	I thought we were short by £6700 odd is that right?

Mr M	Six thousand yes indeed £6,754.09.
J	But on the next one in 45 page 2646 unclear: 15:31 £6,730.
Mr M	Indeed indeed your Lordship does so there's been a two hundred sorry a £24.08 improvement.
J	Oh oh oh I see this is cumulative this.
Mr M	Indeed. At this stage it's cumulative.
J	Oh I see. Right. Yes I see.
Mr M	And then week 46 it's up to £8,243 and at this stage what happens is that Mr Castleton places the amount into suspense account and if your Lordship turns on to week 47 your Lordship sees that the figure of £8,243.10 shown on week 46 gets put into table 2A authorised cash shortages item 46 all goes into suspense and there's a balance week's trading in week 47.
J	Yes I see.
Mr M	In week 48 the figure in suspense remains there and we start a new cumulative total of losses.
J	Yes yes I see.
Mr M	And perhaps the fact that I haven't brought to your Lordship's attention is each of these is signed by Mr Castleton and there's no dispute about that.
J	Yes I see.
Mr M	In week 49 if your Lordship would keep a hand er a finger in tab 48 at week 49 what happens is the £3,509.18 loss for week 48.
J	Yes.
Mr M	Is moved up into the suspense account and there's an arithmetical mistake which is corrected in manuscript.
J	Yes I see.
Mr M	And there's a further discrepancy of £3,512.26.
J	Yes I see yes.
Mr M	In week 50 the £11,752.78 is still shown and there's a discrepancy erm shown an accumulated discrepancy now a further £10,653.
J	Well it's a further £7,000 odd isn't it from the previous week is that right?

Mr M	Mr Lord it's yes it's a further £7,000.
J	Yes.
Mr M	But the total discrepancy now is the sum of table 2A item 46.
J	Yes.
Mr M	And discrepancies table item 2.
J	Yes.
Mr M	So it's £22,000
J	Thousand.
Mr M	Odd.
J	Yes.
Mr M	And then the final account signed by Mr Castleton is at divider 51.
J	Yes.
Mr M	And that gives the figure of £22,963.34 as the total of item 46 and item 2.
J	I see it's actually 50p too much isn't it?
Mr M	It it may or may not be because.
J	Doesn't matter 50p I suppose.
Mr M	It may not at the end of the day.
J	Unclear: 19:05.
Mr M	Indeed. Going back into the sequence the chronological sequence if your Lordship would be kind enough to open that Bundle fully because we're going to look at the next tab in a moment.
J	Which Bundle?
Mr M	The Bundle your Lordship has in front of you.
J	Yes.
Mr M	If you would be kind enough just to open it fully to.
J	Yes.

Mr M	On the 23 March so the following Tuesday after this cash account was produced.
J	Yes.
Mr M	Auditors attended at Marine Drive branch.
J	Yes.
Mr M	They found that by then the Marine Drive was short of cash by £25,758.75.
J	At the end of week 51?
Mr M	It's not no it's in week 52.
J	Oh I see.
Mr M	Day six of week 52 the accounts were paid on the cash accounts were written to the Wednesday of each week.
J	Yes I see.
Mr M	The following Tuesday the auditors attended at the premises.
J	Yes.
Mr M	They conducted an audit that disclosed the the discrepancy of £25,758.75 and Mr Castleton was suspended.
J	Yes I see.
Mr M	And if your Lordship would be kind enough to turn on into tab 52 and turn to page 2771 your Lordship will find another form of document that I I'm afraid your Lordship will become more familiar with as we progress this opening.
J	Okay.
Mr M	This is a er trial balance and your Lordship gets that from the top left hand column it says Marine Drive FAD which is the identification code it's a trial balance produced at 17.13 on the 23 March 2004.
J	Yeah.
Mr M	It's for accounting period 52 it's trial balance office copy. You'll see that there is a discrepancy over of £12.54 and a discrepancy short of £25,771.29 giving a net discrepancy of £25,758.75.
J	Yes I see. I don't quite know what a trial balance is do I need to know that?
Mr M	Well your Lord if I may I'll bring your Lordship back to the delights of the Post Office accounting system as as I hope I make my opening more coherent I'm

	afraid it is quite a technical trial in looking at how these figures are made up.
J	Yes.
Mr M	And not that your Lordship needs any reinforcement but it it's taken me some number of weeks.
J	Yeah.
Mr M	To work out how all the figures go backwards and go forwards but I hope I'll be able to give your Lordship.
J	Okay.
Mr M	A rational and relatively simple explanation of course Mr Castleton is the expert and we'll be hearing from in due course.
LC	Could I My Lord.
J	Yes.
LC	My Lord sorry throughout this period the actual trial balance I'll be the final balance for the week is actually erm produced on a Wednesday evening and at this point this is when the sub Postmaster is allowed to address any issues throughout the week's trading.
J	Yes.
LC	If there are any shortfalls then he's able to ring a Helpline that's run by the Post Office in order to explain any problems that he's had over the over the former week and any balancing problems that have occurred prior to the Thursday morning you'll see that all of those cash accounts are actually timed and dated on the following morning which is a Thursday morning.
J	I see.
LC	Because through.
J	Oh sorry.
LC	You'll find that all of all of those losses have had phone calls and assurances from the Post Office themselves they they would look into the reason as to why those losses were occurring.
J	Yes.
LC	So they were all reported.
J	Yes.

LC	My Lord.
J	I had read your Witness Statement.
LC	Sorry.
J	And indeed two others that you've adduced but not all of the ones you've adduced.
LC	Right my Lord.
J	Mrs unclear: 23:31 and Mrs Day I think in addition to yours.
LC	Yes my Lord. Thank you. I'm grateful unclear: 23:38.
Mr M	No no of course. For the assistance perhaps of Mr Castleton what I was trying to do for the Court is.
J	Is give me a background.
Mr M	A very general background as gentler introduction at this stage as I can. Then I propose to address your Lordship very briefly on one point of view that arises on the burden of proof.
J	Yes.
Mr M	And then even if I'm right on that issue of burden of proof it might be of assistance to the Court and to Mr Castleton if I complete a comprehensive opening so that the Court has presented to it in as neutral a way as possible.
J	Yes.
Mr M	The primary documents.
J	Yes.
Mr M	There will come a point at which I will make some submissions as to my primary case.
J	Yes.
Mr M	But I I hope that that will be of help to Mr Castleton to to relieve him of any burdening of opening the case.
J	Yes quite.
Mr M	And also to provide a balanced view of the primary documents before I make some submissions as to why we're bound to win erm otherwise I wouldn't be here but I hope that's of assistance Mr Castleton.

J	The biggest issue in this case seems to be whether the computer is working properly isn't it?
Mr M	Well that that's how Mr Castleton would like to portray it.
J	Yes.
Mr M	And and it's a matter that your Lordship may have to consider.
J	Yes.
Mr M	But I I'd invite your Lordship to listen to my opening and understand.
J	Yes yes.
Mr M	The facts much like a pocket calculator a computer is only a tool that reflects the the the information that's entered on to it.
J	Yes.
Mr M	And the way the system is meant to work is that Mr Castleton is meant to check the underlying physical transactions against what's shown on the printout.
J	I see well I'll leave it to you to explain that in due course.
Mr M	And if I may.
J	Yes.
Mr M	And your Lordship in fact touches the the core of this question the core of this trial and that is is this a trial about an account produced by an agent.
J	Right.
Mr M	Which is verified by him or is this a trial which is a rampage through how a computer works and whether this is whether Mr Castleton can say that the computer has anything to do with this trial at all.
J	When you say it's an account unclear: 26:05 which it may well be but it's still open to Mr Castleton to say that the account is wrong isn't it?
Mr M	It is still open to Mr Castleton to say the account is wrong in certain limited circumstances.
J	If the computer's wrong if it can be shown that the computer's wrong.
Mr M	If if he could show that the computer were wrong.
J	Yeah.

Mr M	Yeah and in my respectful submission he could only do that by producing physical evidence as to why it was wrong.
J	Yes.
Mr M	And that is going to be the nub of the dispute.
J	Yes.
Mr M	And it it's going to turn on the physical evidence of these transactions.
J	Yes.
Mr M	And why we say that when Mr Castleton signs off on these accounts.
J	Yes.
Mr M	Having complied with his contractual duty to check the accounts against the physical receipts and summaries that he's submitted.
J	Hmm.
Mr M	He can't then go behind them and say ah well the computer figures were all wrong because in fact all the computer figures are I mean he could equally as well have sat down and typed out these figures they simply confirm the underlying transactions.
J	Yes.
Mr M	Lord going back into my opening on the 23 March 2004 as a result of these.
J	I take it was a Thursday morning from what Mr Castleton said is that right?
Mr M	My Lord no the the 23 March is a Tuesday.
J	Oh.
Mr M	The auditors attended on the Tuesday morning.
J	Yes.
Mr M	They spent the day working through the figures and auditing.
J	Yes.
Mr M	And that evening that lunch time about 2 o' clock I think it was.
J	2 o' clock.
Mr M	Mr Castleton was suspended.

J	Right fine.
Mr M	Your Lordship has raised the issue of computers but your Lordship might also note that even at this stage that when the auditors attended the physical stocks that they found was as recorded in the trial balance.
J	I see.
Mr M	So we've got the we know what the what the end position is we know what the start position is because Mr Castleton says well there was no problem certainly before week 41.
J	Yes.
Mr M	And we've established what went in and out in between.
J	I see.
Mr M	So.
J	You say you can actually show if necessary I mean you don't have to have to rely on an account as stated you can actually show it's correct.
Mr M	If I if that were the case I was having to run.
J	Yes.
Mr M	But I don't I say the accounts dated.
J	Yes.
Mr M	Audited at the end confirmed no dispute those were the figures found by the auditors.
J	Hmm.
Mr M	Signed accounts that's it it's for Mr Castleton then to come up and say ah no this entry is wrong.
J	Hmm.
Mr M	He doesn't do that indeed he can't do that.
J	Hmm.
Mr M	And in any event it wouldn't affect the fact at the end of the day I've got an audit that says there was this much owing.
J	Yes.

Mr M	So
J	Which you say isn't disputed?
Mr M	Which I say isn't disputed.
J	Well now Mr unclear: 29:13 and Mr Castleton doesn't agree with that. You do dispute this?
LC	My Lord sorry on the day of the audit the the Post Office are required to produce a form P242 which is the official form for handing over an office from a suspended sub Postmaster to a new sub Postmaster on that particular day the form P242 was only signed by the incoming officer it is a certification of the office standing on that day Post Office I believe.
Mr M	We accept that we haven't been able to find that piece of paper. We we can't find it we accept that. We don't say Mr Castleton signed off on the final audit it's not part of my case and it never has been but what Mr Castleton says in his Defence is is that he accepts that there was an apparent shortfall of the amount that we plead found in the audit. So that that's the way I put it I don't I don't I'm not in any way trying to suggest that Mr Castleton vouched the figure at the time but I wish to say the issue in this trial the figure produced by the auditors is accepted.
J	Yes.
Mr M	I I'm sorry Mr Castleton.
LC	That's alright.
Mr M	If my language [unclear: 30:42]. I don't think you need to worry about that.
LC	No that's fine.
Mr M	So Mr Castleton was then suspended around lunch time on the 23 March and because he was suspended his assistant Christine Train was thereby unable to continue to work behind the Post Office counter because she's an employee of Mr Castleton's not of the not of the Post Office so once Mr Castleton's tenure was suspended she then ceased to be able to work.
J	Yes.
Mr M	Now since the date of the audit a further net loss of £120.20 incurred on the 23 March has come to light and has been brought into account in the total deficiency this loss is made up from the net value of sales and prizes respectively received and paid in respect of National Lottery tickets on the 23 March 2004.
J	Yes.
Mr M	And the Court will find the supporting documentation in Bundle 2.

