

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
CHANCERY DIVISION
BUSINESS LIST

B E T W E E N:-

LEE CASTLETON

Appellant/Claimant

-and-

(1) POST OFFICE LIMITED

(2) FUJITSU SERVICES LIMITED

Respondents/Defendants

REPLACEMENT SKELETON ARGUMENT OF THE SECOND RESPONDENT

References to documents in the Core Bundle are in the form [C/tab/page number (paragraph)] and references to documents in the Supplementary Bundle are in the form [S/tab/page number (paragraph)]

1. The background to this claim (summarised at paragraphs [4] – [8] of the Judgment [C/12/119-120]) is that the Claimant was a sub-postmaster at a post office branch in Bridlington between July 2003 and May 2004. He was suspended from that role due to apparent shortfalls in the branch accounts recorded in the Horizon IT system. The First Respondent (“the **Post Office**”) brought a claim against the Claimant in respect of the apparent shortfall. A trial took place and judgment was granted in favour of the Post Office on 22 January 2007.

2. In 2016, a number of former sub-postmasters, including the Claimant, commenced claims against the Post Office alleging (amongst other things) that judgments against them had been obtained by deceit on the grounds that the Post Office had concealed or misrepresented the existence of faults in the Horizon system. Two sets of issues were ordered to be tried ‘first’ – certain contractual issues and issues concerning the functionality and reliability of the Horizon system.
3. Those trials resulted in two judgments of Fraser J dated 15 March 2019 and 16 December 2019. The latter judgment (*Bates v Post Office Limited* [2019] EWHC 3408 (QB) (the “**Horizon Issues Judgment**”)) found that there had been serious faults in the Horizon system as the claimants alleged and that it was possible that those faults had caused the apparent shortfalls.
4. After the Horizon Issues Judgment was circulated to the parties in draft (but before it was handed down) the claims were compromised by a settlement agreement dated 10 December 2019 (“the **Settlement Deed**”) pursuant to which the Post Office agreed to pay £52.5 million to the claimants in settlement of their claims. As noted at paragraph [10] of the Judgment [C/12/120], the Settlement Deed contains a very widely drafted release of all claims, known or unknown, which “*arise out of or are in any way connected to, whether directly or indirectly, the claims ... made or the facts and matters alleged by any party*” in the claims [C/14/182-183].
5. On 14 March 2025, the Claimant commenced these proceedings. They involve two factually and legally distinct elements (Judgment paragraph [35] [C/12/125]):
 - a. Claims (set out in Parts B and C of the Particulars of Claim) that in the period 2004 – 2007 the Respondents participated in conspiracies to injure the Claimant by unlawful means by abusing the court’s process (Part B – alleged against the Post Office only) or by obtaining a judgment by fraud or perverting the course of justice (Part C – alleged against both Respondents).
 - b. Claims (set out in Part A of the Particulars of Claim) concerning the validity and effect of the Settlement Deed in 2019. In short, the Claimant alleges that the Settlement Deed (i) should be construed as not releasing the claims made in

Parts B and C and/or (ii) should be set aside due to fraudulent misrepresentations said to have been made by the Post Office in its closing submissions in the Horizon Issues Trial and/or (iii) cannot be relied upon by the Post Office because it would be ‘unconscionable’ for it to do so.

6. By their order dated 4 February 2026 (“the **Order**” [C/11/113-117]), Trower J and Master Kaye ordered (at paragraph 2) that the claims concerning the Settlement Deed should be tried separately, and that that trial (the “**Part A Trial**”) will take place before any further steps are taken towards determination of the other claims. They further ordered that the Respondents file and serve defences to the claim concerning the Settlement Deed (paragraph 3) but that the time for filing defences to the other claims was extended to the date of the consequential hearing following the Part A Trial (paragraph 5).
7. The Claimant applied for permission to appeal against those aspects of the Order but permission to appeal was refused by Lewison LJ [C/1/2-3]. As Lewison LJ said “*It is easy to see why the court took the view that the issues raised in Part A of the Particulars of Claim should be tried in advance of those raised in Parts B and C.*” The result is that the Part A Trial will go ahead in order to determine the claims concerning the Settlement Deed and that defences to the other claims will not be served until the claims concerning the Settlement Deed have been dealt with at the Part A Trial. The Respondents have filed Defences to the Part A claims as ordered. A CMC to consider next steps is listed for early July.
8. The only issue arising on this appeal concerns the proviso in paragraph 3 of the Order that the Defences to the Part A claims need not plead back to five identified paragraphs in Part A of the Particulars of Claim listed in Annex 2 to the Order [C/11/114-117]. The reason for that proviso was that those paragraphs contain averments about the merits of the *other* claims set out in Parts B and C of the Particulars of Claim: it is therefore unnecessary for the Post Office (against whom the averments are directed) to plead to them for the purposes of the Part A Trial. That was explained by the Post Office in its skeleton argument at the hearing below (fn. 17) [S/9/209]:

