# Twitter Thread by Nick Wallis

**Nick Wallis**
@nickwallis

**Good morning and welcome to court 4 of the Royal Courts of Justice, pictured from Waterloo Bridge. It's a stunning day, London is empty, but the court is busy to hear legal argument over 41 Subposmasters hoping to have their criminal convcitions overturned…**

**#PostOfficeScandal**




… I will be live-tweeting proceedings, hopefully abetted by the various skeleton arguments which I have asked to be supplied by the various teams of counsel present today. Words of warning….

… my tweets only SUMMARIZE what is being said or going on in court. My legal responsibilities are to be contemporaneous, accurate and fair. Nothing is VERBATIM unless it is in "direct quotes", which only happens when someone speaks very slowly and then there is a pause. So...

… not very often.

For a layman's summary of the legal arguments likely being exercised today, please have a look at "Court of Appeal: Battle Royale" on the Post Office Trial website: https://t.co/FztPq1GVj2

I am in the press box alongside (well 2m apart from) @samiotobin from the Press Association. I know @TomWitherow from the Daily Mail has an interest in today's proceedings. Maybe he is attending remotely. Brian Altman QC is senior counsel for the Post Office. Various other...

@samiotobin @TomWitherow … barristers are representing the Postmasters.

30 appelleants for Mr Maloney
Darlington + 3 - Mr Orret
Page - Mr Saxby
Mr Parreck - Mr Smith
Skinner, Felstead, Misra - Ms Busch QC
and an advocate for the court Mr Mably...

@samiotobin @TomWitherow Judges are sitting - Lord Justice Holroyde is senior judge.

LJH let's just remind ourselves why we are here. There are two questions of principle - is each appellant entitled as of right to argue Ground 2, and if not what grounds might permit us to allow Ground 2. We are...

@samiotobin @TomWitherow … only concerned today with the 34 appellants where 1st ground is not resisted but 2nd is. NOT where the cases are not resissted on either ground or the cases where both grounds are resisted.

No consideration will be given to the merits of each individual case.

@samiotobin @TomWitherow LJH although the PO does not resist a number of cases on ground 1 it is for the court to decide whether they wil be allowed in March.
LJH the court has received emails in the last 30 mins a request for access to certain document. Subject to anything anybody wants to say...

@samiotobin @TomWitherow … that application will have to wait to the end of today.

We have been seeking since 18 Nov for the orderly hearing of these appeals. We are keen to ensure this hearing takes place before the end of this term and teh full hearing before the end of next term.

@samiotobin @TomWitherow The court has been sidetracked with issues that have arisen and it has taken up a considerable amount of court time. So we invite the application to be heard at the end of the day.

Brian Altman: Mr Witherow from Daily Mail wants access to the submissions we made in response to..

@samiotobin @TomWitherow … Mr Wallis's last application. And Mr Wallis has asked for access to all the skeleton arguments which are being made today.

LJH remind me specifically of what it is Mr Witherow would like?

[BA tells him it is the disclosure context document sent to the court in response…]

@samiotobin @TomWitherow [to my application - also that the Post Office has no objection to Mr Witherow having them. This is odd as the Post Office has also told me I can't publish them as they contain information the court has said should not be made public. I guess the Post Office's positions has…]

@samiotobin @TomWitherow […changed. Mr Witherow has just made a short submission, as have I asking that if Mr Witherow can have the disclosure note written in response to my application that I can have it to]

LJH we will deal with this at the end of the day, before that I would ask that...

… no one jumps the gun.

Lisa Busch QC on her feet for Skinner, Misra and Felstead - she is Paul Marshall's replacement. Paul Marshall "resigned" on Tuesday:

https://t.co/4qAEYc9Ik7

LJH asks her to address the issue that has been raised by other parties that arguing ground 2 would add a considerable amount of time to the appeal proceedings.
LB - yes I realise cases should be dealt with expiditiously but it does not follow that the matter would be dealt...

.. with inefficiently. This will not be time spend unnecessarily. My clients position is that given the exceptional nature of their cases and the background to their proceedings it is firmly in the intersts of justice that the appellants should be able to argue Cat 2...

… abuse of process.