J	Have we finished the Bundle
Mr M	My Lord yes although it's one I will be returning to in due course so it would be convenient to put it to one side and go on to tabs 36 and 37.
J	Yes.
Mr M	And here you will find the formal documents former Sub Postmaster's Statement of Errors.
J	Yes.
Mr M	And details of Camelot lottery online sales are understated in the receipt section for week 52 resulting in a £176 charge error evidence attached and if your Lordship turns over the page to page 260.
J	Yes.
Mr M	Your Lordship finds the daily office totals for National Lottery sales and on the 23 March your Lordship sees there were 43 sales to the value of £176.
J	Oh yes.
LC	...statements.
J	The word group just refers to the National Lottery is that it or not? Daily office totals
Mr M	My Lord I'm.
LC	[inaudible: 33:53].
J	May be it doesn't matter.
Mr M	Well could your Lordship give me a minute.
J	Yes.
Mr M	Mr Castleton wishes to tell me something.
LC	[inaudible: 34:08] because I had no access to the computer the temporary sub Postmaster unclear: 34:18 whispering]. No I appreciate that it's just I know it's unclear: 34:26 would be quite.
Mr M	Okay what Mr Castleton I'm very grateful to Mr Castleton.
LC	Unclear: 34:30.
Mr M	No no it's what Mr Castleton has just told me that he accepts this business was transacted in this branch on this date. So £176 receipts and there were

	payments out your Lordship finds this at tab 37 of £75.80.
J	Yes I see.
Mr M	And that gives a net deficiency of £100.20 now on the pleadings.
J	Yes.
Mr M	The case appears to be that Mr Castleton didn't admit that this trading had taken place however in his Skeleton Argument which I received and I hope the Court received in compliance with the previous Orders so there was no allegation unclear: 35:42 or anything like that in the Skeleton Argument was the first time and I'm told in Court today again Mr Castleton's case is now that he accepts that he did that the trading was undertaken but that he gave the money the following day to the incoming sub Postmaster.
J	That's you mean £100.20.
Mr M	£100.20.
J	Yes.
Mr M	[whispering/inaudible: 36:27] So we'll see how it's made out in the pleadings and in due course you may be asked to consider how we deal with this and indeed whether it makes any difference if that is now the defence that's being run we don't have any evidence that the money was received.
J	The incoming Postmaster being Ruth someone?
Mr M	Ruth Simpson my Lord.
J	Simpson. Yes right.
Mr M	And well there there's various issues that might arise but perhaps we might move on as a result of these deficiencies and as your Lordship will see in Bundle 2 tab 33.
J	Yes.
Mr M	On 17 May Mr Castleton's Contract as a sub Postmaster was summarily determined.
J	Yes.
Mr M	With effect from the 23 March on the grounds broadly summarised and your Lordship sees this in the third substantive paragraph that his performance as a sub Postmaster was unsatisfactory he was in breach of the terms of his Contract in allowing losses to arise and failing to make them good.
J	Yes.

Mr M	And his dismissal was confirmed on appeal as appears from the letter on the next behind the next tab tab 34 on the 9 July.
J	Yes.
Mr M	Now from these facts the Post Office seeks to recover the sum of £25,758 odd.
J	Yes.
Mr M	The monies found to be missing on the audit on the 23 March which had previously been recorded as received by Mr Castleton as agent for the Post Office which he failed to account we also see the sum of £100.20 save in relation to the lottery money we note Mr Castleton's defence is that whilst accepting the audit revealed the branch the Marine branch Marine branch Drive I'll get this right in a minute Marine Drive branch was short of cash in that amount and we can see that he signed accounts to show that deficiency building up that he says that deficiency is not real it was occasioned by problems with the computerised accounting system used by the Post Office and accordingly his solicitor suggests it was wrongful.
J	You say he admitted it was short of cash in the amount of £25,000 odd but that it wasn't a real deficiency I'm not sure I can understand that.
Mr M	Well my Lord neither are we.
LC	My Lord just to clarify.
J	Yes.
LC	The documents shows us a deficiency in cash but on the evidence that's going to be presented by Mr unclear: 40:30 you will see his spreadsheet proves that there actually is not a cash deficiency. Mr Jones has made three attempts unclear: 40:45 figures from his cash spreadsheet and in the final attempt that he's made he hasn't actually taken into account unclear: 40:47 worth of of erm cheque transactions. When those are taken into account you will see that there's not actually a reduction in cash in the in the office for a sum of £8,000 which is accounted for through the accounts from the figure of final balance of week 41 at 43 I've had [inaudible: 41:27] 51 at £39,000.
J	I see well I haven't yet read the Witness Statement of Mr Jones I better do that inaudible: 41:40.
Mr M	My Lord the course that's proposed to be taken is I will.
J	Yes.
Mr M	[inaudible: 41:53] to your Lordship.
J	Yes.

Mr M	And then your Lordship will have at least half a day or however long your Lordship obviously requires.
J	Yes.
Mr M	And then once that we'll call witnesses and of course that half a day will allow whichever side side is to call witnesses first to.
J	Unclear: 42:13.
Mr M	Have the witness available and so your Lordship knows I think Mr Castleton at present has six witnesses warned including himself.
J	Yeah.
Mr M	And the Post Office I know there are 15 Witness Statements but Mr Castleton has been kind enough to indicate that he only requires nine of those to be called.
J	Yes.
Mr M	And the Post Office is presently considering whether there are any Mr Castleton's witnesses that are required.
J	Yes okay thank you.
Mr M	Now leaving aside the unclear: 42:55 for his part Mr Castleton counterclaims for wrongful termination of his Contract as sub Postmaster.
J	Yes.
Mr M	He initially claimed a figure not exceeding £250,000 for alleged loss of income diminution in capital value of his shop at a loss of profits and turnover but following disclosure it now appears the Marine Drive shop is owned and operated by a company and Mr Castleton has abandoned the majority of his claim on the 7 November of this year and has limited the remainder to a claim for £11,250 for alleged loss of income.
J	I see.
Mr M	And there's nothing in evidence from Mr Castleton to support this quantum.
J	I see.
Mr M	No my Lord before we go any further might I take your Lordship very briefly to the pleadings so your Lordship sees how the case stands on those documents?
J	Yes certainly.
Mr M	If your Lordship would be kind enough to take up Bundle 1.

J	Yes.
Mr M	Statements of case your Lordship will find behind divider the 2 the amended Particulars of Claim.
J	Yes.
Mr M	And I apologise I don't know what your Lordship's preferred practice is.
J	I have read the Particulars of Claim yeah I have read all of the unclear: 44:59 things and I note paragraphs 1 to 6 of your unclear: 45:06 are admitted.
Mr M	My Lord yes so your Lordship sees that Mr Castleton held the unclear: 45:13 as an agent.
J	Yes.
Mr M	And he was a sub Poster Master under the terms of the Contract the material terms of which are set out.
J	Yes.
Mr M	He had a duty to account electrical duty to account over and above the duties set out in the Contract and he accepts that in accordance with unclear: 45:35 standard requirements in paragraph 6 he was to provide accurately to enter all transactions on the Claimant's computer system and retain or place appropriate supporting documentation.
J	Yes.
Mr M	From this information the Defendant was obliged to not sell things and did complete various day and weekly financial reports including weekly final balance lists and cash accounts final.
J	Yes.
Mr M	Then we plead the reported losses in paragraph 7. Paragraph 8 we plead that week 51 was the time when the Defendant we say that it's not something he's entitled to go behind we plead the further losses at 9 in paragraph 9. We plead in paragraph 10 that on the 23 March he was asked to make good that loss. We plead the lottery losses and we claim for return of the sums plus interest.
J	Yes.
Mr M	Mr Castleton's defence there's no issue between us that it's unsigned your Lordship sees the front sheet we've put in saying it's accepted defence subject to any questions of cost or amendment and that's because of the unclear: 47:05 aspects of the counterclaim and there is one typographical error. This was prepared by his former solicitors who came off the record we received Notice unclear: 47:20 on the 13 November 2015.

J	I just I want to know week 51 unclear: 47:26.
Mr M	52.
J	Yes.
Mr M	So that's why I've told your Lordship there's no issue that Mr Castleton had signed all of those cash erm stubs for week 51.
J	Yeah.
Mr M	We had been concerned at one stage that that that pleading in paragraph 3 suggested there was going to be some issue with signature but I'm pleased to say that it was simply a typographical error.
J	Right.
Mr M	Mr Castleton sorry notice of Mr Castleton acting in person was received of the 20 November.
J	Yes.
Mr M	Now if your Lordship sees at first on page 7 of the Bundle behind divider 3.
J	Yes.
Mr M	In paragraph 2 Mr Castleton admits that by March 2004 there was an apparent shortfall in the account in the amount alleged.
J	Yes.
Mr M	The Defendant avers that the final audit following which he was suspended took place on the 23 March there was an issue because an audit report was dated a day or two later at which the above balance was produced by the Claimant's audit itself as a final account figure before handover.
J	So he's not admitting that unclear: 49:12 of the account is that it?
Mr M	He's not admitting that he's that he stated the account or the final figure of £50 er £25,758.
J	Yes.
Mr M	Although we say two things first of all its what we prove was the deficiency as at that date.
J	Can you not show me unclear: 49:39 to that effect signed by him?
Mr M	No it's not it's.

