

From: Gideon Cohen <[REDACTED]>
To: 'Amy Prime' <[REDACTED]>, Owain Draper <[REDACTED]>
Cc: Andrew Parsons <[REDACTED]>, Tom Beezer <[REDACTED]>
uk.com>

Subject: RE: Recusal - Horizon Issues Trial [WBDUK-AC.FID26896945]

Date: Tue, 26 Mar 2019 11:48:15 +0000

Importance: Normal

Inline-Images: image001.png; image002.png; image003.png

Amy,

I think the short answer on this is that this would have to be a separate complaint. The risks to us of this application sprawling into a general complaint about his behaviour throughout the litigation are significant. We will have to work pretty hard not to sound like a disappointed litigant.

Best

Gideon

From: Amy Prime [mailto:[REDACTED]]
Sent: 26 March 2019 11:20
To: Gideon Cohen; Owain Draper
Cc: Andrew Parsons; Tom Beezer
Subject: Recusal - Horizon Issues Trial [WBDUK-AC.FID26896945]

Gideon, Owain

We are receiving some pressure from Post Office that matters from the Horizon Issues Trial which show the continuing bias of the Judge should be referred to in the recusal application (either skeleton, oral submissions or both). Have we reached a view on what approach is to be taken? If the preference is not to include HIT matters in the recusal application we will need some good reasons to provide to POL.

We think that the best example of this is the lack of disclosure by the Cs witnesses, Latif and Tank, and the Judge's approach to this in comparison to his approach to the memoview and third party RMG disclosure. There seems to be a stark difference in the Judge's approach.

In summary (relevant documents attached):

On Day 2 of the HIT (12 March 2019), in their XX both Latif and Tank referred to documents relevant to the Horizon Issues Trial which had not been disclosed. The relevant sections of the transcript are:

- page 67, line 16
- page 105, lines 8-15
- page 105, lines 19-22
- page 108, lines 15-19
- page 117, lines 22-25
- page 120, line 6
- page 146, line 17

Also on Day 2 of the HIT (12 March 2019), Mr Latif gave evidence that a memoview had been sent to his branch (page 70, line 19 to page 76, line 1). Fraser later discussed the disclosure of the memoview (Page 98, line 16) stating:

"Also I would have thought things like a notice or a memo view ought really to be, if they are contentious, explored in advance. I imagine the Post Office will be able to produce a list of the memo views that were sent out in January 2018. I would like that to be done please. I'm not going to make an order but we will revisit that on Wednesday morning and if it is going to be difficult then I can have an explanation then and I might make an order, but there's no point having disputes of fact where there are none, because there are enough genuine disputes of fact in this case it seems to me."

No mention was made of the missing disclosure from the Claimants or an order being made for those documents.

On Day 4 of the HIT (14 March 19), AGRQC discussed the disclosure of the memo views (page 196, line 7):

"MR DE GARR ROBINSON: My Lord, I had thought there was something else. Oh, your Lordship during the course of Tuesday asked for memo views that were talked about in the evidence of Mr Latif.

MR JUSTICE FRASER: Yes.

MR DE GARR ROBINSON: Post Office has acquired what it thinks are the memo views for January. There's nothing relevant in there that they have found so far, but they want to ensure that they've got all of them so your Lordship may have to bear with us for a while.

MR JUSTICE FRASER: Well, that's all right. When they've got them all -- I don't necessarily want them but you ought to give them to the claimants.

MR DE GARR ROBINSON: My Lord, yes.

MR JUSTICE FRASER: Right, so is that all the outstanding points?"

On 15 March, WBD wrote to Freeths seeking disclosure of:

- Records and transaction logs consulted by Mr Latif for the purposes of drafting his witness statement;
- Mr Tank's handwritten notes, documents in the "box file" and the CCTV recordings which were consulted by Mr Tank for the purposes of drafting his witness statement;

- Any other documents consulted by Mr Latif and Mr Tank in the course of drafting their witness statements; and
- Any other documents which should have been disclosed by the Claimants pursuant to paragraph 3 of the Fourth CMC Order or due to being adverse documents

Disclosure of the memoviews was given 17 March 19.