[LB is now talking about Article 6 of human rights act which allows everyone the right to have their case heard in good time (or without undue delay). Argues that there has been huge delay thanks to the Post Office's behaviour and that this is abuse]

LJH Looking at the matter in broad and imprecise terms G1 - an appellant could not have a fair trial due to a lack of info which would have assisted their defence. G2 is a contention that the appellant should never have been prosecuted in the first place. Recognising...

… that this is a sketch outline. In relation to G2 a central issue is likely to be "who in the Post Office knew what when" because wheher it is fair to prosecute someone in the first place could turn on what someone knew for example about problems with the Horizon suystem….

… one of the problems is that G2 could require newevidenc or new areas of research. It may be legitimate to say for G1 purposes that a failure to disclose a document is linked to who knew what about that document and so G2 is pretty closesly linked to G1, but there are...

… contrary arguements.

LB taking it steps from your comments just now. I am aware of the difference between G1 abuse and G2 abuse. G1 does not amount to a complete vindication of my clients. G1 could mean they might be guilty of an offence but could not be prosecuted for...

… whatever reason. Whereas G2 would be a complete vindication of their position and given what has happened to them - this is not nec a legal point - but it is almost the least we could do.
Could the court not use its case management powers to manage a G2 hearing effectively.

Whislt enquiries into G2 are relatively rare, it has happened and the court can use its case management powers to make sure it happens expiditiously. There has to be a question of proportionality.

Justice Picken: so you say if there is delay involved it's a less important...

,,, factor than ensuring the issues are heard. But we are scheduled for w/c 22 March. Are you suggesting a delay to that? I am assuming not.

LB correct. The spectre appears to be raised by those who object to G2 of wide-ranging delays. The court has case maangement powers to...

… deal with that.

LJH yes we said that this group of appeals (Misra, Skinner and Felstead) should be heard first, followed by the other appeals, all done in a week starting 22 March. And yes we do have those case management powers.

LB I agree it's not the court's function to investigate who knew what when. I don't see why G2 can't be argued on the evidence that is already available. The Clarke advice, the High Court judgments and the CCRC statement of reasons.

LB I can't for myself why a v respectable G2 case can't be mounted on the evidence already disclosed. I say expidition and efficiency need not be prejudiced by hearing a G2 argument. There is no reason to be delayed. The overriding consideration has to be the interests of ….

… justice. Albeit that the CCRC say it could make an argument for G2 - they had not had sight of the Clarke advice which sheds more light on the Post Office's behaviour and that these things should be exercised in open court.

[Justice Farbey raising a point on article 6...

… of the human rights act]

LB I don't think I need to show article 6 rights have been impugned, I mean, i think they have, but I just have to show now just that the arguments are engaged - which they are.

LJH taking my lady's point and looking at it with reference to taking up further time - one might say as a proposition - if a trial was unfair because relevant material was not disclosed. it's inevitable that a just resolution is delayed. So my lady was

suggesting that it's...

… just the other side of the coin - so whether article 6 adds much to the timescale of the proceedings of the court.

LB well I agree that it shouldn;'t add much time. The principles are well established. It simply underlines the wrong that has been done to my appellants...

… not only did they not have a fair trial, but it was against their human rights.

The PO suggests G2 would be inconsistency with the overriding objective of epidition and efficiency - and they say that it's not necessary to hear the secondary grounds on the basis they...

… have conceded the first. We say it's not about that.

We say it's fairly and squarely in the interests of justice that the should have hte G2 arguments aired.

[LB goes to case law and acknowledges there is an argument for an appellant to be vindicated on as wide a ...

… basis as possible which needs to be balanced with the need for epedition and efficiency. Says matters should be publicly ventilated and that prosecutors should not be able to sidestep the issue by making a partial concession, which she suggests that is exactly what the PO is..

… trying to do.]

LB can I take you to the Maxwell case - tab 21
LJH we don't have tabs - we are on pages
LB p551
LJH yes, Maxwell
LB par 13 where the court sets out the 2 cats of abuse...

[she reads from case law about affront to the public conscience being an important consideration and nothing should happen in the courts in this area that lets public confidence be eroded or crim justice system comes into disrepute]
LB my submission is that this is in play...

… in the present case. Given the high profile of the Post Office and the high profile of teh proceedings which have happened to date. It would be quite wrong for the PO to be able to sidestep G2 because they concede G1.

LB now summarising that it would be proportionate and it would be the only way in which the severity in which the consequences of their wrongful convictions could leave them fully vindicatied, and it would be the only way to retain confidence in the court. Given the very very...

