
From: Anthony Grabiner [GRO]
Sent: Fri 24/05/2019 2:45:55 PM (UTC)
To: David Neuberger [GRO]
Cc: andrew.parsons@ [GRO] David Cavender [GRO] Rob Smith [GRO]
Subject: DEN 39 Re: Post Office

Dear all,

I understand Fraser J rejected the permission application but I don't know more than that, eg what was said etc.

I must say I think that is extraordinary and is obviously wrong. If anything it merely confirms his bias. He is determined to ensure this matter doesn't get before the Court of Appeal.

This leads to my real concern which is that the permission application to the Court of Appeal might, once again, be dealt with by Coulson LJ on paper. Under the current rules there would be no mechanism for further complaint, eg by way of an application for an oral hearing. I've never heard of it being done but if ever there was a case which would call for a complaint to be made to the LCJ/MR it is this one. There would be a strong inference of impropriety/injustice.

Is there any way of knowing which LJ the application would come to? If we knew in advance that it was going to Coulson it would be easier to apply directly to the LCJ/MR beforehand. It will be procedurally more difficult to do that after Coulson has ruled.

In the circumstances I agree with David Cavender that we should be asking for a two/three judge consideration of the application. I'm afraid this is developing into a horror story of Kafkaesque proportions.

Regards,

Tony

Lord Grabiner QC
One Essex Court,
Temple,
London, EC4Y 9AR

GRO

On 8 May 2019, at 22:17, David Neuberger <DNeuberger@ [GRO]> wrote:

Dear Andrew,

Yes, that entirely reflected my view when Tony and I talked. On looking at the draft skeleton again, the high level executive summary may be already included in paras 15-23, but it is not entirely clear to the reader that paras 15-18 are concerned with Section C challenges (until one gets to para 19, and it is not immediately clear that paras 21-23 are an outline of the Section D and E challenges. I suggest that para 15 explains the three heads of challenge and goes on to say that paras 16-19 (now 15-18) summarise the case on the Section C challenge, and paras 20-22 (ex 20-23) the Section D and E challenges. As to the contents of those paragraphs, I wonder whether it is worth specifically mentioning in what is now para 16 the fact that if the category of relational contracts exists, it is clear that they must be long-term contracts, and these were contracts freely determinable by either party on three/six months notice. (incidentally in what is now para 16 is it right to say that PO was "criticised" for relying on Chitty?).

When it comes to summaries, after what is now para 29, I think we should include a new paragraph summarising our grounds as to why the judge was wrong (i) paras 30-58, (ii) paras 59-74, (iii) paras 75-96, in each case perhaps highlighting one or two of our most telling points

I have a few comments on the draft Notice of Appeal and they are on the attachment to this email. It is also a long document, but I can well see why.

With best wishes,
David

-----Original Message-----

From: Anthony Grabiner <[redacted] GRO>
Sent: 08 May 2019 19:57
To: andrew.parsons <[redacted] GRO>
Cc: David Neuberger <[redacted] GRO>; David Cavender <[redacted] GRO> Rob Smith
<[redacted] GRO>
Subject: Post Office

Dear Andrew,

I've been through the draft skeleton and I've discussed it with David N.

It's a very long document but that's a reflection of the length of the judgment, the large number of points that need to be addressed and the poor quality of the judgment. It's more difficult to deal on an appeal with a bad judgment than a good one.

David and I think the draft covers the points. We do not think that concessions should be made, eg on the implied terms, because, as previously advised, we think the co-operation and Stirling v Maitland implications are effective and would be readily implied in this case without the need to manufacture further terms which is what the Judge in his wisdom has done.

We wonder if it might be possible to incorporate a high level executive summary for the benefit of the CofA reading the document. It's always useful to give them a guide as to where the document is going and what the key points are.

We haven't addressed the bits of grammar and typos which should be sorted out before the draft is finalised.

Regards,

Tony

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GRO

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