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Reporting the High Court class action against the UK Post Office

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Wednesday, October 24, 2019

Costs, KELs, mediation and another investigation?!



The Rolls Building sign, about to topple onto an unsuspecting barrister.

There was a costs hearing at the Rolls Building today, but the revelations concerning the cash both parties have burned through on this case was the least interesting thing about it.

What was originally only going to be an hour in court became almost a full day's hearing as the two parties vied to have various eye-watering expenses attached to proceedings or removed.

I made a guesstimate in an earlier blog post that the combined costs for this litigation must be around £42m by now.

Today I found out that up to 3 Sep this year the combined totals spent were at least £36.3m, but excluding money spent by both parties on their fight in the Court of Appeal. Also outside this total was the Post Office's costs in contracting a technical team at Fujitsu and a team of "shadow" experts sitting within the

Post Office reviewing all the stuff they get from their own systems and Fujitsu before it is disclosed to the Post Office's legal team.

I don't know for sure, because I didn't have the spreadsheets the parties were poring over (which were 7 weeks out of date anyway), but I reckon I my £42m guesstimate is possibly a slight underestimate, if anything.

More mediation news

The most newsworthy nugget for me today was a sense of how desperate the Post Office appears to be to start settling the case. They want to do this via a process called Alternative Dispute Resolution (ADR), a structured method of resolving matters outside a courtroom.

We know the Post Office has been keen on mediation more or less since it failed to get the presiding judge sacked for producing a judgment it didn't like. But today the urgency was spelled out in court by its barrister Owain Draper, who was, at the time, trying to justify the Post Office's gargantuan ADR budget. Mr Draper told Fraser J:

"There's no shying away, my Lord, from the fact that Post Office has spent and proposes to spend a great deal of money seeking to settle the litigation at this stage. It's seeking to devote resource proportionate to what it's spending on fighting the case trying to settle it, trying to resolve it by compromise. If one puts the costs of settlement in the context of the total costs of the proceedings, whilst very substantial, they are not out of line."

That's not to say the Post Office is about to fold - the next trial date (2 March 2020) is slowly rumbling towards us - and the Post Office will be aiming to put its case robustly. It is

About this blog

Hello. This crowdfunding blog has been set up to cover the group litigation action against the UK Post Office at the High Court. Your contributions fund my reports and presence in court.

The 1st trial finished in 2018.
Judgment was handed down 15 March 2019.
The 2nd trial finished 2 July 2019.
Judgment is due Autumn 2019.
The 3rd trial starts 2 March 2020.
There will be more than 3 trials.

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position in this litigation - it's just another battlefield.

Horizon trial judgment release date

The judge announced the Horizon trial judgment (judgment number six, confusingly) will appear in two distinct parts. Part one will be the main judgment and part two will be what he called a "technical appendix" which he described as dealing "with some of the more technical computer aspects, which an average reader won't necessarily need or want to read."

Fraser J said he had hoped to get both parts to the parties by the very end of October (next week) in draft, but now that wasn't going to happen "so if any of you do have children.. who have half-term holidays next week, you won't be getting the draft judgment during half-term."

The judge said he was now intending to release the judgment early in November, but before that could sink in Mr Draper stood up with a potential problem. Basically the Post Office's Fujitsu team, diving around in Horizon's murky depths, came across some KELs [Horizon Known Error Logs] relating to problems potentially affecting Subpostmasters, which had not been disclosed to court.

KELs bells

"What we have discovered" announced Mr Draper, "are not new KELs in the sense that they are documents never before the court in any form, they are just back versions of existing KELs. "

How many? The guess was "in the low hundreds". The judge wanted to know more.

"My understanding" continued Mr Draper "is some of them differ in tiny and immaterial respects, like a typo has been corrected" but others were earlier versions of the KELs which were "less complete versions of the final one. "

The claimants' barrister, Mr Warwick, was not going to take Mr Draper's description at face value, suggesting "the claimants would very likely have quite a lot to say about these particular [KELs]... suffice to say, my Lord, that the explanation given of the nature and number of those documents is not necessarily accepted at all."

The judge was unbothered. He wearily admitted he had a recollection of seeing something about these undisclosed KELs in recent correspondence from both parties, but he was taking "what could be described as a passing mental note of it and not really paying too much attention", because "I'm at the point where, so far as I was concerned, the trial has ended."

He asked the parties to keep him informed of any development on the KEL front, particularly one that might delay the handing down of his judgment because though now it wasn't coming out in October "it won't be much past the early days of November."

This means it should land *before* the Court of Appeal hearing on 12 November.

Oh so you want to do a proper investigation *now*, do you?

Finally, a note on the effect of the Common Issues trial judgment of 15 March 2019 and how it is still sending shockwaves through the Post Office. The Post Office has tasked Herbert Smith Freehills (HSF) to take charge of its ADR processes. According to Mr Warwick, HSF is planning to "investigate, with respect to each of the 555 claimants, training materials, accounts, correspondence... they want to investigate whether each has been subject to a bug or error that caused a lasting shortfall, so they want to look at Horizon data date by date. "

He added this proposed investigation "covers decades, different contracts and many different types of alleged breach of duty."

HSF propose this would be done at a budgeted cost of £1,328 per claimant [good luck with that one - ed].

Mr Warwick looked askance at the idea that this should be a recoverable cost from the litigation. He said that in the light of the Post Office's responsibilities which the judge had decided were part of the Subpostmaster contract in the first trial judgment, this was "simply something that this business has to undertake anyway as business cost".

The implication being if the Post Office had interpreted its contract properly and done these kinds of investigations when problems arose, we wouldn't be having a litigation in the

with @stacialong ahead of his #rwc2019 start on Saturday. Thanks to the boys @trinitycroxdon for getting involved on their half term and thanks especially to Stacia. youtu.be/7Kr8Ho9xBM via @YouTube

13h

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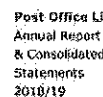
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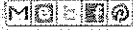
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