… sorry history of these proceedings there is a very real risk of publc confidence in the crim justice system being undermined if they do not make their case. I would not always, subject to instruction, make this point in any criminal case. This is important.

[LB sits down. Tim Moloney for 30 appellants on his feet]

LJH anything to add?

TM it seems there's no dispute on the right to argue G2, but we have developed some ideas in relation to G2. It might take time - we have in mind that this is about those who have been...

… conceded in G1, not G2, but the PO has conceded both grounds in 4 cases on a fact-specific basis. Therefore a fact-specific approach may be necessary for those currently being conceded on G1. So that would require my team to advance ebfore the court fact-specific analysis...

… on behalf of my clients. Which would take time. Also the "global unfair to try" argument. it's not just that there's a respectable G2 on the face of the papers at the moment. What we need to do is advance that G2 argument in the best light possible. Now important to the ...

… court's considerations of a G2 is a "who knew what in the organisation, when they knew it and why it wasn't discolosed. was it inadvertent non-disclosure. Was it deliberate non-disclosure, which would be absolutely material to the court's consdiration."

This would take time to investigate. Expert evidence may be necessary as to the extent of material which was available within the post office, the malfunctioning of Horizon and whether it should have been spotted or disclsoed. This is further time which would be taken up.
So...

… you have fact-specific to each appellant and then you have the investigation into what was going on in the Post Office.

Justice Picken: what about general facts
TM: that is a consideration
JP: could not general facts be established to avoid case-specific factual work?

… so that if G2 was established generally, you don't need to go to fact-specific.

TM my clients do not accept that the PO position in respect of G2 is correct. They make a pragmatic decision to preserve their position….

… But if G2 was to be argued, my team would fully engage in that process.

JP it could be a process whereby you all appellants could go for a general G2, and if you fail, then your clients could decide on pragmatic grounds whether they wish to pursue G2 individually

TM yes

LJH goes back to the "who knew what when" point using a hypothetical which might allow the court to draw a general conclusion about individual appellants to conclude G2 and those they can't

TM the PO has conceded G2 on 4 appellants essentially on the role of confiscation...

… orders and pleas, and that is the sort of area we would seek for our appellants to make those cases.

LJH is there any reason why an appellant who wished to pursue G2 shouldn't draw up a list of proposed agreed facts which the PO can admit or not admit, thus narrowing the need

… for further argument.

TM I see no reason why that couldn't happen.

LJH thank you.

TM just to say my lord, you have our submissions. We said that if the court was prepared to consider G1 to begin with and then consider whether thos convictions are safe. That is...

… straightforward. There can be reference to the judgments of Mr Justice Fraser. There is no dispute between the parties as to the admissability of those judgments. So if the court admits those judgments those are the grounds for appeal.

Judge Picken: I have not read ALL of Fraser J's judgment, but this is the area he traversed is it not
TM indeed, if there were to be any more expert evidence it would be very limited.
We know the PO will accept Fraser's judgments and has accepted G1 so if those are accepted...

… it could be that we progress to G2 more quickly. And if the court can find a date to get through that before March that would help.
You'll be reminded that 6 appellants at SCC were quashed by Judge Taylor.
LJH I am bound to observe that no one told this court that...

… these appeals were going to take place. In fact the first I or my lord and lady heard about it was when I read it on twitter.
TM it's a very reliable source of court reporting my Lord [there is laughter. I have gone red.]

TM we do not accept the PO's position...

… on G2 and if we are able and the court allows it we will argue our case on G2.

[LJH says hellow Mr Orret who is attending remotely]
LJH sorry that Mr Stein is indisposed. Please pass on our best wished.
O: we rely on our written skel argument and adopt Mr Maloney's point on..

… cat 2. Our position is the same as you outlined for Mr Maloney.

LJH you represent 4 of the appellants. Can you help us with the additional court time if we were to allow G2 arguments in those four cases.

O There are two elements to that. We are still going through disclosure

… our position is if cat 2 is argued it COULD NOT be done in March. There is currently an investigation into Mr Jenkins. Even if PO agrees Mr Jenkins misled court, there has been no response from Mr Jenkins. The evidence he gives in teh course of an investigation could ahve...

