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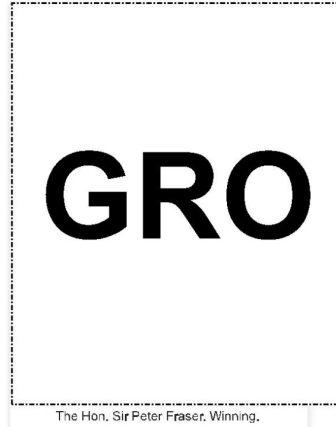
Post Office Trial

Reporting the Post Office Horizon scandal

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Saturday 11 May 2019

Fraser J is going nowhere



I thought the Court of Appeal was taking its time with the Post Office's application to appeal Sir Peter Fraser's decision not to recuse (sack) himself from the Bates and others v Post Office group litigation. I was wrong. It made its decision without a hearing yesterday. I am consoling myself with the knowledge I am the first journalist to get a hold of it. You can read it here.

The ruling was made by the Right Honourable Lord Justice Coulson. Over 19 pages he indicates that Sir Peter was bang on about everything in his recusal application judgment and the Post Office's application to have his judgment overturned was "without substance", "misconceived", "fatally flawed", "untenable" and "absurd".

Lord Justice Coulson notes the claimants contended the purpose of the recusal application and application to appeal was to sink the Horizon trial.

He muses: "the mere making of these applications could have led to the collapse of that [Horizon] trial altogether. Although I can reach no concluded view on the matter, I can at least understand why the SPMS [Subpostmaster claimants] originally submitted on 21 March that that was its purpose."

There follows some choice quotes from the ruling broken down into sections. They are all critical of the Post Office.



In summary:

"Permission to appeal against Judgment 4 [the recusal judgment] is refused. I set out the reasons for that conclusion in greater detail than usual only because of the volume and nature of the criticisms which have been made and the importance of the group litigation to both parties. I do not do so because of the merits of the application itself, which in my view is without substance."

"What matters for the purposes of any recusal application is whether, when looking at Judgment 3 [the Common Issues trial judgment] as a whole, a fair-minded observer would conclude that there was a real possibility that, to the extent that he made such findings, the judge was biased in so doing.... as explained in greater detail below, the PO has not come close to demonstrating it in this case."

The Post Office's obsession with trying to get rid of evidence it doesn't like:

"There is force in the submissions... that the PO's strike-out application [made in October last year and rejected in Judgment 2] arose because the PO wished to adduce extensive factual evidence in their favour, but objected to any evidence to the contrary from the SPMS [Subpostmasters]. As they put it, "the Post Office wanted the case decided all one

About this blog

Hello. This now-archived website covers the Post Office Horizon scandal between 2018 and September 2021. I set up a new website for the Post Office Scandal.

I have also published a book about the scandal which is available from all good outlets. It is a definitive guide "with the power of a great novel" according to Dame Joan Bakewell. Ian Hislop called it "an extraordinary journalistic experiment you want to buy it and be added to my subscriber email list, please click here."

Other material I had a hand in:

- Private Eye special - Justice Lost in the F
- BBC Radio 4 - The Great Post Office Trial
- BBC Panorama - Scandal at the Post Office

Enjoy looking around. Many thanks, Nick

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recusal application, and that what mattered were individual sentences, scattered through Judgment 3 which they say amount to a demonstration of apparent bias. The judge thought that was a misconceived approach. So do I."

"The judge said in a number of different places in Judgment 4 that many of the phrases or sentences upon which the recusal application is based are taken wholly out of context by the PO. I agree with that conclusion."

"This is particularly egregious where, as happens repeatedly, the sentence before or the sentence after the phrase/sentence relied on makes clear that, for example, it is not a finding of fact, or it is an observation based on the PO's own evidence."

"The fair-minded observer would only consider whether the passages relied on gave rise to a real possibility that the judge was biased by considering those passages in full and in context. That is what being "fair-minded" requires. I consider that the recusal application and the appeal ignore this basic principle and are fatally flawed in consequence."

The Post Office's behaviour before and during the Common Issues trial:

"The PO's application is based on a total disregard of what it actually said and did before and during the Common Issues sub-trial... the PO's skeleton argument, in keeping with the oral arguments made to the judge, endeavour to present the sub-trial as a clearly-defined, simple set of issues concerned with the construction of contract terms, where factual disputes were few and far between. On any view of the papers, that is a significant misrepresentation, not only of the issues themselves, but also of the way in which the PO itself ran its case before the judge. It raised factual disputes at every turn."

"For the PO now to say - as they do - that actually all of this was irrelevant, and that the judge demonstrated apparent bias by dealing with and making findings upon those matters which the PO itself had put in issue, is an untenable position to adopt."

"For the PO now to complain about the making of findings on these issues, which arose out of the way which they themselves put their case, is absurd."

The Common Issues judgment's alleged mission creep:

"The mere fact that in a lengthy judgment, the judge may have strayed beyond the strict scope of a particular issue, out of thousands in dispute, is, in one sense, neither here nor there. It is quite capable of correction at any subsequent sub-trial."

In his recusal judgment Sir Peter made it quite clear that even if the Post Office's submission for his recusal had any substance he would refuse them anyway due to the way they were made. Lord Coulson agrees:

"It is unnecessary to decide the waiver point, given that, for the reasons I have given, the substantive appeal has no prospect of success. However, it would be wrong to leave this application for permission to appeal without dealing with the timing and manner in which the recusal application was made."

"The judge learned of the recusal application by accident just before the afternoon session of the last day of the factual evidence on the Horizon Issues trial. This was at best discourteous; at worst, it betrayed a singular lack of openness on the part of the PO and their advisors."

In conclusion:

"... the scattergun way in [sic] the original application was made, now mirrored in the way that this appeal has been pursued, can be seen in the continually changing nature of the PO's arguments."

"It is a great pity that the recusal application and this application for permission to appeal have had the effect of delaying the conclusion of the critical Horizon sub-trial. Indeed, the mere making of these applications could have led to the collapse of that sub-trial altogether. Although I can reach no concluded view on the matter, I can at least understand why the SPMs originally submitted on 21 March that that was its purpose."

So there we go. Sir Peter Fraser remains and will remain the managing judge in Bates and others v Post Office until it concludes. The Post Office's attempt to blow him out of the water has failed, miserably.

I have, of course, emailed the Post Office asking for a comment on the ruling, and as soon as I get it, I'll post it up.

Further reading:

Common Issues trial judgment (cheat sheet)

The drama of the day the recusal application was given to the judge

Being in court for the initial recusal application judgment

And because it's now in danger of being overshadowed by the Court of Appeal ruling, a piece I put up yesterday afternoon about a Subpostmaster currently being hounded by the Post Office for £35,000. It's always good to remind yourself why this story exists.

The Horizon trial now definitely re-starts 4 June. I'll be there. Join the secret email gang by donating below and enjoy the build up.

If you can, please help keep this crowdfunded public-interest journalism project going by chucking a few quid in the tip jar below. Contributors who give £20 or more will start receiving regular "secret" emails which have all the info and gossip about this litigation as it makes its way through the courts.

If you want to find out a little bit more about the underlying story, [click here](#).

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Court of Appeal recusal decision

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