J	It's not.
Mr M	It's a trial it's a trial balance.
J	Ah. That figure first appeared then on the trial balance.
Mr M	That the figure of £25,000 first appeared as a trial balance.
J	I'll make an note.
Mr M	And its produced by the Post Office auditors.
J	Just give me the cross reference again.
Mr M	It's unclear: 50:13 tab 52.
J	Yes.
Mr M	Page 2771 and it's not signed.
J	The last one that was signed was 9 is tab 51.
Mr M	Tab 51.
J	Yes. £22,000 odd it adds up to.
Mr M	In indeed.
J	Yes. Yes. Thank you.
Mr M	And at the bottom of paragraph 2 in relation to this is the way it's put on the pleading is any apparent loss sustained after around 14:00 hours on the 23 March including the lottery sales of £176.00 in relation to National Lottery game sales are not attributable to the Defendant. In paragraph 3.
J	Yes.
Mr M	Mr Castleton admits that he produced weekly balance lists and personally produced signed off and submitted to the Claimant cash accounts save for the first week in which that alleged loss occurred was week 42 and was for £1,103.88 and your Lordship has seen week 42 and your Lordship may recall that it was shown as a 60p loss that that's a matter to which we'll have to return.
J	Yes.
Mr M	And he says that such alleged losses of the said weekly balances and cash account final appeared to show were illusory not real. He says that he has repeatedly sought assistance from Managers within the Claimant company during the period around the shortfall no assistance was forthcoming now the the cause unclear: 52:54 and your Lordship will hear evidence in due course about what

	they were and what was said.
J	Yes.
Mr M	It it's not admitted we don't accept no assistance was forthcoming.
J	Yes.
Mr M	He avers that any apparent shortfall was entirely a product of problems with Horizon computer accounting system used by the Claimant. The Defendant further avers that he will be able to demonstrate through a manual reconciliation of figures contained within the daily balance snapshot documents created by the Defendant during the course of his 10 years as sub Postmaster at Marine Drive Post Office which were removed from the Post Office on the Defendant's suspension apparent shortfalls are in fact nothing more than accounting errors arising from the operation of the Horizon system now this is a passage that we'll come back to because it's something about which we have asked for information on Mr Castleton from the outset indicated that he was going to have the assistance of experts in fields of accountancy and IT.
J	Yes.
Mr M	The deadlines for production of those reports have passed there was a direction for sequential exchange and it was indicated that at least Mr Castleton's accountancy expert was going to produce a report that deadline passed. Last week at the pre-trial review it was accepted that no accountancy evidence was going to be forthcoming and the learned Judge on that occasion directed that there should be no expert evidence none having been produced to date. So Mr Castleton has had the opportunity and indeed he's had experts looking at this but despite that opportunity no things or reconciliation has been produced for the assistance of the Court.
LC	My Lord sorry. Can I just add that um the reason why the accountancy evidence wasn't forthcoming was because I ran out of money to revisit a second week when the first week was found inconclusive through lack of unclear: 55:29 my Lord.
J	Okay thank you.
Mr M	Mr Lord I hate to take to accept that I don't wish to appear combative so early on in this opening but Mr Castleton can either waive his privilege in relation to undisclosed expert reports and we'll have a look at it or the Court is to be presented with a with the bare position which is he had permission and no expert report was produced.
J	Yes well in the first instance it can be dealt with privately between the two of you.
Mr M	Indeed.
J	Unclear: 56:17.

Mr M	Indeed yes. Then paragraph 7(a) its denied the cash account final for week 51 is not an account sorry the cash account final was not an account stated final which the Defendant is not entitled to go and what's said is it doesn't unclear: 56:39 acknowledgment or the account that it was done by the Defendant the Claimant has not alleged that the account was approved the Claimant does not allege the account was entered by its agreed in books nor recognised by us in some way is correct and there's a reply on that. Then there's unclear: 57:02 in 7 sorry there's an admission in 7(b) that the alleged er that it said the alleged deficiency was only apparent and not real.
J	Yes.
Mr M	Paragraph 10 is also admitted it except the existence of the alleged loss is denied. In relation to the lottery loss 7(d) no admissions are made to the facts in paragraph 11 being matters that occurred after the Defendant's suspension and the Claimant is put to proof but the Defendant's liability is denied. Having been suspended set out as in paragraph 2 above the Defendant had no way of transacting those matters and that's that's accepted once the that's accepted in this sense Mr Castleton accepts that he had access to the National Lottery till indeed that he continued to operate it but the way the National Lottery till works is that it's connected to the National Lottery Head Office so when you get your numbers out of the National Lottery till it sends the numbers up to Head Office and they know that there's a ticket that's been sold and they record on their system the electronic data from the ticket sales.
J	Yes.
Mr M	The Sub Postmaster then at the end of the day prints out a list of what's happened .
J	Yes.
Mr M	Takes it across to the Horizon system physically enters that data on to the Horizon system and puts the cash in the Post Office till.
LC	Unclear: 58:43.
J	I'll just make a note of that just a moment. List of the transactions.
Mr M	He made from the till.
J	Lottery transactions.
Mr M	From the National Lottery till.
J	Takes the money from the till is that right?
Mr M	He then looks at what the total is takes the money out of his own till takes it across to the Post Office section enters up the information on on Horizon and puts the money the net receipts in the till.

J	How are the prizes paid out do people just bring their tickets in some other time is that right?
Mr M	Any time if your Lordship isn't familiar with how the National Lottery operates erm let's do the sales first of all you go in and you ask either colour in some numbers or you say can I have a random some random six random numbers.
J	Yes.
Mr M	And then you pay over your money and you get a ticket and when you get that ticket the information goes up to Head Office National Lottery Head Office.
J	Yes.
Mr M	And they recall the sale when you have a when you collect a prize and it's a prize up to a certain threshold.
J	Yes.
Mr M	They're all barcoded there's a little bar code reader on the National Lottery terminal where you go in with your ticket and you hand it to the um vendor it can be a ticket from any provider in the country the vendor sticks the ticket on the barcode reader.
J	Hmm.
Mr M	And the barcode reader transmits the information back to Head Office checks whether it's a winning ticket and if it's a winning ticket the amount of the winning is displayed now assuming it's not a big win and I don't know what £250.
?	We have checked.
Mr M	And the Post Office can pay cheques out up to £10,000 if its more than £10,000 they have to go and claim it somewhere else.
?	£500 in cash.
Mr M	And it's £500 in cash I'm told um the that particular shop will pay out against that ticket.
J	Right.
Mr M	And that information then goes and is included it goes back to National Lottery HQ and is included on their system as a payment out and at the end of each week there's a recon there's a book reconciliation between the Post Office the main Post Office the Head Office and National Lottery as to whether there's a unclear: 01:01:29 one way or the other but it matters not to the Sub Postmaster because all he does is go back to Horizon and enter up the fact that he's had to pay out potentially a lot of money.

J	Yes.
Mr M	But that's still just part of the ordinary trading of the business.
J	So as far as the actual shop is concerned the money simply comes from the National Lottery till and goes into the Post Office till.
Mr M	Yes and if there was a if there was a
J	Unclear: 01:02:00.
Mr M	Well yes if there was a net say for instance in any week there had been sales of £450 but a cash payment of £500.
J	Yes.
Mr M	Presumably what Mr Castleton would have done would be walked into the Post Office entered up the figures on Horizon and then taken £50 out of the till walked it back and put it in the shop till.
J	Yes unclear: 01:02:25.
Mr M	Now is that satisfactory for the present purposes?
J	Shop till no just a minute.
?	The National Lottery till.
Mr M	Well if there's a separate till.
J	You're assuming you've paid out £500 which would have to be from the Post Office till.
Mr M	Well it's not. May I help your Lordship with this point.
J	Yes.
Mr M	If your Lordship imagines walking into into a shop ahead of your Lordship is the Post Office counter.
J	Yes.
Mr M	To your Lordship's right.
J	Yes.
Mr M	Is a is a till area.
J	Yes.

Mr M	For the shop area.
J	Yes yes.
Mr M	And is a separate trading point there's a cash till.
J	Yes.
Mr M	And a National Lottery till.
J	I see.
Mr M	The assistant will stand behind the National Lottery till entering the numbers or feed in the piece of paper or collect the piece paper out of the top when you're buying tickets.
J	Hmm.
Mr M	When somebody hands over a ticket they check it for a prize and they'll take money out of the till beside them.
J	Yes.
Mr M	And it's only at the end of the day when the summary is printed out and you can see oh I've got to take £150 because that's how much I've had by way of receipts over to the Post Office or gosh I've paid out a big prize and in fact I've made less sales than I've paid out in prizes I'll go into the Post Office take the money out of the till and give it back to the shop till because the shop effectively trades as a separate unit and then you Mr Castleton would account one way or the other depending what the net flow of funds was in relation to National Lottery sales.
J	I'll have to think about that at the moment I don't see why money goes back to the shop till but don't take any more time on it I'm sure I'll understand it by unclear: 01:04:19.
Mr M	Well very briefly sales of £200 cash prize paid out of £500.
J	Unclear: 01:04:26 paying out £500 you'd just get it from the National Lottery.
Mr M	Mr Lord from the Head Office yes but at the moment the assistant is standing behind the lottery till.
J	Yes.
Mr M	And her float is beside her.
J	Yes.
Mr M	And at the start of each day that float is at zero she collects in money from people buying tickets.

J	Yes.
Mr M	And puts it in the cash till beside her.
J	Yes.
Mr M	Somebody comes in and and with a prize winning ticket and they she then has oh £500 of cash she goes to the till and there's £500 in it she takes out £500 gives it.
J	The National Lottery till it's not the Post Office till.
Mr M	Not the yes the the shop till not a specific till for National Lottery it's just the general shop till all the cards and wrapping paper and.
J	And the Post Office collects the money from that aspect of the shop so I should say the National Lottery till unclear: 01:05:31 goes the other way.
Mr M	Indeed.
J	Inaudible: 01:05:33.
Mr M	Indeed.
J	Yes thank you.
Mr M	It is fiendishly complicated for those who don't do it. Now the unclear: 01:05:46 on this is that because the Post Office shuts at 5.30 every day if the shop stays open later it's trading period doesn't finish until after the Post Office's books have been completed.
J	Hmm.
Mr M	So from Monday the Post Office shuts at 5.30 Mr Castleton does the Post Office books but meanwhile in the shop people are coming in off the street and want to but a National Lottery ticket.
J	Hmm.
Mr M	So they continue to sell National Lottery tickets the shop itself shuts at 7 o' clock or 7.30.
?	The National Lottery.
Mr M	7 o' clock the National Lottery shuts and at that stage they push the button and they get a receipt er a receipt but Mr Castleton has done his books and records for that day all he needs to do is add the National Lottery figure to to those books but what he does is wait until the next morning he comes in he finds the National Lottery printout and enters it onto the system. Now on the day in question Mr Castleton was suspended at 2 o' clock.

J	Yes.
Mr M	At that stage he ceased to have any access at all to Horizon and he couldn't update the system one way or the other.
J	Yes.
Mr M	So although the National Lottery till wasn't closed it continued to trade Mr Castleton had no way of putting those figures into the Post Office system.
J	Right.
Mr M	So he could never account for that day's trading now his pleaded defence is not I gave the money to somebody else his pleaded defence is it's not admitted having been suspended he had no way of transacting those matters.
J	Yes.
Mr M	And the Claimant's temporary Sub Postmaster who assumed responsibility for the branch and the Claimant's audit start of the balance account prior to her doing so what's not suggested and indeed hadn't been suggested until yesterday sorry Monday was that Mr Castleton had given the money to somebody else. Now the remainder of the Defence.
J	What I'm not clear at at the moment is why your claiming that that £100.20.
Mr M	Because it was business transacted in Mr Castleton's shop area for which he has not accounted to the Post Office.
J	People paid money into the National Lottery is that right? In the order of £176.
Mr M	The the shop area.
J	Yes.
Mr M	Is completely separate from the sub Post Office area.
J	Yes.
Mr M	There's a shop till and money in the shop till is used sorry money is put into the shop till for sales of cards sales of wrapping paper sales of sellotape for sales of the National Lottery tickets. That goes into Mr Castleton's.
J	Unclear: 01:09:16 till the National and this is a separate National Lottery till.
Mr M	My Lord no.
J	I follow. So £176 will have gone into the shop till.
Mr M	Indeed. And then paid out.

