

Message

From: Mark Underwood [GRO]
Sent: 15/10/2018 19:31:52
To: Rodric Williams [rodric.williams@GRO]; Andrew Parsons [/o=Exchange-Org/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ad9ed344815e47e4aaa3c0e7e1740919-Andrew Pars]; Jane MacLeod [jane.macleod@GRO]
CC: Dave Panaech [/o=Exchange-Org/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0310835f6adc435ab1b160664f370de9-Dave Panaech]; Victoria Brooks [/o=Exchange-Org/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7a2f6b0bed844154a96f5e671bcc4253-Victoria Br]; Amy Prime [/o=Exchange-Org/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ab7222dda3a9453eae5751238a59562-Amy Prime]
Subject: Re: Strike out application [WBDUK-AC.FID26896945]

I have read it. I may be being overly simplistic / optimistic but I think it is important to remember why the application was made in the first place - to prevent judgments in November going further than just the common issues and to prevent the judgments on the common issues being polluted by prejudice.

Although we have taken a kicking to get there, I think the first objective has been achieved. Prejudice is a concern but at least this judgment opens the door for David to cross examine on credibility points (false accounting etc) and there are some useful points of detail included in the judgment, which I think can read into as being positive for POL e.g para 31.

We do need to consider how this judgment informs what we do with the claimants witness statements for the horizon issues trial.

Mark

Mark Underwood
 Head of Portfolio: Legal, Risk & Governance

[GRO]

From: Rodric Williams <rodric.williams@GRO>
Sent: Monday, October 15, 2018 8:08 pm
To: Andrew Parsons; Mark Underwood; Jane MacLeod
Cc: Dave Panaech; Victoria Brooks; Amy Prime
Subject: RE: Strike out application [WBDUK-AC.FID26896945]

All,

I am reading this now and have spoken to Andy. I'll send my comments later this evening.

I have however instructed Andy to ask counsel to again revisit their merits opinion, essentially "war gaming" it in the context of a judge who has formed a view that Post Office acts in a high-handed/oppressive manner towards its agents.

Rod

From: Andrew Parsons [mailto:andrew.parson@GRO]
Sent: 15 October 2018 19:03
To: Rodric Williams [GRO]; Mark Underwood [mark.underwood@GRO]; Jane MacLeod [jane.macleod@GRO]
Cc: Dave Panaech [dave.panaech@GRO]; Victoria Brooks [victoria.brooks@GRO]; Amy Prime

<amy.prime@**GRO**>**Subject:** Strike out application [WBDUK-AC.FID26896945]

Rodric, Mark, Jane

Please find attached the strike out application judgment. Its not good news – Fraser refused to strike out the Cs evidence.

- The Judge has approached this as a case management issue, rather than a trial issue. As a case management issue, the Judge adopted the test that he cannot strike out evidence unless the evidence can "*never be relevant*" to the issues at trial (para 22). This is a very high bar to clear and so he found that the Claimants' evidence must remain live in the proceedings (para 53).
- However, he acknowledges that just because the evidence remains in the Common Issues Trial does not mean that it is relevant to the Common Issues – he says that that question will be the subject of detailed debate at the trial (para 25).
- He carefully avoids deciding whether the evidence is actually relevant to any of the Common Issues, but expressly makes clear that he will not be making any findings on the Horizon Issues or issues of breach (para 52). This last point appears to be a contradiction in this judgment – if he does not intend to make any findings on breach then how can large parts of the Claimants' evidence be relevant?
- As a side note, Fraser also criticises both sides for "aggressive litigation tactics" (paras 13 – 16). This section is at odds with his comments at the other hearings in the run up to the strike out application in which he invited a strike out application.

In substance, we do not believe that this Judgment moves Post Office backward or forward from its position before the strike out application, but we are going to give this further careful consideration overnight.

The more worrying part of the Judgment is the final para where he refers to Post Office's termination correspondence to Alan Bates back in 2003, calling it "*undoubtedly aggressive and generally dismissive*". It is one thing to criticise the lawyers as being aggressive (that criticism, although never welcomed, is a risk in all litigation) but it does not directly affect the Judge's substantive view of the case. It is a different thing altogether if correspondence about Post Office's conduct of a termination 15 years ago is starting to seep into his thinking.

David, Tony and I will be in touch tomorrow with further advice on how to proceed.

Kind regards
Andy

Andrew Parsons

Partner

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