“There is a small, but very important, distinction between pleading to “the Part A Claims” ...and pleading to “Part A” of the PoCs. This is because there are a small number of substantive references to [the Part B/C claims] in Part A of the PoCs, as identified in POL’s draft order which is filed with this skeleton argument. It is not suggested that they be pleaded to at this stage (which would necessarily result in incurring the time and cost of responding to [the Part B/C claims], the postponement of which is the very purpose of a split trial).”

9. This was drawn to the Court’s attention at the hearing [C/15/389 (7-13)]:

“MR BAILEY KC: To draw it to my Lord's attention, the slightly tedious but very important point about the difference between pleading to Part A and pleading to Part A claims which is reflected in our document.

MR JUSTICE TROWER: Yes. You can reflect that in the form of order.”

10. The Claimant did not object to the proviso at the time or when the drafting of the Order was being discussed between the parties. There was no sensible reason to object – the proviso was simply intended to give effect to the fact that the Respondents are not pleading to the Part B and C claims until after the Part A Trial (reflecting the fact that if the Respondents are successful at the Part A Trial those claims will not arise, thereby achieving a substantial saving that is an important part of the reason for the separate trial).

11. Nevertheless, the Claimant sought permission to appeal against the proviso as Ground 6 of its grounds of appeal, i.e. which is that: *“The Court wrongly relieved the Respondents of the mandatory requirement to comply with CPR 16.5(1) by directing that they were not required to plead defences to the five paragraphs/phrases of Part A listed in Annex 2 to the Order.”* [C/6/75]. Lewison LJ granted permission to appeal on that ground alone [C/1/2].

12. It is not entirely clear why Lewison LJ considered this minor point of pleading to be a matter worthy of this Court’s attention. In his reasons for granting permission [C/1/2], Lewison LJ said *“There is a real prospect of successfully arguing that if the court directs the trial of preliminary issues it should either (a) provide for all the facts to be found or (b) direct a trial on the basis that the facts pleaded by the claimant are true. The hybrid approach of the court in this case may well be wrong.”*

13. With respect, it appears to be the case that Lewison LJ (who did not have the reasons for the proviso in paragraph 3 of the Order before him) may have misunderstood the limited purpose and effect of the proviso:
- a. As already noted, the only point of the proviso is to make the Order consistent and avoid the Post Office pleading back to paragraphs of the Particulars of Claim that relate to the Part B/C claims merely because they happen to be included in Part A of the Particulars of Claim.
 - b. Lewison LJ may have thought that the effect of the proviso was that the Part A Trial would not determine all of the facts and matters arising in respect of the claims relating to the Settlement Deed, creating a risk that any decision might not finally dispose of those claims. That seems to be what he means by a “*hybrid approach*” – that some relevant facts will be found, but other relevant will not, leaving the potential for a need for a second trial to decide the facts that have not been found. If so, that was a false impression. The Part A Trial will fully and finally decide the Part A Claims one way or the other. The proviso in paragraph 3 is only concerned with identifying paragraphs of the pleading that concern the Part B/C claims that do not arise at this stage and making clear that the order that the Respondents are not to plead to the Part B/C claims applies to those paragraphs.
14. In his skeleton argument for the appeal, the Claimant seeks to take a point that has nothing to do with Ground 6 or the proviso. Instead, apparently inspired by the use of the phrase “*hybrid approach*” in Lewison LJ’s reasons, the Claimant seeks to attack the decision of Trower J and Master Kaye that, for the purposes of the Part A Trial, it will be assumed that (i) the Part B/C claims are viable claims and (ii) the Post Office knew that at the time of the Settlement Deed. That decision is reflected in fn 1 to Annex 1 to the Order [C/11/116].
15. The short answer to that is that the Claimant did not seek to appeal, and does not have permission to appeal, against the decision to assume the facts in fn 1 to Annex 1 for the purposes of the Part A Trial.