… an impact on Cat 2 about. We wont' know his evidence until the invetigation is complete. It could be that Mr Jenkins arleady had invotmed people in the Post Office and at Fujitsu. We just don't know. That in our submission could be essential to an Cat2 abuse argeuments...

…. therefore we might not eb able to put forward a full Cat 2 abuse argument without knowing the full extent of that investigatino. it is unlike that invoestgaiton would be complete by march.

Judge picken: you say the PO accepts the PO your position on Mr Jenkins. so before...

… any hearing the parties would be at one, would they not.

O - they would be at one on that issue, but we dont' know what he says in relation to his superiors and what tehy might or might not have known when he gave his evidence. so far on the disclosure we have had...

… there is nothing on the disclosure of information between him and his superiors before the Clarke advice in 2013.
JP: hius superiors at Fujitsu
O - well the Fraser judgment makes it clear there might have been a lot of info passing between Jenkins and PO directly. So we don't

… know.

LJH. Well, TM says he is not actively seeking G2. If it argument is permitted and others are advancing it, he would wish to take part. You are different, you don't wish to seek G2, but if it is advanced, you would wish to take part, but not yet…..

… you would rather do it at some stage in the future.
O - yes. because we think the court can only consider cat 2 abuse after we know what mr jenkins has to say.
[LJH thanks Mr Orrett. He has finished. Mr Saxby rises]
S - I am sorry to introduce a 3rd variant. If there court...

[sorry]
My client [Page] does not want the court to consider G2. Does not consider it necessary.
[Another barrister is on his feet saying it is not necessary to determine G2 and that it will take time. However the best argument for it is that it is in the public interest...

… but if it is in the public interest, it should be done in a thorough manner, so I am not sure it can be determined in March, principally because if the court is going to assess who knew what and when on a general and specific basis more will need to be known...

… we would need to know the decisions of the reviewing lawyer and the Post Office more generally.]
[the barrister on his feet is Mr Smith]
Judge Picken: atmo only Busch's clients positively want a G2 investigation. Most others willl take a G2 if offered. What if

Lisa Busch...

… puts her case in a way that puts the case for her clients in a way that doesn't extend the time this all takes. It's slightly odd that so many clients don't want G2, but if we are with Ms Busch, then they do want G2 considered.
[Smith isn't entirely sure]
LJH thanks him for...

… his submission and congratulates him on finding an area of the court which seems to have good accoustics]
Brian Altman is on his fee for the PO: Following the way the argument has narrowed over the past hour or so. If limb 2 were to be argued, what is its ambit? How do...

… we define it? None of the appellants have. No criticism, but there it is. TM for instance would have to ask what his limb 2 argument would be, or anyone else.
Taking up my Justice Picken's point about general abuse - the only way I can do that is to take up the cudgels...

… Mr Marshall has left behind in previous documents submitted to the court. I am not going to ask the court to look through the document itself, but his submissions in par 5 - 10 of his draft case...

… that deals with non-disclosure of issues in Mrs Misra's trial. This document was solely in the case of Ms Misra - not skinner or felstead. We submit these are amplifying arguments of non-disclosure. The PO held that any number of documetns that was available to be...

… disclosed, but never was.
[BA moves on to another section of Marshalls submission]
LJH we're into the merits now and we're not doing that
BA no I want to make a different point - without knowing the case the court will not know whether March is sufficient for all cases...

.. to be heard on a G2 basis. Moving on through the same document…

they cover PO's alleged conduct following the decision to cease prosecution in 2013/4 right up to current day events, including alleged misleading parliament, some of the contents of Mr Wallis's...

… Panorama programme in 2015 right up to the present day including its behviour during the Bates v Post Office litigation in 2018/9

This document highlights the PO's alleged behaviour, so when it comes to a quesiton of ...

… who knew what and when, it's not a simple question. We'd have to ask the PO to interview lawyer working on prosecution cases, some of whom may be at PO, some not. And we'd have to look at corporate governance. It would take a substantial amount of time. Not just PO too….

… it would inevitably involve Fujitsu. Fujitsu are an important player. Including Mr Jenkins who gave evidence in the Misra trial and certainly others. That was outisde the PO's hands.

So any argument which seeks to develop some or all of the kinds of issues raised in...

… Mr Marhsall's draft case would take a huge amount of investigatory time and court time. And all the appellants should be invited to say what their case would be on G2. and here we are at the end of December and we're going to court in March.