J	To which Mr Castleton did have an access to.
Mr M	Indeed. Yes or his staff.
J	What's that got to do with the Post Office?
Mr M	Because the National Lottery sales.
J	Yes.
Mr M	Are something that go into the National Lottery then turns around to the Post Office and said you made £176 worth of sales.
J	Oh I see so the Post Office has to pay the £176.
Mr M	Indeed.
J	To the National Lottery.
Mr M	Netted off against the prizes paid on that day.
J	That's right. Now just remind me again why are you saying that Mr Castleton has to pay that your saying because he was in charge of the Post Office?
Mr M	He's in charge of the National Lottery till.
J	And remains so after his suspension?
Mr M	My Lord yes.
J	I see. Yes.
Mr M	It's an awful awfully disproportionate exercise I'm aware but.
J	Small sum of money yes. Yes oh well.
Mr M	There we are that's the end of the account.
J	Yes.
Mr M	Or the end of the period to which Mr Castleton as fiduciary is obliged to account.
J	Yes.
Mr M	Now on Mr Castleton's amended Counterclaim he repeats his defence and he says that the Claimant wrongfully terminated the Defendant's Contract.
J	Yes.
Mr M	And perhaps My Lord it might be convenient just to look briefly at the Reply.

J	Yes.
Mr M	Before we look at the Particulars.
J	Yes.
Mr M	We accept that we attended on the 23 March with the audit team. We say that the National Lottery till was located in the Defendant's shop we accept that he was suspended at 2 o' clock on the 23 March we did retain a Sub Postmaster who took over the Defendant's duty but did not acquire any liability for errors which occurred prior to the 24 March.
J	Yes.
Mr M	We say that Fujitsu Services who are the software writers looked at the Claimant's computer system and confirmed the losses recorded by the Defendant were caused by a difference between the physical transactions actually occurred and were recorded on the system as taking place and the cash in hand that was declared by the Defendant relating to those transactions.
J	Hmm.
Mr M	We say that the accounts are final and binding acknowledgements by the Defendant absent inadvertent mistake on his part proven by him the amounts that the amounts unclear: 01:12:08 and owing the amounts shown cash counts final the unclear: 01:12:13 entries made by the Defendant for each week on the Claimant's database which entries were adopted by the Claimant in its computer and other financial records including its audited accounts as being correct and final and similarly that's shown the cash account final for week 52 though that I think in fact is my mistake it's the amounts shown in the trial balance for week 52 or produced by the Claimant's audit team for from the daily entries in the Claimant's computer books and records made by the Defendant or by agents or employees for whose actions he's responsible for who unclear: 01:12:49 which entries the Defendant has accepted responsibility for five of those individual entries are final and binding acknowledgements are independent absent inadvertent mistake on his part. If which is denied the Defendant is in any way or entitled to challenge the accounts previously submitted or entries previously made by him then the Claimant is entitled to and here by claims by way of alternative relief to that sought in the Particulars of Claim a formal account entirely at the Defendant's expense of what sums are due and owing from him.
J	Hmm.
Mr M	Now the point of that is that if necessary if your Lordship is persuaded that there is some deficiency in the accounts it's not for me to say what sums are owing from Mr Castleton.
J	Right.
Mr M	It's Mr Castleton contractually and subject to his fiduciary duties to produce the

	account and this is a dichotomy that we'll come back to in due course in in a further part of the opening. Mr Castleton actually to produce the account to date he's now said well I just want to tear that account up and start all over again if that's the case this trial doesn't go away all that happens is your Lordship has to adjourn it.
J	Hmm.
Mr M	Mr Castleton will then have to produce an account to a Master.
J	Yes.
Mr M	He'd bear the burden of proof on each and every item.
J	Yes.
Mr M	And we would say well unless you've got something to support the difference from the existing accounts he hasn't discharged that burden so all that would happen is we'd have a formal account he'd pay for all of that and we'd be back before your Lordship.
J	Yes.
Mr M	For judgment on the on that account but that's an anomaly that we'll come back to. By way of defence to the Counterclaim not surprisingly we say the Contract itself by clause 8 of section 1 he agreed to the terms of his appointment would not entitle him to any compensation for loss of office by section 10 the Defendant agreed the Contract could be determined by the Claimant at any time if the Defendant breached the conditions or failed to perform his obligations is otherwise terminable on three months' notice we terminated his employment as Sub Postmaster and we were entitled to terminate it because the Defendant was in breach of the terms of his Contract the Claimant had failed to make good losses for which he was responsible and the sub Post Office was not being well managed to the satisfaction of the Claimant in that the losses pleaded in the Particulars of Claim had occurred neither made good nor explained.
J	Yes.
Mr M	Paragraph 11 without prejudice to the position if contrary to its case the Claimant has not suffered the losses shown in the accounts produced and signed off by the Claimant and claimed in the Particulars of Claim then it would be the Claimant's case that it was then entitled to terminate the Defendant's Contract by reason of a breach of clause 3 of section 22 of the Contract in that the failure to produce by an independent were on his case which is denied inaccurate.
J	Yes.
Mr M	So he's obliged to produce accurate figures.
J	Yes.

Mr M	If he doesn't do that then we're entitled to terminate.
J	Yes.
Mr M	So we say there's nothing in the Counterclaim.
J	Right.
Mr M	Then we take some points on on loss if he were to get home on it.
J	Yes.
Mr M	My Lord there is then a request for further information.
J	Yes.
Mr M	Your Lordship finds that over the page starting at sorry at tab 6 starting at page 18.
J	Yes.
Mr M	We asked for information about what the alleged problems were.
J	Yes.
Mr M	And the Reply starts at page 19 and I'm happy to go into the details but I don't think they assist your Lordship at this stage it may be that your Lordship would wish to come back to at a later date but reading the headings he says Mr Castleton says the problem that the Defendant encountered with the Horizon system were that it was not communicating properly, that the screen was freezing, that there was a blank screen, the card swipers were not reading, that he thought it rolled over cash figures and he thought that it lost transactions. Now over the page at page 21 the answer at 1.2 he says how and why each of the problems experienced by the Defendant of the Horizon system meant that these the alleged losses in question is theoretical rather than real is an issue that will require disclosure from the Claimant for the period in question. In particular as to the correction operation er correct operation of the Horizon system software and the correct operation of the hardware maintained by Fujitsu Services together with expert evidence both in the field of information technology and accountancy. Now we don't have any of that evidence and your Lord will see at the bottom the Defendant reserves the right to amend this Reply following disclosure of that expert evidence.
J	Yes.
Mr M	So we simply don't still don't know how it's said that any of these problems could have caused any losses.
J	Yes.

Mr M	Going on to 1.3 there's a denial as to the amount of cash ordered and so on and so forth. Then there's a question about.
J	Unclear: 01:19:08 remember that allegation I must admit that unclear: 01:19:14 contained in the figures £205,000. Is that just dividing up figures unclear: 01:19:24?
Mr M	My Lord it it's to do with the fact that on Mr Castleton's appeal to John Jones there was some discussion between Mr Castleton and Mr Jones as to whether Mr Jones' position was that Mr Castleton had ordered more cash into the business than he could account for going out and Mr Jones adopted the position it doesn't form the primary thrust in my case but he adopted the position on the dismissal that that was supportive of the fact that these were real losses.
J	I see.
Mr M	Then there's in request 2 there's the Claimant seeks information about the phrase upon disclosure of either of the Claimant's daily balance snapshot documents there are questions about what this is all going to go to but again for these purposes the material part is paragraph 2.4 at page 24 your Lordship may see how.
J	Yes I see that.
Mr M	Page 24 paragraph 2.4.
J	Yes I know that.
Mr M	Page 24 that was a question my Lord.
J	I'm sorry 24. Yes.
Mr M	Your Lordship's the reason for taking your Lordship to this is that Mr Castleton has said repeatedly and you'll see this in the answer 2.4 on page 24 how and why a balance snapshot is capable of demonstrating the alleged shortfalls were only accounting errors rather than genuine shortfalls will be a matter for expert evidence in the field of accountancy.
J	Yes.
Mr M	And in paragraph 2.5 at the bottom of that page the Defendant does not rely upon any other receipts apart from other snapshots but considers that it will be necessary to reconstruct all transactions carried out at the Marine Drive branch for the period in question in order to do so in order to do so docu there's a unclear: 01:22:03 of documents upon which the Defendant will seek to rely and will include the following reports as may be necessary and then there's a substantial list there.
J	Hmm.

Mr M	Then over the page there's a request for information about how the Defendant is going to make his case that the Defendant the Claimant wrongfully terminated the Defendant's Contract there's um there are particulars of alleged procedural irregularities.
J	Hmm
Mr M	Which there they are it wouldn't be my submission that none of those are relevant on the wrongful grounds at er.
J	Yes.
Mr M	Paragraph 20 page 27 at the bottom of page 27 his defence is basically that the losses weren't there.
J	Right I see.
Mr M	And then the remainder of that document doesn't really assist us. Now given that Mr Castleton admits that the books and records of the Marine Drive branch show a shortfall of £25,000 odd pounds and that this shortfall was verified on the Post Office's audit.
J	Yes.
Mr M	The main issues on the claim are therefore one as a matter of law on his pleaded case is Mr Castleton entitled to show.
J	Is this in your Skeleton because I'm writing it down?
Mr M	No it for your Lordship's assistance I have this typed and I will provide you with a copy.
J	That would help yes thank you.
Mr M	Again I'm afraid I don't know your Lordship's practice to whatever you prefer it or I will provide this in writing and obviously that will be of assistance but your Lordship may also like to take notes if your Lordship feels there are core points coming out.
J	Yeah I think it's helpful if you have a written effectively a skeleton or something.
Mr M	It's effectively a written overview.
J	Yes I see.
Mr M	The reason I haven't provided it to your Lordship is that one never quite knows whether a Judge is going to take them of in a completely different direction to change the case.
J	What I will do at the moment I will just write out what you've been saying and the

	main issues one.
Mr M	One as a matter of law on his pleaded case is Mr Castleton entitled to show that the shortfall recorded in entries in his own books and records and on the accounts prepared by him for the Post Office.
J	That's so fast you had better give just me that.
Mr M	I do beg your pardon.
J	Yes that's alright.
Mr M	As a matter of law.
J	Yes.
Mr M	On his pleaded case.
J	Yes is Mr Castleton entitled to
Mr M	Show that the shortfall recorded in entries in his own books and records.
J	Yes.
Mr M	My Lord I apologise I don't have a spare copy for Mr Castleton I can of course produce one for him.
J	Yes.
Mr M	Over the short adjournment.
J	Thank you so much.
?	Your welcome Sir.
J	Thank you
Mr M	And to page four.
J	Right yes thank you.
Mr M	And its item one.
J	Yes.
Mr M	Is he entitled to show those um those are fictitious and that in fact no such losses arose?
J	Yes.

