

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved

IN THE HIGH COURT OF JUSTICE

No. QB-2016-004710

QUEEN'S BENCH DIVISION

Rolls Building
Fetter Lane
London, EC4A 1NL

Monday, 16 December 2019

Before:

MR JUSTICE FRASER

B E T W E E N :

BATES & ORS

Claimants

- and -

POST OFFICE LTD

Defendant

MR P. GREEN QC (instructed by Freeths LLP) appeared on behalf of the Claimants.

MR O. DRAPER (instructed by Womble Bond Dickinson (UK) LLP) appeared on behalf of the Defendant.

PROCEEDINGS

INDEX

	<u>Page No.</u>
Judgment handed down	1
Discussion re Tomlin Order	1
Referral to DPP	3

(2.02 p.m.)

A MR JUSTICE FRASER: There are three items on the agenda for this afternoon. The first is
handing down the judgment. This was distributed in draft on 28 November 2019 to the
parties' legal advisors and two members of the steering committee, but it was under
B embargo until now. The usual embargo in this case was slightly amended so that the two
mediators involved in assisting the parties settle the litigation were also permitted to see the
draft judgment. That judgment is to be handed now, which means its contents become
public, so I am going to ask my learned clerk to do that.

C There are a number of printed copies. There are ten in folders; there are eight printed
copies not in folders. The judgment has three appendices, one is the technical appendix,
one is a glossary and one is a summary of the findings on the numbers of bugs, defects and
errors that I have found to exist within the Horizon system.

D If anyone who is in court would like a copy and they put their email address on the three
forms which have been provided for that purpose, or they give my learned clerk their email
address, they will be emailed a copy straightaway after this hearing.

E The judgment is also going to be placed on the **Bailii** website which is at www.bailii.org
with the neutral citation [2019] EWHC 3408 QB. It will also be placed on the judicial
website straight after this hearing at www.judiciary.uk. If anybody does go onto the **Bailii**
website and search for it under the name *Bates v Post Office*, they should just remember that
it is the sixth judgment, so it is *Bates v Post Office (No 6)*. That is the first item.

F The next item, Mr Green.

G MR GREEN: My Lord, the parties, as your Lordship know, agreed a settlement to be
incorporated in a Tomlin order to be made by your Lordship, subject to your Lordship's
approval, of course. We have revised it in the light of your Lordship's observations about
the malicious prosecution claims and the provision made for those. The structure is that the
settlement does not embrace the malicious prosecution claims to which that paragraph
refers, which are those of convicted claimants, and that is why there is a provision in
H paragraph 3 that neither the stay provided for in paragraph 1 nor the discontinuance
provided for in paragraph 2 prejudice the right of any convicted claimant to bring an

individual claim for malicious prosecution. What we have added, your Lordship will see, that last sentence, which is to the extent that convicted claimants require permission under CPR rule 38.7 to make another individual claim for malicious prosecution following discontinuance under paragraph 2 above. Such permission is granted.

MR JUSTICE FRASER: Yes. Now, that provision – I will just check this with Mr Draper in a moment – as I understand the operation of it is so that if there is any claimant who is currently subject to the group litigation wishes to advance a claim for malicious prosecution----

MR GREEN: Exactly.

MR JUSTICE FRASER: --that is not caught by the settlement.

MR GREEN: Exactly.

MR JUSTICE FRASER: Because that is a claim that is actually included on the claim form.

MR GREEN: Your Lordship is absolutely right. Exactly.

MR JUSTICE FRASER: Right. And the discontinuance does not yet occur until an application is made under paragraph 2.

MR GREEN: Exactly right. So, it is a Tomlin order until the application for discontinuance is made and granted, and then it comes to an end.

MR JUSTICE FRASER: Right, I am just going to ensure that Mr Draper is on board; I am sure he is. Mr Draper, I see you appear for the Post Office today.

MR DRAPER: I do appear for the Post Office. My Lord, yes, the provision there is just to ensure there is no possible argument about abuse of process if there is, if you like, what might be contended to be a second claim in relation to malicious prosecution.