…. The court asked Ms Busch what her case might be and she, in all fairness didn't know. If Mr Marhsall were here, we might. We have to look at the practicalities.
Moving away from the practicicalities - what is the overall purpose in arguoing G2 - does it have a...

… different outcome - no. Does it disable the court from making comments ariusing out of G1 - no.
What other means are there that these appellants can be publicly vindicated? The issues have already been publcily and very fully canvased in Fraser J's judgment and some...

… or all of the appellants are likely to pursue claims for malicious prosecution in the civil courts, which will satisfy the public interest for airing the alleged wrondoings of a prosecutor.
The appellants interest and the wider interest is limited by the concessions by the PO

… that the convictions are unsafe on a wider ground. So the court is not actually in a position to make a judgment. Wil it require new evidence? We don't know. Will events need to be litigated. If an application for fresh evidence would that be expedient for admin of justice?

When there is already a concession there has been abuse of process?
We come back to LB's submission. We say that when we look at the provisions of the overrinding objective to deal with cases efficiently and expiditiously, the impact is not known. That's the position we find...

.. ourselves in. This is not for any purpose other than to assist the court. And Fujitsu and Jenkins lurking in the background are not isseus that can be ignored.
One other thing in the disclosure management document - the disclosure the PO has been involved in ENDS in 2013.

If these arguments are going to be pursued then a whole new disclosure exercise will have to take place.
LJH: what was your point about future appeals - how does it affect the management of these appeals
BA it's not clear
LJH well it's not clear whatever we do

BA you're right
Justice Farbey: you say the appellants can get vindication from malicious prosecution or some other means. Does it follow therefore that it's you view can have nothing to say about vindication? And public confidence in crim justice system can be ventilated...

… somewhere else.
BA no I'm saying the court can make such comments as it wishes - the court can say as much as it wishes to do so.
JF - what about the public interest
BA - yes G2 is about public interest. If the court wishes to hear G2 arguments to go as wide as it wieshes...

… that is entirely up to the court. but if the court doesn't hear G2 that doesn't disable it to make such comments as it wishes in relation to G1 and the Public Interest.
LJH: re disclosure.
Zoe Johnson for the PO: yes
LJH due to be finished in Feb?
ZJ: yes

ZJ - we have given a tranche at the beginning of this month, there will be another tomorrow, then there will be one more in order to abide by the court's direction. The last disclosure will not be a wash up - there may be more meatier material in it, but by tomorrow, MOST will...

… be isclosed, but we looked ONLY at convictions between 2000 and 2013.
JP: the doc says 1999 - 2013, but in the doc actually is 2013/4 - is the point quite as stark as you are saying
ZJ - it depends what the abit of any Cat 2 argument is. if we are dealing with fact-specific...

… areas then it will be dealt with, but we have not touched the parliamentary proceedings or the civil trial.
[Advocate for the court is on his feet]
AC this court's practice of allowing an appeal on one point without allowing other grounds is widespread.

AC there is no rule which means a case can't be decided just on one limb. if the court wishes to dismiss an appeal all limbs must be considered. so if there is a concession it appeas to be the position that the court can structure its approach to settle grounds of appeal...

… and its hearings as it sees fit. it is a matter of discretion.
In relation to the second question - how should the court proceed. It really is a blank sheet of paper. In grasping with the principle - what matters is the interests of justice. There are two matters of note...

… any assessment of the interests of justice has to operate in the statutory functino of the court which is to decide whether a conviction is safe. It is NOT a court of public inquiry.
Secondly, even within that there are going to be a wide number...

… of factors which arise. Efficiency.
Practical questions (which don't seem to arise in this case) and the vindication of appellants.

Efficiency - if a court decides a coinviction is unsafe on G1 it is NOT necessary to conside G2. The court must consider whether it would be...

… "wasteful" to consider outstanding grounds. In that context the court would want to consider whether the outstanding ground is complext or simple. IN the present case G2 has complexity. What does it look like? In law it looks like that in the CCRC's SOR.

… because a ground has to relate to the CCRC's reasons. And the court has not given permission for the ground to go outside the SOR. Nor have the parties sought to. As it MIGHT be - that is down to the court to give leave for elaboration.
With regard to whether generality...

… will suffice. I don't know. The court will have to consider that, but it's in the court's control.