Mr M	As a matter of fact issue two is is he able to show that accounts prepared by the Post Office and by the Post Office final audit contain false entries.
J	Yes.
Mr M	Three is now somewhat moot is there evidence that Mr Castleton was responsible for money received for National Lottery sales on the 23 March. The main issues on the Counterclaim are can Mr Castleton demonstrate that the Post Office was not entitled to terminate his Contract either by reason of the alleged deficiency or by reason of the submission of inaccurate accounts. If so has he suffered any loss or damage. Has Mr Castleton failed to mitigate?
J	Hmm.
Mr M	In order to answer these issues it will be necessary to have the contractual framework of Mr Castleton's appointment.
J	Yes.
Mr M	The accounting steps that Mr Castleton was required to and did undertake to produce daily and weekly accounts.
J	Yes.
Mr M	And the status of accounts prepared by agents for their principals.
J	Yes.
Mr M	Now if I start by opening briefly on the question status of accounts prepared by agents for their principals.
J	Yes.
Mr M	Now I hope your Lordship has a copy of an Authorities Bundle which will be a black Bundle.
J	Well
Mr M	If your Lordship hasn't I've got a spare copy.
J	I did actually bring the Authorities I've got the Authorities themselves it is helpful to have an Authorities Bundle and I can mark it up.
Mr M	Indeed. I'd like to thank the Court staff if they've managed to find unclear: 01:27:43.
J	Yes somebody has here they are no no no I found myself yes.
Mr M	Your Lordship may be unclear: 01:28:02 of the fact that the law reports back in the 1800s tends to be of somewhat variable quality I hope by choosing the report

	from.
J	I think unclear: 01:28:15.
Mr M	Indeed and they are in fact reported the size of cases in English reports.
J	Yes.
Mr M	And I've taken it from the English reports rather than unclear: 01:28:26 original.
J	Yes.
Mr M	I have I can tell your Lordship gone back and read the other law reports.
J	Yes.
Mr M	They confirm unclear: 01:28:37 Cresswell's reports.
J	Yes.
Mr M	They don't produce anything substantially better. My Lord.
?	Have you got a copy?
J	I have yeah.
Mr M	Simply by way of historical interest the case concerns the Estate of the late General Sir Thomas Picton who is of course unclear: 01:29:06 Waterloo.
J	Waterloo.
Mr M	Having his leg shot off. It's a it's an action by the Trustees in Bankruptcy of agents who have produced accounts now your Lordship finds at page 1227 of the English reports page 715 of the original a holding held that the agent was bound by the account which he had delivered page 1227 at the top.
J	Yes.
Mr M	The holding held that the agent was bound by the account which he had delivered unless he could show that he had given credit for those payments by mistake.
J	Yes.
Mr M	The claim you'll find it under references to the other citations unclear: 01:30:10 the money lent etc and on account stated to the bankruptcy money having received and accounts stated with the assignee since the bankruptcy pre unclear: 01:30:21 that was the old form of pleading prior to the unclear: 01:30:28 change to the procedure effected.
J	Yes.

Mr M	And that's explaining the subsequent House of Lords Authority that I will be taking your Lordship to.
J	Yes.
Mr M	Your Lordship sees approximately the middle of the page the paragraph beginning there the bankrupt Howard.
J	Yes.
Mr M	Many years before until the month of January 1814 and two other bankrupts unclear: 01:30:50 to the death of the late General Sir Thomas Picton which happened on the 18 June 1815 who were employed by the General to purchase annuities for him and they were in the habit of receiving the annuities for which they charged him a commission of 2.5% the General acted in those matters now if your Lordship would just scan down the page.
J	Yes.
Mr M	It's about 10 lines up from the bottom if your Lordship may pick up a line that reads between Howard and Gibbs or on the death of General Picton.
J	Yes.
Mr M	And then the passage that I'll take your Lordship to but the account was carried on regularly from the commencement in the bankrupt's ledger with balances from time to time struck as the bankrupts thought proper. The Defendant had a passbook which from time to time as he came to town was left with the bankrupts to be filled up with the several entries made in the ledger since the period at which it had been last left with them. The passbook was not however a facsimile of the ledger in as much as it did not state the balances made from time to time in the ledger but in it the balances were stuck at the times of making up the passbook no accounts were settled between them except by unclear: 01:32:11 the passbook and returning it with the balances struck therein as above stated.
J	Yes.
Mr M	Now what happened in this case is that the agents were being paid on the balances that they received and perhaps not being the most sensible of agents although they were meant to be receiving annuities they didn't always get them in but they entered them in the passbook any way.
J	Oh I see.
Mr M	And then they paid out against the passbook and low and behold when they went bankrupt the Trustee comes along and says well actually you shouldn't have been paid out these sums because they haven't necessarily been received.
J	Hmm.

Mr M	So this is quite a rare case of an agent or a representative of an agent saying well actually my own accounts are wrong.
J	Hmm.
Mr M	And it's the only case that I have been able to identify indeed my diligent pupil has been able to identify where this way round the problem has arisen this way around.
J	Right.
Mr M	This case is still cited as good authority in unclear: 01:33:40 Snell, Chitty and the other textbooks.
J	Yes yes.
Mr M	Now if I may I'll take your Lordship on to the decisions of the of the Court this is the King's Bench Division it was the three Judge Court.
J	Yes.
Mr M	The Chief Justice Chief Justice Abbott was the presiding Judge.
J	Yes.
Mr M	His Judgment is not as enlightening as it might be but your Lordship finds it at page 1230.
J	Yes.
Mr M	And we're concerned with rose annuity and that is the passage about halfway up halfway down the page.
J	Yes.
Mr M	With respect to rose annuity if this was the case for a man given credit by mistake the mistake might no doubt be corrected and the money that had been paid in consequence of that mistake might be recovered back but that is not the present case Howard and Gibbs with their eyes open and knowing as we must suppose how much they had actually received out of the leasehold Estate and how much was applicable to the payment of that annuity think fit from time to time for long periods to give credit to the General in his lifetime and after his death to the Defendant the whole of this money as the money received on their account. It is evidently important to Howard and Gibbs with reference to the solicitor which they were unclear: 01:35:06 business to make their customers believe that the annuities were duly paid and they having thought fit to give credit for these sums to the grantees of these annuities and induced them to treat them as money for which they had a right to draw we think it would be most unjust to allow Howard and Gibbs if they had not become bankrupt or their assignees to stand in the same situation to say at last that the grantees must refund all this money we

	therefore think the Plaintiffs cannot recover back the sums which the bankrupts have paid to the Defendant and his brother on account of that annuity.
J	Yes.
Mr M	Now Mr Justice Bailey then gave a shorter but a rather more succinct Judgment at page 1232 about a third of the way down the page as to rose annuity I agree entirely with the opinion expressed by my Lord Chief Justice it is quite clear that if an agent employed to receive money and bound by his duty to his principal from time to time to communicate to him whether the money is received or not unclear: 01:36:25 account from time to time which contains a statement that the money is received he is bound by that account unless he can show that the statement was made unintentionally and by mistake. But indeed if he cannot show that he is not at liberty afterwards to say that the money had not been received and never will be received and to claim reimbursement in respect of those sums for which he had previously given credit I think that where an agent has deliberately and intentionally communicated to his principal that the money due to him has been received he makes that communication at his peril and is not at liberty afterwards to recover the money back again.
J	Right.
Mr M	So there we have a very forthright judgment from Mr Justice Bailey. There's a slight fly in the ointment with this authority it's a three Judge call so on the basis of the two Judgments it's my submission it's a good authority.
J	Yes.
Mr M	Is that Mr Justice Littledale at page 1233 and it certainly amused me said that.
J	And it's also Mr Justice Holright unclear: 01:37:33 Court is it?
Mr M	My Lord yes.
J	Except that Mr Justice Littledale wasn't there.
Mr M	Unclear: 01:37:43 express an opinion.
J	They'd be wise if it wasn't unclear: 01:37:47.
Mr M	Indeed.
J	He's enormous Justice Littledale but what about Mr Justice Holright?
Mr M	Mr Justice Holright with respect to rose annuity the money was advanced for handling gifts to discharge it but as that money is admitted and have been received by a member of an account of unclear: 01:38:01 annuity I think we are bound to consider that account as closed with respect to the Defendant.
J	Yes.

Mr M	Assuming sorry in consequence of that account the Defendant drew for sums which he thought he was entitled to receive assuming they really have not received those sums yet they held out that they had received them and they voluntarily took it upon themselves to credit the payment of those sums to another person the Defendant drew for them not for sums advanced to them by way of loan unclear: 01:38:32 represented by Howard and Gibbs to be received by them to use or unclear: 01:38:36 which they had agreed to make themselves accountable it appears to me that payment of those sums by Howard and Gibbs under such circumstances do not constitute a loan and unclear: 01:38:48 receive the Defendant is now bound to refund.
J	Yes.
Mr M	I think for reasons already given there was no well-founded claim for interest but the interest after all was quite expensive.
J	Yeah.
Mr M	So he doesn't really take the position much further now the next authority to which I wish to take your Lordship is the decision of the House of Lords in the Flow Tank Steamer Ship Company.
J	Yes.
Mr M	And Alexandria Engineering Works.
J	Yes.
Mr M	Five Judge House of Lords decision two Judges unclear: 01:39:28.
J	Yes.
Mr M	Principally on the facts this is a case where a ship a ship had been damaged and was being repaired in Alexandria.
J	Yes I have read the report. Not the full report but I've got the facts.
Mr M	Well I'm grateful if your Lordship there are a number of Judgments that deal with accounts with what an account means what an account stated it means but they're looking at it.
J	In this case they were saying there really was some contractual element because the account was relied upon to release the ship.
Mr M	Indeed but it was an account rendered by the rendered by the contractor.
J	Yeah.
Mr M	To the principal.

MJ	Yes.
Mr M	Or to the principal's agent and the question was then whether the principal could go behind the account because of course where there is an account.
J	Hmm.
Mr M	And account there there are certain four mechanisms of challenging an account for instance an account on an account an action the process of having an account taken in the Courts of chancery. This is not a case where the agent is saying my accounts are false. This is an account where the principal is saying the the contracting parties accounts are false.
J	Yes.
Mr M	And so what they're looking at there is not whether there's whether the agent is seen to go behind the situation but whether there's something that elevates the principal's acceptance of the accounts from the principal admitting that the account is good to a contractual relationship.
J	Yes.
Mr M	Therefore the the way this the speeches of their Lordships are strictly unclear: 01:41:20 on the point before your Lordship today however what I given this this causative authority what I seek to do is take your Lordship very briefly to the speech of Lord Shaw.
J	Yes.
Mr M	And that's at page 144.
J	Yes.
Mr M	In the right hand column.
J	Yes.
Mr M	And he sets out the narrative by reference to Lord Filly's speech my Lords there is the same and powerful argument to the bar of this house unclear: 01:41:56 the whole subject of account stated and one cannot I think peruse carefully the written authorities bearing on that topic that being the law upon it has not reached a decision which can be described as either well understood or satisfactorily clear and I feel that I cannot avoid the statement of how the subject and principals at its various stages appear to me to stand so as to make as clear as I can the foundation of the opinion which I have formed upon the present case a case which I hold to be of much importance in the commercial world. Er and he then goes on to set out the facts or the salient facts as he considers them to be.
J	Yeah.