On Day 6 of the HIT (19 March 19), AGRQC discussed the disclosure of Latif / Tank documents (Page 4, line 2):

"MR DE GARR ROBINSON: Very good, my Lord. While we are on the subject of documents there is one other point I should mention. Your Lordship will recall the evidence last week, Mr Tank saying that he had a box file of documents, and Mr Latif who is still a subpostmaster saying that his staff searched records which revealed that his transaction correction issue occurred in January 2018 not March. My Lord, my understanding is that Mr Tank has now disclosed three documents and Mr Latif has disclosed none at all. Just so your Lordship is aware, on Friday my instructing solicitors wrote to Freeths making those points and seeking disclosure of records and transaction logs consulted by Mr Latif for the purpose of preparing his witness statement, any notes by Mr Tank, documents in the box file and CCTV recordings that were consulted by Mr Tank, any other documents that any of the witnesses consulted when preparing their witness statements and of course any adverse documents. It sought a response by close of business yesterday, we have all been very busy, no response was received. I will keep your Lordship informed as to progress on that issue.

MR JUSTICE FRASER: Thank you."

On Day 7 of the HIT (20 March 19) AGRQC again discussed the disclosure of Latif / Tank documents (Page 1, line 1):

"MR DE GARR ROBINSON: My Lord, good morning. Before I call my next witness there is one small matter I should raise with your Lordship. Your Lordship may recall that I raised the question of disclosure from the claimants in relation to the documents that were referred to by the claimant witnesses who gave evidence last week.

MR JUSTICE FRASER: Yes.

MR DE GARR ROBINSON: Your Lordship will recall that a letter was sent on Friday which sought a response from Freeths by close of business on Monday.

MR JUSTICE FRASER: Yes.

MR DE GARR ROBINSON: I raised it with you on Tuesday. It is now Wednesday morning. I simply wish to make your Lordship aware that this is an issue and that the point is fast approaching where I may have to ask your Lordship to do something.

MR JUSTICE FRASER: Okay. Have I got a copy of that letter?

MR DE GARR ROBINSON: My Lord, I don't believe you have, I will make sure –

MR JUSTICE FRASER: It is not on Magnum, is it?

MR DE GARR ROBINSON: That will need to be checked, my Lord.

MR JUSTICE FRASER: All right. I think the best thing is have the letter put on Magnum, I'm just going to explore the situation with Mr Green now and if we have to come back to it, then obviously we will fit it in with the trial timetable and if people have to be recalled, they have to be recalled, but obviously I would like to avoid that if possible.

MR DE GARR ROBINSON: Of course.

MR JUSTICE FRASER: Mr Green.

MR GREEN: My Lord, I'm afraid we have been working on cross-examination and I just don't know what the position is on it, but I'm sure it is being attended to. I will find out and update your Lordship later in the day. Obviously, any documents that they have referred to need to be disclosed and that's obviously -- we must do it, so I'm --

MR JUSTICE FRASER: We are in -- I suppose in a sense on the basis that these might be -- or these would be documents which Mr De Garr Robinson might want to put a point to a factual witness, then the factual witness would have to be recalled anyway, but just in terms of proper and efficient trial management --

MR GREEN: Absolutely right.

MR JUSTICE FRASER: -- we've got a little bit of scope next week, but I want all the factual evidence dealt with before the experts are called.

MR GREEN: My Lord, yes.

MR JUSTICE FRASER: And one of the days next week has already been set aside for a contested third party disclosure application against Royal Mail which I think has been moved by consent from tomorrow to next Tuesday.

MR GREEN: My Lord, yes.

MR JUSTICE FRASER: And I don't want to let sand run through all our fingers unnecessarily. So we will revisit -- today is Wednesday, we will revisit this at the end of today, please.

MR GREEN: I'm grateful, my Lord."

The matter was not revisited again that day.

WBD chased Freeths for a response on 26 March 19.

Disclosure has still not yet been given.

Many thanks
Amy

Amy Prime

Solicitor
Womble Bond Dickinson (UK) LLP

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m: 
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