On a technical point - admissions - 1967 Criminal Jusitce Act has no difficulty in relation to that [I think this means a guilty plea is NOT an obstruction to a...

… successful appeal]

There is the issue about further appeals or appeals to the SC.
[which I didn't quite undestand]
Prosecutorial misconduct is always a very serious matter, and there is an argument at least there is a wider interest in the public ventilation of these….

… matters…

[a technical issue means we've lost Mr Orret so LJH has stopped the court advocate mid flow and the court has risen in order to re-establish comms]

[we're back]

AC continues

Where prosecutorial misconduct is alleged and the wider interests in the administration of justice is ventilated and resplved. The court's task is not open-ended. It is limited. It cannot declare someone innocent. It only looks at safety...

… of convictions.

Also the cour tneeds to be mindful of at the other cases and the interests of the other appellants in this case.

LJH thanks the AC. Now Ms Busch. as it appears to us at the moment, the only counsel likely wishing to reply is you. Not to shut anyone out...

… of course, but after lunch please could you assistn in your reply with:
scope of G2 argument and to what extent it would go beyond G1 and the specific point Ms Johnson [for the PO] has raised that if anyone wants to put any reliance on anything beyond 2013 it may go beyond...

… the scope of the current disclosure exercise.

[court rises. back at 2pm]

[I have emailed all the parties whose details I have asking for their skeleton arguments - I so far haven't received any, which is unusual. Normally they are handed out as they are put in play]

[I'm going to go and charge my laptop and phone. Oh for the multiple plug points literally springing up from below the floor everywhere in the Rolls Building]

[Right. We're back in court, hopefully with enough juice in both phone and laptop batteries to get through]
Mr Justice Picken is now on a screen
JP: I have been notified someone I have been in contact with has COVID. I have not been officially notified if I should...

… isolate, but I am taking the precaution of doing so. I should add I have no symptoms.
LJH: thank you. Ms Busch.
LB: Thanks we are not on a fishing expedition, nor are we looking for an open-ended investigation. We are looking for an interpretation of the evidence….

… which is largely available already. The only thing we want is 5 or 6 more documents post-2013, but there's no insurmountable evidence or disclosure which would prevent a G2 hearing. The purpose of today's hearing is to attempt to assist the court as to whether it should...

… decide on principle not by considering questions of scope. But anyway - we do know the scope of the case - it's set out in the CCRC's SOR. It's a question of law - not an oppo for the PO to relitigate all the facts by calling witnesses for cross-examination. Most of the...

….evidence has been gone over in great detail in the judgments of mr Justice Fraser. G1 will be decided v quickly, which gives the court time. We are inviting the court to make decisions on law. Brian Altman says there's v little difference between G1 and G2. That's plainly...

… wrong. G1 is about the relationship between appellant and prosecutor. G2 is about the prosecutor. There is a fundamental difference, if there wasn't, why have two categories of case.
With regard to malicious prosecution…
[JP interrupts from the screen, he sounds like he's...

… in a swamp. He queries if this IS an issue of law]
LB well yes, but not entirely there will be issues of fact, but we don't need to rehearse all the facts and evidence that Fraser J has gone over in great detail. The court can manage this. If the court feels we're trying...

…. to start some open-ended public inquiry, then the court can say "oh no you don't" we are here it assist the court.
Also BA is utterly misconceived in saying that proceedings should not be delayed, but BA is now saying there should be delay till the resolution of the...

…. malicious prosecution cases.
LJH that's not how I understood BA's argument. I felt he was saying that vindication might be available through malicious prosecution. Not that we had to wait. Is that right?
BA it is around the other points I was making.
LB BA's point is that...

… vindication comes at the end of Malicious Prosecution. We are saying it could come sooner than that.
LJH I see
LB Also a finding on G2 will have a bearing on malicious prosecution proceedings. Which could expedite them.

LB also why should civil courts be settling issues for criminal proceedings? Also if the court were to comment on G2 matters whilst determining G1 - to suggest that prosecutions should never have taken place, then G2 should be considered.
LB this is as exceptional case...

LB we should not be taking the view that a finding on one ground of appeal “will do”.
LB my extremely learned junior has sent me a couple of point
[she is peering at her mobile phone - he is not in court]
LB on overriding objective of efficiency. Yes this is important...

