

FREETHS

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26 March 2019
Third Letter

Our Ref: JXH/1684/2113618/1/FKS
Your Ref: AP6/364065.1369

Dear Sirs

BATES & OTHERS v POST OFFICE LIMITED
CLAIM NO: HQ16X01238 and HQ17X02637 and HQ17X04248
DEFENDANT'S RECUSAL APPLICATION

Dear Sirs,

We write in response to receipt of the fifteenth witness statement of Mr Parsons ("**Parsons 15**"). That witness statement was directed to be filed and served pursuant to paragraph 3.1 of the Order made in Court on Thursday, 21 March 2019, which required the Post Office to identify:

"(i) the specific findings of fact referred to in paragraph 24 of Parsons 14, (ii) the "critical invective" referred to in paragraph 25 of Parsons 14, and (iii) the criticisms of Post Office witnesses referred to in paragraph 25 of Parsons 14."

We note from Parsons 15 that the Post Office appears to be setting out a non-exhaustive list of those matters, contrary to the requirements of paragraph 3.1 of the Order above. That appears to be the case from the express statement to that effect in paragraph 4 of Parsons 15, in which Mr Parsons says:

"There is a limit to the material that can be referred to in court within the allotted time. The extracts below are the principal sections of the judgment upon which Post Office intends to rely at the application hearing but it is not an exhaustive list of the points made in the Judgment that support Post Office's application. Post Office will also rely, in its application, on the structure, tenor and subject-matter of the judgment as a whole."

In each section of the witness statement which then follows, the opening words are: "*The sections upon which Post Office will particularly rely...*" (paragraphs 5, 6 and 7).

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We make the following observations:

1. The Post Office appears to have decided deliberately to breach the Order requiring it to identify all of the matters that it intends to rely upon. That is not fair to the Court or the Claimants; if matters are to be relied on, the Court and the Claimants should be given notice of them specifically, which was the object of the Order made. That cannot have been misunderstood.
2. The Post Office also now seems to be supplementing the matters referred to in paragraphs 23 to 25 of Parsons 14 by now seeking to impugn or rely on, for example, *“the structure, tenor and subject-matter of the judgment as a whole”*. Not only is the meaning of this phrase completely opaque in the context of this application, but if it has any meaning distinct from the matters set out in paragraphs 23 to 25, it clearly goes beyond the matters identified in those paragraphs. If it has no meaning distinct from the matters in paragraphs 23 to 25, it is an unjustified distraction and an inappropriate qualification in Mr Parsons' witness statement.
3. The approach which the Post Office has taken leaves open the opportunity to ambush both the Court and the Claimants with further complaints, either in the skeleton argument or orally on the hearing of the application. Such an approach would not be acceptable in any normal application. It is certainly not acceptable in this application.

In the light of the above, please unequivocally state whether or not you propose to rely on any other parts of the Judgment for the purposes of subparagraphs (i), (ii) or (iii) of paragraph 3.1 of the Order made on 21 March 2019. If you do, please identify these by 6:00pm today in a further witness statement from Mr Parsons so as substantially to comply (even if belatedly) with the Order that the Court has made.

If for some reason you believe the Post Office does not have to comply with the Order of the Court, please explain that expressly with the particularity that you will rely upon at the hearing, and copy your explanation to the Managing Judge.

Just as an inference of apparent bias is not lightly to be drawn, so a charge of apparent bias is not to be lightly made. It is a serious allegation and must be properly particularised. The Post Office can have been left in no doubt about that given the submissions made by the Claimants' Leading Counsel in relation to the need for such particulars. This is not an issue which the Post Office can finesse and a clear position must now be established so that the Claimants can consider with precision the basis upon which the application is made and whether or not to oppose it.

If we do not receive a satisfactory response by 6:00pm today, we will then consider whether to seek an unless order or otherwise raise the matter with the Managing Judge.

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Yours faithfully

A handwritten signature in black ink, appearing to read 'Freeths', written over the printed name 'Freeths LLP'.

Freeths LLP

Please respond by e-mail where possible