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**IN THE HIGH COURT OF JUSTICE**

**No. QB-2016-004710**

**QUEEN'S BENCH DIVISION**

**POST OFFICE GROUP LITIGATION**

**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**

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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.

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(2.02 p.m.)

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

C There are a number of printed copies. There are ten copies in folders; there are eight  
printed copies which are 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 different bugs, defects and errors that I have found to have existed within the Horizon  
D system.

E 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 of the judgment and its appendices straightaway after  
this hearing.

F The judgment is also going to be placed on the **Bailii** website which is at [www.bailii.org](http://www.bailii.org)  
with the neutral citation [2019] EWHC 3408 (QB). It will also be placed on the judicial  
website immediately after this hearing at [www.judiciary.uk](http://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 for this afternoon.

G The next item, Mr Green.

H 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

A 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  
paragraph 3 of the Order 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, then such permission is granted.

B  
C 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 who wishes to advance a claim for malicious  
prosecution----

MR GREEN: Exactly.

D MR JUSTICE FRASER: --that is not caught by, or prevented from proceeding by, the  
settlement.

MR GREEN: Exactly.

MR JUSTICE FRASER: Because claims for malicious prosecution are actually included on the  
claim form.

E MR GREEN: Your Lordship is absolutely right. Exactly.

MR JUSTICE FRASER: I see. And the discontinuance does not yet occur until an application  
for that is made to the court under paragraph 2 of the Order.

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.

F 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.

G 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?

H 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 with the court 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.

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 conclusion of the Horizon Issues trial, in the interests of open justice and transparency.

The Horizon Issues trial involved very detailed analysis of the Horizon computer system. Since 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 within Fujitsu of a number of different bugs, errors and defects in Horizon.

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 veracity 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 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 as prosecutions by the Post Office against a number of sub-postmasters and sub-postmistresses.

A 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.

B 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 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 C I send him will be confidential, although I will copy it to the parties in this litigation through their solicitors.

D I wish to make it clear that the specific subject to which I will be 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 those claimants who were convicted. Paragraph 66 of the judgment that I have just handed down explains why this court has no involvement, or jurisdiction, in the process underway at the Criminal Cases Review E Commission.

Mr Green, Mr Draper, nothing else?

MR GREEN: Nothing further, my Lord.

F 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.

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

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

H (2.13 p.m.)

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Tel: 020 7831 5627 Fax: 020 7831 7737  
civil@opus2.digital*

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