Mr M	And at page 145 his Lordship considers the expression stated account.
J	Yes.
Mr M	And he sets out a number of ways in which it can be understood.
J	Yes.
Mr M	The first is simply an admission in these circumstances the admission of indebtedness of course arises but it's upon that indebtedness as per the stated account the action lies.
J	Yes.
Mr M	And it may be the investors may be disputed with regard to the whole account or so on. Further and then down the page just above the bottom hole punch.
J	Yes.
Mr M	A further stage however may be reached by that of cross accounts with the balance struck and superficially that's quite an attractive position for the Post Office to take because there accounts there are figures going in both ways.
J	Hmm.
Mr M	At the top of page 145 the second paragraph he sets out the third stage the third stage of the relationship debtor and creditor on accounts may however be reached that is the broad stage of accounts settled it is nevertheless also the law that an opening is still left for challenging a settled account but that challenge must in my opinion be on grounds not less radical than those which would justify the rescission or reduction of regular agreement nor would any challenge of the latter sort one can understand such a unclear: 01:44:14 error a breach of certain conditions arising out of fiduciary relations existing between parties but when such challenges are presented which I agree may be challenges of items in my opinion the parties must at least as an informed case be bound to clear and articulate precision of stay ins and there must be clear proof with regards to particular items objected to. A very special reason for this under this heading is this that it will then be ascertained whether or not the challenge is of that radical character demanded in case of rescission or whether for instance the demands are merely for a readjustment of the charges suggested possibly by change of markets and certainly by a change of mind now that obviously isn't of great assistance other than picking up the unclear: 01:45:00 and particularities to what's going to be said however over the page at page 146 in the context of his unclear: 01:45:08.
J	Yes.
Mr M	It's about eight lines down the passage beginning but less there should be doubt as to my view on this matter I will have to I will venture to add to the category of cases which I have already set out that of accounts stated, cross accounts stated

	and accounts settled the fourth instance i.e. an account fixed value consideration given whether in services rendered and rights surrendered or for any other unclear: 01:45:38 of value. In fact unless such category be allowed for it would be impossible in my opinion to have a smooth and proper working of commercial transactions and on occasion particularly so in the shipping world. In all such cases the conduct of business may depend largely upon letting commercial men know exactly how they stand so as to enable the management of affairs to be continued without that flux in finance which would be produced by the possibility of ripping up accounts and so it may be after the lapse of years altering debtor and creditor relations.
J	Hmm.
Mr M	Now there Lord Shaw and he's the only one of the five Lords to address the issue seems expressly to recognise the Shaw and Picton situation.
J	Yes.
Mr M	Now again I my pupil's diligent research has gone back to the papers filed with the House of Lords the folio submitted to the House of Lords by way of case stated the House of Lords was taken to Bulimer v Leak for the relevant years of 1860, 1875 and so on.
J	Yes.
Mr M	However they weren't taken to any passage containing Shaw and Picton and Shaw and Picton wasn't referred to in submissions to their Lordships.
J	Okay.
Mr M	So this was either Lord Shaw drawing on his own personal experience or or simply obviously I'm trying to open it to your Lordship fairly in light of my learned friend's position.
J	Yes.
Mr M	But that's the passage that I would rely on.
J	Yes.
Mr M	Although it's a matter for your Lordship.
J	Yes.
Mr M	Now unclear: 01:47:12 was referred to by the privy Council the decision unclear: 01:47:17 which is behind tab 3.
J	Yes.
Mr M	I I simply take your Lordship to that for completeness there Lord Atkins only cited

	the speech of Lord Cave which was a descenting speech.
J	Yes.
Mr M	But it doesn't take the matter any further by I put it in simply for the sake of completeness.
J	Yes.
Mr M	Now if in my submission.
J	Yes.
Mr M	Lord Shaw's speech makes perfect commercial sense if agents who are paid to prepare and submit accounts to their principal can simply tear those accounts up at a later date.
J	Yes.
Mr M	Commercial certainty would be destroyed.
J	Yes.
Mr M	And no one could risk relying on what their agents told them was the true financial position. Further the suggestion that accounts rendered by accounting parties are not final also runs contrary to the rules of pleading and to allow an account rendered by an accounting party to be set up as a defence to a claim to an account by a principal. Accounts rendered by agents to their principals are clearly final as suggested by Shaw by the decision in Shaw and Picton and perhaps in relation to pleading defences to claims to an account but on this basis as the Court can see and as I should make clear from the outset to both the Court and to Mr Castleton the case against Mr Castleton at its simplest is that he has submitted accounts that show a loss for which he is responsible and accordingly he must account for those monies further alternatively the final audit is underlying accuracy is admitted which is a copulation a calculation of entries made by Mr Castleton on the Post Office's database that are confirmed on the audit showing a deficiency for which Mr Castleton's liable.
J	Yes.
Mr M	The Post Office does not have to make a case that Mr Castleton or indeed anyone else in particular necessarily took the monies instead it's for Mr Castleton to show that when he signed off the accounts he only did so because he had made a genuine and unwitting mistake as to what was owed and when he made the entries in the books and records those too were mistakes. It's Mr Castleton who bears the burden of proof in relation to challenging his own entries and accounts and he can only mount that challenge on the basis of his pleaded case and by reference to specific examples of inadvertent mistakes on his own part if any. Whilst the Post Office's case is that he does not identify any particular errors in his pleadings and in any event cannot do so as a matter of fact if Mr Castleton

	wishes to persist in his misconceived defences to the claim then if the Court was to permit that course then it's for Mr Castleton to open his case and call his evidence first.
J	Yes.
Mr M	Now given that the timetable for this trial provides for witness evidence to start tomorrow.
J	Yes.
Mr M	Perhaps this might be a convenient time for the Court either to hear submissions and rule on the following points.
J	Yes.
Mr M	Or at least to have them in mind whilst I complete this opening so that the Court can test Mr Castleton's proposed case against the documentation.
J	Yes.
Mr M	Now those issues are whether Mr Castleton bears the burden of proof on the majority of the issues and in relation to the money unclear: 01:51:19.
J	Yes.
Mr M	What case Mr Castleton intends to make on the basis of his existing pleadings and whether as a matter of law that case can succeed or if not whether he is to be permitted to adopt any other if so what case and how is that case to be formalised. If Mr Castleton is to call witnesses to what issues is their evidence relevant and is Mr Castleton to be permitted to call witnesses pursuant to a purported Witness List served by him.
J	Has that not been all decided in unclear: 01:52:00.
Mr M	My Lord no what happened was that last week at the Pre-Trial Review the learned Judge directed that if Mr Castleton wished to rely on evidence live evidence he had either to serve Witness Statements or if insofar as he was unable to obtain Witness Statements he was to serve Witness Summaries. Mr Castleton served Witness Statements in respect of three witnesses himself and two others and I have no objection to those.
J	Yes.
Mr M	Going in he also served three Witness Summons erm supported by an email or sorry one Witness Summons had attached to it an email which I would take to be what he intends the witness to say. One has attached to it a photocopy of a letter in a newspaper and the third Witness Summary so far as I'm aware is blank.
J	You have referred to Witness Summons you meant Witness Summaries?

Mr M	No Witness Summonses he's actually summonsed.
J	He's actually summonsed the witness?
Mr M	Well he's issues Witness Summonses I don't know whether they're effective because some of them were served outside the jurisdiction and they have they don't have summaries of the evidence that is to be given they simply have an email a photocopy of a letter in a newspaper.
J	Unclear: 01:53:41.
Mr M	And they it's unclear to me and in due course I may have to take your Lordship to that what relevance they have to this case and indeed whether what we are about to embark upon will be a massive further exercise of disclosure. But perhaps I might come on to that when we get a bit further through outlining the issues but there is a live issue there as to whether Mr Castleton should be permitted to call that evidence.
J	Yes.
Mr M	Because what I think Mr Castleton intends to do is to say that if any other Postmaster has ever experienced a problem with Horizon then that is relevant to this trial. Mr Castleton identified these three witnesses last Wednesday evening at 4 o' clock we have spent some time trying to work out who they are and whether they are within the Post Office organisation and it may be that in order to unclear: 01:54:48 their evidence we will have to produce the same disclosure for each of them as we have unclear: 01:55:05 for Mr Castleton. But I hesitate to interrupt my opening at this stage to to address what may be a side issue there is a House of Lord's decision on whether your Lordship might consider excluding that sort of evidence.
J	At the moment I'm quite in the dark as to what the evidence unclear: 01:55:31.
Mr M	My Lord yes perhaps the convenient course in relation to that is for your Lordship to finish hearing my opening.
J	Yes.
Mr M	And I can take your Lordship through it.
J	Yes.
Mr M	Point four in what order are witnesses to be called. Point five is if there is going to be a trial timetable going forward in particular is there to be a time limit on the examination and cross-examination of witnesses. Point six is assistance to the Court and Mr Castleton for me to complete the opening of this case in any event in order to save Court time. I I think Mr Castleton in fact thinks it will be of assistance unclear: 01:56:10 your Lordship.
J	I think it will be of assistance too.

Mr M	My Lord I'm grateful. Might we park those issues for a moment.
J	Yes.
Mr M	I see this opening as going on rather longer than I expected.
J	Well how many pages 25 there's another pages 9 to 25.
Mr M	My Lord yes.
J	I could of course rise and read it to myself.
Mr M	Your Lordship your Lordship could although your Lordship is now going to turn for the contractual provisions.
J	I think the safest course is you open it yourself.
Mr M	Your Lord.
J	Inaudible: 01:56:57. If it takes a bit longer then that's too bad.
Mr M	Given that there are some issues that are going to have to be debated and resolved might we at least adopt a timetable unclear: 01:57:11 the Court for today and tomorrow?
J	Yes if you want to do that certainly.
Mr M	Might we complete the opening.
J	Yes.
Mr M	Translate with your Lordship the issues about order of witnesses admissibility of further evidence, any directions on disclosure that need to be given.
J	Yes.
Mr M	So on and so forth in the course of today.
J	Yes.
Mr M	And possibly if necessary if your Lordship wishes to reserve overnight on any issues for tomorrow morning if your Lordship then wishes to take tomorrow for reading and the first witnesses to be called on Friday?
J	Tomorrow for reading what am I going to read tomorrow?
Mr M	Well my Lord Witness Statements.
J	Are there are a tremendous number of them?

Mr M	My Lord there aren't a tremendous number of them its Bundles 3 and 4.
J	Three is a rather full one isn't it?
Mr M	Three is quite full yes.
J	Yes I see.
Mr M	I mean your Lordship I'm entirely in your Lordship's hands but I don't know whether your Lordship would be prepared to give a preliminary ruling at this stage on order of witnesses.
J	I hadn't appreciated that there was so much witness evidence I read I seem to have read a Witness Statement of Michael Johnson I think that must have been in your reading list probably.
Mr M	My Lord that was the first.
J	No I have read that one I see.
Mr M	And Helen Rose was the auditor.
J	Yeah I read it but so a whole lot of things here which I unclear: 01:58:43.
Mr M	What I didn't want to do was trouble your Lordship with reading a whole load of complicated factual information on how the system operated.
J	Yes.
Mr M	Before your Lordship had the benefit of several weeks of learning on my part.
J	Yes.
Mr M	I just needed to try and simplify and produce a piece of comprehensive explanation.
J	Yes. Well I think you better get on obviously I'm not going to hear any of the witnesses tomorrow er today and you will want to know sometime during the course of the afternoon I suppose 4 o' clock would be soon enough would it to determine.
LC	[inaudible: 01:59:27].
Mr M	Er with Mr Castleton unfortunately.
J	Yes.
Mr M	Some of his witnesses are travelling from very far away.
J	Well I better know who these witnesses are hadn't I and so on.