… but justive being done and being seen to be done is the most important. If justice can ONLY be done by arguing ground 2 then it cannot be trumped by expedition. By way of final point I would remind the court of Maxwell of the essential role of the court in maintaining the...

… integrity of the justice system. can that be done in a circ where the PO can dictate the way proceedings will develop by conceding G1, which impinges on my clients, but not just that, it is about justice and the justice system. This can be done through effective...

… case management.
LJH does anyone else want to add anything?
[silence in court.]
LJH because of the need to speak to Mr Justice Picken at a greater distance than previously envisaged we will rise to consider, but we will be back soon.

[court rises]
[will G2, or limb 2 or Cat 2 be allowed or not? What do you think? I might, if I can work it out, and it's not too disrespectful to the court, set up a twitter poll]

[Limb 1: will i have worked out how to do a twitter poll before the judges return?
Limb 2: If so, will setting one up be disrespectful?
Let's have a day of legal argument.]

After this is over the court is going to hear @TomWitherow from the Daily Mail's application to have sight of the Post Office document responding to my application for the Clarke advice, which the court gave to me, but which the Post Office said I couldn't publish.

This morning Brian Altman for the Post Office stood up and said he had no objection to Mr Witherow having the advice. Which is obviously a change in position, which I wasn't notified of until I heard it in court this morning.

I'm not entirely sure what caused the Post Office to change its position. I will ask.

I still haven't received any of the skeleton arguments from any of the parties despite the Post Office saying they had no objection. Deafening silence from everyone else. Skeleton arguments "normally should" be given to the press once they have been referred to or...

... treated as read out in open court. They have all been treated as read out, it's just that everyone's frit - well, not frit, but, let's say exercising an abundance of caution after the way this whole case was started with an allegation of contempt of court.

Will the court of appeal allow G2?

[court back]
LJH we will not give a full ruling now, but we will briefly indicate our decision and give some directions
LJH we repeat we are concerned here only with the 34 appellants whose appeals are opposed on G2 but not on G1. All parties agree as does the court that...

… no appellant is entitled to G2 as of right. It's for the court to decide. We must consider a number of factors. We wil give the reasons in writing asap, we conclude that argument on G2 SHOULD be permitted. We make clear that no appellant is required to argue G2...

… no appellant is required to argue G2, but any can if they wish. Consistent with the overriding objective we must avoid any risk the determination will be delayed. We find it at present difficult to see why G2 cannot properly be argued on the basis of the material which has...

… already been disclosed or will be by the end of the current exercise. We are encouraged by Ms Busch that no extensive disclosure is needed. We would require a specific application for further disclosure on which we would decide. We direct… LB must by 15 Jan...

… file a skeleton argument specifically indicating how G2 is put on behalf of their appellants. Any other appellant who wishes to argue G2 must file a similar skele by 29 Jan 2021 - any appellant who has not filed a skele will be limited to G1 only.

The respondent must provide a responding skele by Fri 12 Feb 2021.
Each appellant who wishes to argue G2 must by 19 Feb 2021 submit to the respondent a list of the facts which he or she asks the respondent to agree.
The respondent must by 5 March 2021 serve on the appellants...

… and the court a list of all the facts which are agreed. Previous directions remain in force as before. The date of the hearing of the appeals (22 March for 4 or 5 days) remains unaltered.
LJH are there any other matters? If not we will turn to the press representatives.

LJH - Mr Witherow - can you hear us?
TW - yes thank you [he is on screen - wearing a shirt this time - before it was a training top] my request is for 5 docs as you are aware - I'd like to first talk about the Clarke advice disclosure note filed in response to Nick Wallis's...

… application. I understand it doesn't disclose any more of the Clarke advice than is already in the public domain. It just gives crucial context.
LJH - Mr Altman says Mr Wallis has it and has no objection to you having it

TW I’ve been told the PO thinks it is not publishable..

… which is of course why I want it. So given that understanding of the PO’s position because the way the Clarke advice was disclosed continues to be an important part of these proceedings.
LB told us the CCRC had not had sight of the Clarke advice, there are issues...

… of non-disclosure and public interest.
I’ve also asked for additional grounds of appeal and an appellants note for three of the appellants - quotes Criminal Practice Directions which said documents should generally be made available on request - these include...

… skeleton arguments and written submissions.
TW - the parties have made commitments to open justice, the court is reminded that throughout this case issues of disclosure have been in play
LJH do you want to say anything aobut what the CPD says about contemporaneous reporting..