16. A second short answer is that the decision as to whether to assume those facts for the purposes of the Part A Trial was a case management decision that was well within the “*generous ambit*” of the discretion entrusted to experienced chancery judges to decide the details of the way in which their trial should be conducted (per *Royal & Sun Alliance v T&N Ltd* [2003] PIQR P26 at [38]).
17. A longer answer is that there is no sensible objection to the two matters set out in fn 1 to Annex 1 being ‘assumed’ for the purposes of the Part A Trial:
- a. The key point, which it is essential to understand, is that there is no suggestion that assuming these two points has any effect on the fact that the Part A Trial will fully and finally determine the claims in Part A. It is not the case that assuming these points could lead to the Part A Trial not fully and finally determining the Part A claims.
 - b. The first matter being ‘assumed’ is simply that the Part B/C claims are viable. It is an everyday occurrence that claims are assumed to be viable for the purposes of determining preliminary issues. An obvious example concerns claims where a limitation issue is raised: it will frequently be the case that the court decides the question of limitation as a preliminary issue or at a split trial (including hearing evidence going to that issue) while assuming that the underlying claim has merit. Many first instance examples could be given, but the point is graphically illustrated by *FII v Commissioners for HMRC* [2022] AC 1 at paragraphs 199 – 201 where the Supreme Court (Lord Reed and Lord Hodge, with whom Lords Lloyd-Jones and Hamblen agreed) make the point that trials on limitation sometimes involve a defendant asserting that a claimant should have discovered a fact which (if the matter comes to trial) he will deny is a fact at all.
 - c. The second matter being ‘assumed’ is that the Post Office knew that the Part B/C claims were viable at the time of the Settlement Deed. That is relevant to the claim that it would be unconscionable for the Post Office to rely on the Settlement Deed. It is important again to be clear what is meant by ‘assumed’ in this context: it is not the case that the Post Office is reserving the right to seek

to re-open the Part A Trial by allowing that issue to be assumed for now but retaining the right to challenge that fact and therefore the decision on the Part A claims based on it. All that treating the fact as ‘assumed’ means is that the Post Office does not take a point about its own state of knowledge for the purposes of the Part A issues: it effectively admits that knowledge for those purposes. Obviously, if the Part B/C claims arise, the Post Office denies that the claims are viable and it follows that it would also deny ‘knowing’ them to be viable. But that has no impact on the Part A claims or on the Part A Trial.

- d. In other words, since the Post Office is content not to take the point, for the purposes of the Part A claims or the Part A Trial, that it did not know that the Claimant’s claims were viable at the time of the Settlement Deed, the point is not in issue and there is obviously no need for the parties to argue that point out or for the Court to make a finding about it.

18. In his skeleton argument, the Claimant seems at times to want to expand the scope of the appeal even further, questioning the decision to order a separate trial of the Part A claims and citing the well-known guidance of Steel J in *McLoughlin v Grovers (a firm)* [2002] QB at [66] as to the circumstances in which preliminary issues are appropriate. To that it is necessary only to say that (a) permission to appeal the decision to have a separate trial was refused; (b) what is happening in this case is not the determination of preliminary issues relating to the Part B/C claims, it is a separate trial of the logically, legally and factually separate claims concerning the Settlement Deed; many of the concerns that arise in relation to determining some issues in a claim on a preliminary basis do not arise in this context and (c) with respect, Trower J and Master Kaye were plainly right that the claims in relation to the Settlement Deed can and should be tried separately and first in this action. They are distinct from the complex claims in Parts B and C and, if the Respondents are right, mean that those claims have been settled and released.

19. There are two final points to make. First, the Claimant’s suggestion that, if the appeal were to be allowed, the claim should be remitted to a different judge, is not understood. There is no proper basis for that suggestion. The decision of Trower J and Master Kaye

was plainly a sensible one and the Judgment is an impressively concise and well-reasoned one.

20. Second, it has been said, but bears repeating, that the Second Respondent deeply regrets its role in what happened to the Claimant and other sub-postmasters, has apologised for it and will continue to apologise. This claim, however, is fully denied: the Second Respondent denies that it or any of its employees participated in any conspiracy to harm the Claimant by unlawful means, and it considers it to be quite clear as a matter of law that the claims against it fall within and have been released by the Settlement Deed. It is in no one's interest for this litigation to be lengthier or more expensive than necessary. It is with that in mind that the Second Respondent proposed the separate trial of the Part A claims that is now going to occur. This appeal, disputing as it does a point of pleading that has no impact on either the underlying merits or the sensible conduct of the Part A Trial, does not advance matters.

21. For the reasons set out above, the Second Respondent respectfully submits that the appeal should be dismissed.

STEPHEN MIDWINTER KC
FREDERICK WILMOT-SMITH
JAGODA KLIMOWICZ

Brick Court Chambers
London

10 April 2026