Mr M	Well it's Mr Castleton's witness.
J	Unclear: 01:59:46 Bundle 4.
Mr M	They're in Bundle 4 they're coming two of them are coming from Scarborough. The problem as I anticipate it and without wishing to make Mr Castleton's case for him he has these three outstanding Witness Summonses.
J	Yes.
Mr M	One witness is to come from Chelmsford, one witness is to come from Falkirk and one is to come from County Durham.
J	So none of these are in Bundle 4 is that right?
Mr M	No those those are Witness Summonses if your Lordship would be kind enough to look at Bundle 8.
J	8 Bundle 8 please. Thank you.
Mr M	And number 8 at the back behind divided 97 at page 257.
J	25
Mr M	257 right at the very back.
J	Do you mean 2557?
Mr M	2557.
J	Yes.
Mr M	Your Lordship finds AH it's the first document.
J	Yes.
Mr M	Your Lordship should ignore that AI is a Witness Summonses listed erm issued in respect of Mr BK Bajaj.
J	Yes.
Mr M	And that's it may not have been issued but that was sent to us and then on page 2557AK so on two pages.
J	Yes.
Mr M	Your Lordship has what I take to be the Witness Summary and it's a letter to Simon General and it says Sir September. Unclear: 02:02:13 2004 and he had problems with the functioning of Horizon it seems that certain unclear: 02:02:18 were either not recorded or go missing on three occasions he had to pay over

	£4,000, £3,500 and £3,000 respectively.
J	Hmm.
Mr M	And that is said to be the gist of the evidence that he's going to give.
J	Yes.
Mr M	Now.
J	So all you all that Mr Castleton wants from me so far as you can is some indication of when he's going to have to require these witnesses to attend.
Mr M	Well yes. If he if he bears the burden of proof.
J	Yes.
Mr M	As to which you've not your Lordship has not yet heard Mr Castleton.
J	No quite. Well I better hear Mr Castleton on that now then.
Mr M	My Lord I'm grateful.
J	What do you want to say about who bears the burden of proof on this case Mr Castleton?
LC	My Lord.
J	Yes.
LC	In between the period of week 42 and 51.
J	I'm sorry?
LC	During the period of week 42 to 51 in the accounts.
J	Yes.
LC	All losses were subject to telephone calls to the Post Office to explain that I was having difficulties and I needed help.
J	Yes.
LC	Throughout that period the Post Office in my opinion failed in their duty of care to me to come out and allow me the benefit of their knowledge in order to aid me in finding the true reason or the reason as to why the accounts were deficit.
J	Yes.
LC	The er the accounts themselves and the phone calls themselves in the authorities

	that my learned friend has given for his case of claim in each one of these authorities the the parties are actually revisiting accounts post their the end of the accounts whereas all of my claims were made prior to the signatory of the account the following morning and on each phone call I was assured that the Post Office would act I never looked to revisit the accounts in that way I'd always made sure that throughout the period over the evening of numerous phone calls to the Post Office that the the actual facts of the losses were given and in that in the light of that whilst I'm sure you know I'm sure that these authorities are very appealing they're all re-visitations to accounts that have passed whereas in my particular case this was a live account that had been questioned at that particular point under the assurances of the Post Office then I've I've signed the accounts the following morning.
J	That seems to be a new case it isn't in the pleadings. I've read the evidence about the assurances of the Post Office but there's nothing in the pleadings about it is there?
LC	I because I'd lost my solicitor and my barrister my Lord I didn't write the pleadings I'm afraid.
J	No. Yes but it is the case I mean the real issue is whether these accounts are correct is that I see it.
LC	Yes my Lord.
J	I suppose you're saying there may be another issue really is this a stated account at all.
LC	Yes my Lord.
J	But prima facie I would say that it is it doesn't stop you adducing evidence about assurances and so on but it does seem to me that the burden is on you.
LC	My Lord.
J	How important it is well it may be very important but it seems clear to me that the burden is on you.
LC	My Lord.
J	Therefore your witnesses will go first.
LC	Yes my Lord.
J	And so the sensible course I think is for particularly given the distance and so on and given the size of this Bundle for me to read.
LC	Yes my Lord.
J	Is to say that your witnesses should come what's today Wednesday isn't it? Your

	witnesses should come on Friday.
LC	Yes my Lord.
J	And and you as it were bat first after Mr Morgan has opened the case.
LC	Thank you my Lord.
J	Thank you.
Mr M	My Lord with your permission then might I leave over leave over the question of whether or not Mr Castleton Mr Castleton's Witness Summonses are going to produce relevant evidence or whether your Lordship might rule to exclude them even at this stage might I address that at the conclusion of this opening?
J	Yes. Yes certainly.
Mr M	I'm grateful. In those circumstances might I move on to the detail of the opening.
J	Yes.
Mr M	My Lordship finds this at page 9.
J	I'll just put this back for now. Thank you. Yes.
Mr M	Marine Drive branch is a single shop unit in which the Post Office is located.
J	Yes.
Mr M	The branch provides a fairly usual range of sub Post Office services customers can pay utility bills, collect pensions and disability payments, buy stamps, driving licences are issued and so on. In order to fund these operations the Post Office provides floats of cash that cash is meant to be kept in a safe where the Post Office can unclear: 02:08:40 not open it's meant to be taken from there and used in the two Post Office tills when it is.
J	Yes.
Mr M	The Marine Drive premises were acquired by Mr Castleton in or about July 2003 and he applied and was accepted by the Post Office for the position as sub Postmaster on taking over the sub Post Office from the previous owner. If I can invite Lordship to take up Bundle 2 which is the core Bundle.
J	Yes.
Mr M	And turn to the first divider divided 28.
J	Yes.
Mr M	At the back of divider 28 on page 210 is Mr Castleton's signature on the standard

	terms or signing up to the standard terms and conditions.
J	Yes.
Mr M	And the standard terms and conditions in fact appear before that they start on page 87 the front page Sub Postmaster's Contract.
J	Yes.
Mr M	If your Lordship would be kind enough to turn on to page 89 just one point of clarification just to.
J	Yes.
Mr M	To dealt with at the outset under the heading as a consequence of the recent change of business name from Post Office Counters Limited to Post Office Limited some of the references in the standard Sub Postmaster's Contract etc
J	Yes.
Mr M	May not apply so where your Lordship sees Post Office Counters Limited.
J	Yes.
Mr M	That's the same entity it's just there was a name change but not all the documentation was updated.
J	Yes.
Mr M	Now if you look at turn on to page 101.
J	Yes.
Mr M	You see clause 1 sorry section 1 of the Contract the Sub Postmaster's Contract is stated Contract paragraph one. The Contract is contract for services consequently the Sub Postmaster is an agent and not an employee. Sub-paragraph 3 the Sub Postmaster must provide and maintain at his own expense reasonable office accommodation and pay also at his own expenses any assistants he may have he may need to carry on the Post Office Counter's business.
J	Yes.
Mr M	Sub-paragraph 5 the Sub Postmaster is not obliged to attend the Sub Office personally but he is required whether he is there or not to accept full responsibility for the proper running of his Sub Post Sub Office and the efficient provision of those Post Office services which are required to be provided. Retention of the appointment of Sub Postmaster is dependent on the sub office being well managed and the work performed properly to the satisfaction of Post Office Counter Services.

J	Yes.
Mr M	Over the page clause 7 if Post Office Counters Limited alters the services to be provided or withdraws a service the Sub Postmaster has no claim to compensation for any disappointment which may result from the change.
J	Hmm.
Mr M	Clause 8 the terms of the appointment of Sub Postmaster do not entitle the holder to be paid sick or annual leave, pension or to compensation of loss of office. Clause 10 should the Sub Postmaster desire to resign his office he must give three calendar months' notice. About three lines down the agreement may be determined by the Post Office at any time if in the case of breach of condition by him or non-performance of his obligation on provision of Post Office services but otherwise may be determined by the Post Office on not less three months' notice.
J	Yes.
Mr M	And then over the page at page 103 Post Office Rules and Post Office Instructions it sets out the layout of the Contract sections 1 to 23 contain the general terms of the Sub Postmaster's appointment, Post Office Counters issues the Sub Postmaster rules and personal instructions which deal with various parts of the business to be transacted the rules provided for the instruction and guidance of Sub Postmasters must be kept up to date they must be carefully studied and applied no breach of the rules will be excused on the grounds of ignorance. 15 operational rules are intended for the instruction and guidance of both the Sub Postmaster and the staff which he employs at his sub office. So that's incorporation of the operational rules. Now the remuneration section appears in the section 2 at page 105 and I hope your Lordship has the May 1997 amendments.
J	Yes I have.
Mr M	And then over the page at page 106.
J	Yes.
Mr M	Paragraphs 1, 2 and 3 a Sub Postmaster is paid according to the amount of business transacted in his office the annual amount of remuneration paid in respect of unclear: 02:13:57 sub offices and the total signed off is and total product payment your Lordship doesn't need to understand that at the moment. All remuneration is in respect of the provision of Post Office counter services er and then 3 the annual amount of remuneration calculated is paid monthly in arrears at the rate of one-twelfth of the annual remuneration by credit transfer bank credit transfer so your Lord simply put Mr Castleton is paid on the amount of the business conducted by the sub Post Office the more business he discloses the more he's paid.
J	Yes.
Mr M	Turning on to section 12 page 139.

J	Yes.
Mr M	<p>Clause 1 the Sub Postmaster on taken up this appointment is supplied with suitable Post Office stock the amount of which is fixed by the Regional and General Manager. Cash balance 2 the Sub Postmaster is permitted to hold Post Office Counter Limited cash unclear: 02:15:02 payment to the sub office after allowance have been made for expected receipts in accordance with official accounting and security instructions. 3 the Sub Postmaster is expressly forbidden to make use of the balance due to Post Office Counters for any purpose other than the required Post Office service and he must on no account apply for his own private use for however a short a period any portion of the Post Office Counter's funds entrusted to him. He must also be careful to keep Post Office monies separate from any other monies. Misuse of cash may render the offender liable to prosecution and/or termination of his Contract of Employment. Accounts sub-section 4. The Sub Postmaster must ensure that accounts of all stock and cash entrusted to him by the Post Office Counters Limited are kept in the form prescribed by Post Office Counters Limited. He must immediately produce these accounts and the whole of his sub office cash and stock for inspection whenever so requested by a person duly authorised by the Regional General Manager. Over the page page 140 clause 5 the Sub Postmaster is held strictly responsible for the safe custody of cash, stock of all kinds and other Post Office Counters Limited property papers and documents whether held by himself or by any of his assistants and should keep them in a place of security especially at night.</p> <p>Over the page page 141 losses the Sub Postmaster 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. 13 the financial responsibility of the Sub Postmaster 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.</p>
J	Hmm.
Mr M	And then if I could ask your Lordship turn on to page 153.
J	Yes.
Mr M	<p>Assistants. The Sub Postmaster must provide at his own expense any assistants which he may need to carry out the work in the sub office. 2 assistants are employees of the Sub Postmaster the Sub Postmaster will be held wholly responsible for any failure on any part of the assistants to apply Post Office rules or to provide a proper standard of the service to the public. He will also be required to make good any deficiency of cash or stock which may result from this assistant's action actions. And then section 18 at page 173.</p>
J	Yes.
Mr M	Deals with non-observance of rules and the appeals procedure now I I don't think