… given today was largely concerned with legal arguments.
TW there is confusion amongst the press as to the status of the documents and the correct way to request and receive documents

[LJH asks me if I want to say anything. I just say I haven’t had today’s skeletons despite requests]
LJH Mr Altman?
BA TW can have the documents he’s asking for for reference not publication...

… Mr W can have today’s skeletons but for reference not for publication unless the court decides they have been read our or treated as read out in court.
LJH Thank you. any other submissions?
[there are none. court rises to consider]

Well done to the clever clogs who got the twitter poll right 84% thought the judges would allow G2 and they did. Though I think the poll was still open when the decision was announced. So maybe you’re just opportunistic.

I might ask someone who knows more about this sort of thing, who is either connected or unconnected to proceedings to write a guest post for the blog on the implications of allowing G2 to be considered for those appellants who want it. I hope it would be uncontroversial...

My hot take is that it will allow some or all of the appellants to use documents already in the public domain, documents which the Post Office chooses to disclose and those which can be sought by the appellants to come into play in the appeal hearing starting 22 March.

I might be wrong on this and obviously we’ll have to read the written judgment when it appears, but it potentially opens the door to the appellants representatives asking the court to order the government to disclose documents if they are relevant to supporting "affront to...

… the public conscience.” which would blow everything right open. If I were an appellant I’d certainly be wanting to see the minutes of any meetings between govt reps and PO execs in 2013 as well as Post Office board meetings in autumn 2013 + the ad hoc sub-committee

… set up to deal with the Horizon issues featuring Paula Vennells, Alice Perkins, the General Counsel and two civil servants.

Let’s see...

By the way - today was a major victory for Paul Marshall and Flora Page, two barristers no longer involved in proceedings due to possible contempt charges hanging over them. They fought to keep Ground 2 of the CCRC’s SOR in play simply because they felt this was such a huge...

… matter of public interest and justice it would be peverse, in Lisa Busch’s submission, to allow the Post Office to dictate the appeal procedings through its strategy of conceding one limb in most of the appellants cases and not the other.

There is, of course a long way to go before the court decides on whether this was an affront to the public conscience, but it is now, at least, on the table. And the other appellants’ concerns about delay have been dealt with by the court, who have stated clearly that...

… the scheduled hearing on 22 March next year will stick.

If you want to read about what happened to Mr Marshall and Ms Page, start here:

https://t.co/4qAEYbS6Vx

[we’re still in court btw waiting for the judges to return with a decision on the Daily Mail application to see and publish the note written in response to my applciation to see the Clarke advice and my application to see and publish the skeletons from today]

[judges have returned]

LJH we are grateful to Mr Witherow and Mr wallis for their v clear submissions of their applications for copies of various documents as accredited reporters. We have been hearing submissions of legal principle. The substance of the arguments will be heard on 22 March...

… and have not been aired here. We have emphasized that documents need to be heard in the correct order.

We continue to wish to ensure that no one jumps the gun.

None of the documents requested by Mr Wallis or Mr Witherow have been read or treated as read out according to CPD.

So we decline to make the order.

[Wow. So the court won't order me to receive the skeletons. That means the parties only have to give me their written skeletons if they want to. And of course now none of them, including the appellants will]

[court has risen. off to the RCJ press room]

[still dwelling on this]

I am sitting in the little corner of the RCJ given over to the Press Association. It's a newsroom which doesn't look as if it has been refurnished, or possibly even cleaned since the 1970s. All that's missing is the heavy fug of cigarette smoke (disappeared in 2007) and...

… other people (disappeared in 2020). @samiotobin is the only other person knocking about. I have just told him what happened in court about the skeleton arguments. I will not publish his response...

I am going to get my head down and write a court report, which I'll draw your attention to via social media when it's up. If you've found what I've written useful in any way, please consider making a modest donation to my tip jar. I am here purely thanks to your generosity...

… so anything you can chuck in to keep me going would be very welcome. Any contribitors who can afford £20 or more will be added to the secret email list which means an occasional email with all the latest gossip on this story, which is now the biggest single miscarriage...

.. of justice in English legal history. And it keeps growing.

Tip jar is here:

https://t.co/glpJ0qm2TC

My grateful thanks in advance.

@threadreaderapp unroll bitte