MR JUSTICE FRASER: That is why I raised the point because I think the intention of the parties is that any such claimant in that situation issues a fresh claim form. Is that right?

MR DRAPER: My Lord, yes.

MR JUSTICE FRASER: But for the moment this action is not yet discontinued in any event. It is just subject to a stay under the Tomlin order.

MR DRAPER: That is right.

MR JUSTICE FRASER: Right. Thank you very much. I am going to make that order. I have signed one copy of the Tomlin order. I am going to hand that down now, as well as return the confidential schedules that were lodged at the same time. I will give those to Mr Green. So far as the parties are concerned, is there anything else today?

MR DRAPER: My Lord, no.

A MR JUSTICE FRASER: Right. There is one more thing from the court's point of view. By
signing the consent order that I have just signed, today is the final substantive hearing day
of the Post Office Group litigation. This means that I am therefore effectively no longer the
managing judge. What I have to say now does not have any effect upon that function in any
event and I will still be able to make any further procedural order in January 2020 if one is
sought, as anticipated in paragraph 2 of the Tomlin order, for the withdrawal of the group
litigation order. However, I am making these comments now in open court at the
B conclusion of the Horizon Issues trial in the interests of open justice and transparency.

C The Horizon Issues trial involved very detailed analysis of the Horizon computer system.
In the year of its inception in 2000 up to 2018, in order to address the Horizon issues, both
the evidence and the judgment that I have just handed down considered in great detail the
contents of contemporaneous documents within Fujitsu and the Post Office dealing with the
operation of the Horizon system generally, but particularly in respect of the known
existence of Fujitsu of bugs, errors and defects in Horizon.

D Based on the knowledge that I have gained both from conducting the trial and writing the
Horizon Issues judgment, I have very grave concerns regarding the voracity of evidence
given by Fujitsu employees to other courts in previous proceedings about the known
existence of bugs, errors and defects in the Horizon system. These previous proceedings
E include the High Court in at least one civil case brought by the Post Office against a sub-
postmaster and the Crown Court in a greater number of criminal cases, also brought by the
Post Office against sub-postmasters and sub-postmistresses.

F After very careful consideration, I have therefore decided, in the interests of justice, to send
the papers in the case to the Director of Public Prosecutions, Mr Max Hill QC, so he may
consider whether the matter to which I have referred should be the subject of any
prosecution.

G In arriving at that decision I have considered the relevant authorities, including *R v Patel*
[2016] EWCA Crim 2001, which was a decision in the Court of Appeal Criminal Division
of Lord Justice Simon and Mr Justice Hickinbottom, as he then was, at paragraph 84;
Hussein v William Hill Group [2004] EWHC 208 QB, a decision of Mrs Justice Hallett, as
H she then was, at paragraph 50; and a number of others. It will be entirely a matter for the

DPP what, if anything, he does in respect of this referral. The contents of the letter that I send him will be confidential, although I will copy it to the parties in this litigation through their solicitors.

I wish to make it clear that the specific subject to which I will drawing the specific attention of the DPP relates to the evidence on previous occasions of Fujitsu employees. This matter is entirely separate from any aspects of the process currently underway at the Criminal Cases Review Commission in respect of claimants who were convicted. Paragraph 66 of the judgment that I have just handed down explains why this court has no involvement in the process underway at the Criminal Cases Review Commission.

Mr Green, Mr Draper, nothing else?

MR GREEN: Nothing further, my Lord.

MR JUSTICE FRASER: Mr Draper?

MR DRAPER: No observations, my Lord.

MR GREEN: My Lord, may we thank you on behalf of all parties for the hard work that has gone into several thousand pages of judgments.

MR JUSTICE FRASER: Yes. My learned clerk did actually do a word count on all six of the judgments and it is just slightly fewer than **War and Peace**, but not by very many.

Thank you all very much, and if I could wish everyone a very happy Christmas.

(2.13 p.m.)

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Proceedings or part thereof.

*Transcribed by Opus 2 International Limited
Official Court Reporters and Audio Transcribers
5 New Street Square, London EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

A

B

C

D

E

F

G

H