	there's anything much between us that there there were procedures that were carried out.
J	Yes.
Mr M	Unless your Lordship wishes to go through in any detail I then propose taking to take your Lordship on to section 19 page 175.
J	Yes.
Mr M	To show your Lordship clauses 4, 5 and 6 to show that there's provision for suspension from office and that the that he can be that on the termination period of suspension prior to termination of the Contract or reinstatement the Sub Postmaster remuneration in respect of the period may be forfeited and that's what happened in this case.
J	Yes.
Mr M	Moving on to section 22 your Lordship finds section 22 starting on page 186 I was going to invite your Lordship to turn to page 187 and transactions.
J	Yes.
Mr M	The Sub Postmaster will be responsible for ensuring that transactions are carried out accurately that all reasonable steps are taken to prevent fraud and that all documentation is properly completed and dispatched at the due time. So he's under a contractual obligation to ensure that transactions are carried out accurately and we're entitled unless Mr Castleton wants to say that he was acting in breach of his own Contract to say that he provided information to us complying with that requirement.
J	Hmm.
Mr M	Your Lordship can put that Bundle to one side for the moment.
J	Yes.
Mr M	On the basis of this agreement Mr Castleton took up his appointment on the 18 July 2003. From opening he operated the sub Post Office with the assistance of Christine Train and I think my Lord a woman called Rita.
LC	No.
Mr M	I'm mis I'm mistaken there.
LC	Ruth Spearman.
Mr M	Ruth Spearman.
LC	Sorry yeah I see what you mean. Sure.

Mr M	And there were two Post Office computerised tills in the Marine Drive branch.
J	Where are we now oh yes sorry page 13?
Mr M	Page 13.
J	Yes.
Mr M	Mr Castleton and Mrs Train operated these tills.
J	Unclear: 02:20:54 as well?
Mr M	And Ruth Spearman. There was at least one further till along with National Lottery machine from which lottery tickets were sold in the shop and your Lordship will find a sketch of the shop behind Catherine Ogilvie's Witness Statement. If your Lordship wishes to see that it's Bundle 3 behind tab 54 page 3679.
J	Yes.
Mr M	Mr Castleton says I'm grateful to him Mr Castleton says its near enough right.
J	Yes.
Mr M	So that's just so your Lordship has.
LC	It's actually...[whispering].
Mr M	Because of its location National Lottery tickets could therefore be sold at the times outside the hours of opening of the sub Post Office although lottery ticket sales were part of the Post Office business.
LC	Yes.
Mr M	The two Post Office tills operated a computerised accounting system called Horizon which was written and maintained by Fujitsu Services and the Court will hear evidence from Fujitsu employees Andrew Chambers and Andrew Dunks in relation to the workings of Horizon and its operation at the Marine Drive branch. And in that we include the calls to Fujitsu's support line.
J	Yes.
Mr M	As the Court will hear from the Post Office's own witnesses Horizon can best be likened to a sophisticated calculator and book keeping program. It runs on a PC or more than one PCs and these are linked back to a central data storage centre either by a broadband connection or in the case of the Marine Drive branch at material times by a dial up modem connection. Before taking up the post the Postmaster or Sub Postmaster have training on the Horizon system Andrew Wise a Post Office employee will give evidence that Mr Castleton is shown as having received such training. He also explains how Horizon works in practice. Mr

	Wise's evidence will be that Mr Castleton received four days training in the Post Office's classroom in Leeds and he then had a trainer with him for his first week of trading at the Marine Drive branch from the 18 to the 25 July.
J	Yes.
Mr M	Once the Sub Postmaster is in post he also has access to a helpline. The Court has evidence before it again provided by our Mr Wise of Mr Castleton's contacts with the helpline and indeed that forms part of Mr Castleton's case.
J	Yes.
Mr M	The Sub Postmaster is also provided with extensive supporting documentation explaining Horizon and it may be useful if I now take the Court to part of that documentation. The full suit though makes up four lever-arch files.
J	Yes.
Mr M	Might I start however by outlining how the system works.
J	Yes.
Mr M	First all stock and cash received at the branch are REM'd in. REMing in is a technical expression used by the Post Office to mean that items coming into the branch are entered on the Horizon system and it's a slang reference to remittances.
J	Yes.
Mr M	So if the Postmaster receives 100 first class stamps and £100 in cash he'll enter up on the Horizon system that he's received that those in stock or as part of his float and the computer will then add them to the inventory of items held at the branch.
J	Uh huh.
Mr M	As part of the process of REMing in Horizon prints a slip showing what has been entered onto the system by the user. Thus the Postmaster gets both the physical docket with the delivery and a slip from Horizon which can be checked against each other. Once he's checked the items he signs and returns the docket. If there's a discrepancy then that has to be reported immediately and unclear: 02:25:26 issue the appropriate vouchers. The process of REMing in is explained in greater detail in unclear: 02:25:36 6(a) from page 1173.
J	Thank you. Yes.
Mr M	Your Lordship finds the front sheet Transactions Other Part 1.
J	I'll be with you in a minute.

Mr M	Over the page 1174 transfers and remittances this booklet contains information about the transfer and remittance options on the Horizon system.
J	Yes.
Mr M	It also and then lastly it also contains information about dealing with remittance discrepancies. Now your Lordship finds and I won't take your Lordship through the transferring out provision but at 1184 a flowchart.
J	Yes.
Mr M	De entitled dealing with remittances.
J	Yes.
Mr M	Remittances in. And you start at the go button and you follow the flowchart down and your Lordship sees that you need to check items against remittance advice check the items received against the remittance advice items correct yes or no decide whether the items are correct if the items are correct remit in the item shown on the remittance advice as if they are correct and deal sorry and if they're not correct remit them in as if they are correct and deal with any discrepancy. For information on dealing with remittance discrepancy go to sub-section 3 and then there's a whole section from page 1191 about how to deal with discrepancies.
J	What does ADC stand for?
Mr M	Area Distribution Centre.
J	Oh I've asked that already.
Mr M	I'd forgot already. Thank you.
J	Yes.
Mr M	And so I take you your Lordship to this part simply to see that this part was as your Lordship will see all parts of the system involve a physical check of the stock going in and out of the branch.
J	Yes.
Mr M	Now if the Sub Postmaster wants to transact business with a customer he accepts the customer's documentation or item for purchase he then scans in the documentation.
J	Where are we?
Mr M	Sorry I was going to [sneezes] sorry beg your pardon.
LC	Bless you.

Mr M	Thank you. I was going to move away from REMing in and go to transacting business unless your Lordship wishes to.
J	No.
Mr M	Read through the flowchart.
J	No no that's alright. So what page shall we go to now?
Mr M	We're not going to a particular page.
J	We're finished with 6A?
Mr M	If your Lordship would keep it for the moment.
J	Yes
Mr M	I fear I'm going to go back to page 643 in a moment.
J	Alright.
Mr M	I was going to explain with words what the flowcharts will say unclear: 02:29:57 your Lordship that's remittances in when you want to conduct a physical transaction a sale or something else.
J	Yes.
Mr M	When a Sub Postmaster wants to transact business with a customer he accepts that the customer's documentation or item for purchase he then scans in the documentation or in respect of physical stock he touches the relevant icon on his touch screen he may receive part of a voucher for example a pension I think you get part of pensions a counterfoil or something like he identifies a method of payment, receives payment and then on completion of the transaction he does something known as settling or cut off the transaction which means that the details are then needed to update the stored information about stock and cash.
J	Yes I see.
Mr M	By way of an example a flowchart demonstrating how the processes works for an automated payment by magnet card appears in Bundle 6A from page 643.
J	That's 743.
Mr M	I do beg your Lordship's pardon. My Lord perhaps I might unclear: 02:32:21.
J	Yes.
Mr M	Short adjournment ah I do beg your pardon I'm grateful it's at page 943.
J	Right. Yes.

Mr M	And your Lordship will again see a flowchart showing how payments are made through the system.
J	Yes.
Mr M	And at each stage there are options provided to check that the transaction has gone through correctly and what to do if it hasn't.
J	Yes. Yes.
Mr M	Page 1146.
J	Yes.
Mr M	There's a flowchart showing how transactions are settled and that is we've finished doing all the transactions with a particular client say you've made a pension payment out or similar a client has come to the branch and said here's my pension book can I have 20 stamps as well.
J	Hmm.
Mr M	You would then both both items of business and then you'd ask the you'd touch the finish icon in the transaction sack and if the snap shows the payment to a customer you go to page 47 of this section which is page 1152.
J	Yes.
Mr M	And that shows you how you pay out to the customer. Or if a customer is paying you how you go through that that process.
J	Yes.
Mr M	Now if something goes wrong during the process and again the documentation sets out what must be done. By way of example staying in 6(a) if your Lordship would be kind enough to turn back to page 819.
J	Yes.
Mr M	Your Lordship sees a list of ways in which the equipment can fail.
J	Yes.
Mr M	And what one might be expected to do in any one of those failures.
J	Yes.
Mr M	And at 821 your Lordship sees for example at 12.3 monitor being touchscreen failure.
J	Yes.

Mr M	A list of actions that one goes through in a sequence.
J	Yes.
Mr M	And at page 823 magnet card failure. Card reader failure again what we might do now the Manual expressly recognises that when there is a failure there is a possibility that a transaction will not have been recorded on the database. Your Lordship finds that on page 830.
J	Yes.
Mr M	Identifying lost transactions following a system failure. If the Horizon system fails for any reason transaction information may be lost this could either be in relation to the last transaction that was in progress at the time of the failure or information about transactions that were completed and which has become corrupt as a result of the system failure. As soon as the system is restored you must identify any lost transactions so that they can be recovered correctly. They system will prompt you for recovery of lost information unclear: 02:38:13 transactions when it's restarted. For information on recovery of automated payment transactions see transaction unclear: 02:38:24 part one automated payments recovery of automated unclear: 02:38:28 however you will have to identify and recover lost unclear: 02:38:32 transactions yourself using the procedure below and those are then set out. And then if you go over the page there's recovery procedures after systems failure and so on and so forth. And then at page 856 there's information about the Help Desk and how to contact it. Now the Court will hear first-hand evidence from Greg Booth about how transaction recovery was meant is meant to work in practice the Post Office doesn't shy away from saying of course computer systems can go wrong a piece of machinery can go wrong but the Post Office's case will be that the systems that are in place are designed to ensure that the computer is being used to check the physical transactions that the physical documentation is used to check the information on the machine if there has been a failure the onus is on the Sub Postmaster to identify that and make appropriate correcting entries. All this computerisation is designed to do is to give the Postmaster an ability to produce frequent and regular accurate financial information and have this transmitted directly to the Post Office.
J	Hmm.
Mr M	My Lord might that be a convenient moment?
J	Yes unclear: 02:40:37 at 2 o' clock.
Mr M	I'm grateful my Lord.
Usher	Court rise.