
From: David Neuberger [GRO]
Sent: Mon 18/03/2019 6:48:44 PM (UTC)
To: Anthony Grabiner [GRO]
Cc: Rob Smith [GRO]; David Cavender [GRO]; Gideon Cohen [GRO]
Subject: DEN 6 RE: Post Office - preliminary thoughts.

No indication. Agree with you.
Order duly noted.
David

From: Anthony Grabiner [GRO]
Sent: 18 March 2019 18:41
To: David Neuberger [GRO]
Cc: Rob Smith [GRO]; David Cavender [GRO]; Gideon Cohen [GRO]
Subject: Re: Post Office - preliminary thoughts.

Many thanks David. I assume they gave you no indication of where they were likely to come out on the point? Imagine if they did nothing except appeal and when they got to the CofA they wanted to know why we hadn't asked the J to recuse himself!!
Enjoy your holiday - that's an order.
T

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

[GRO]
[GRO]

On 18 Mar 2019, at 18:36, David Neuberger [GRO] wrote:

Tony,
I spoke to the Board for 55 minutes.
I told them that I thought that they would win on recusal, but couldn't guarantee it, and that, if we were to run recusal we had to grasp the nettle.
Their questions were mostly well-judged and all understandable, but they are very concerned about the risks, which, bearing in mind they are a public body which has just had a very nasty, and I think unfair, shock, is scarcely surprising
They thought my note suggested that unfairness was a free-standing point: I don't think it is really. It is linked to recusal obviously, and it is linked to interpretation only to the extent that the findings which were irrelevant to interpretation were ones he should not have made and were therefore unfair. As a freestanding issue, I think that unfairness does not relate to any order the Judge is likely to make. I think it could only be relevant for the purpose of the CA being prepared formally to scrub the unfair findings of fact or unfair assessment of witnesses, which it has on a rare occasion been prepared to do.
The only reason not to go ahead is fear of the judge getting more anti- if we lose and fear of bad publicity etc.
I think the Judge is a lost cause and, if he isn't, he may react better if we stand up to him.
As to bad publicity, it's seldom a convincing reason.
Ho hum.
All the best,
David

From: Anthony Grabiner [GRO]
Sent: 18 March 2019 16:42
To: David Neuberger [GRO]

Cc: Rob Smith { GRO }; David Cavender { GRO }; Gideon Cohen { GRO }

Subject: Re: Post Office - preliminary thoughts.

Thanks David. I won't be on the call { GRO } and the clients are keen to get your view untrammelled by mine and vice versa. For the same reason I think they will prefer not to have the rest of the team on the call.

I agree with your points. There's no difference between us. I think this is really a no brainer. Apart from anything else the clients can hardly make things worse for themselves in the eyes of the Judge. For some reason he's already taken very strongly against them.

Tony

Lord Grabiner QC
One Essex Court
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{ GRO }
{ GRO }

On 18 Mar 2019, at 16:11, David Neuberger { GRO } wrote:

Dear Tony,

Thanks very much for that.

As you imply, I think that a "normal" organisation faced with this nightmare would make the application.

As I see it at the moment at any rate, the only reason for not making the application is that we will alienate the Judge if we do, and if he doesn't recuse himself (which he is unlikely to do) and the CA don't remove him (which is possible, though I think they ought), then we will have antagonised him even further than we apparently have already.

I think that the answers to that are (i) yes, making the application has risks, but a risk register approach suggests that the consequences of not making the application would be worse than the consequences of making it, (ii) like you, I think we have a good chance of ultimately removing him, (iii) even if the application fails, we are just as likely to frighten him into behaving a bit better as we are to alienate him into behaving worse, and (iv) his judgment suggests that we couldn't antagonise him much more than, for some reason, we have already.

Excluding them is a bit unfair to David and Gideon, but I suppose one can see where the PO are coming from. I take it that you will be on the call? I am anxious to ensure that nothing I say crosses with what you have said/will say or makes your task more difficult. I have the luxury of expressing a view and then stepping back, whereas you will be presenting the case and are the ultimate adviser.

Best,

David

From: Anthony Grabiner { GRO }

Sent: 18 March 2019 15:29

To: David Neuberger { GRO }

Cc: Rob Smith { GRO }; David Cavender { GRO }

Gideon Cohen { GRO }

Subject: Re: Post Office - preliminary thoughts.

Dear David,

We just met with the solicitor - Tom Beezer - and the GC from the clients - Jane MacLeod - and had a full discussion. I advised that the clients had no choice but to make the application and that there were strong grounds for doing so. Jane explained that the judgment came as a bolt from the blue for the clients because there was no expectation that the Judge had formed such a negative view of the PO.

Her concern is that the board may not have the stomach for a fight because asking a Judge to recuse himself is a drastic step. PO is Government owned and there are board members who are nervous of the publicity consequences. I said that was a matter for the board and that members who might be conflicted should step out of the process but that is a matter for them - not me.

It's possible that neither David nor Gideon will be asked to participate in your call - the board seems to think that they will get a more detached view from you in their absence. I make no comment on that bollox.

The problem is that if they don't challenge the Judge they will be in an even worse position than they now are because he will be emboldened on his current course of action and the fact finding which, on the basis of thrust judgment, he's obviously heading for.

Meanwhile we are preparing on the basis that an application will be made.

Hope that helps for your purposes later today.

Best,

Tony

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GRO

GRO

On 18 Mar 2019, at 12:12, David Neuberger <GRO> wrote:

Dear Rob,

Fine with me.

Thanks for dial-in details

If there is anything I should know as a result of the 14.00 meeting before the 17.15 telephone con, could someone email me?

Best,

David.

From: Rob Smith <GRO>

Sent: 18 March 2019 09:19

To: David Cavender <GRO>; Anthony Grabiner

<GRO>

Cc: Gideon Cohen <GRO> David Neuberger

<GRO>

Subject: RE: Post Office - preliminary thoughts.

Dear All,

Meeting booked for AG,DC & GC at 14.00 in chambers with Post Office and Solicitors

Telephone con booked for DN,DC & GC with PO and sols at 5.15 – Dial in to be provided.

Please let me know if there are any problems.

Thanks

Rob

Robert Smith

www.oeclaw.co.uk

Direct dial:
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From: David Cavender <GRO>

Sent: 16 March 2019 12:15

To: Anthony Grabiner <GRO>

Cc: Gideon Cohen <GRO>; Rob Smith
<GRO>; David Neuberger <GRO>

Subject: Re: Post Office - preliminary thoughts.

Tony,

Many thanks for this. The final judgment was handed down yesterday and is available online apparently. It seems to be largely unchanged. Rob - could you possibly send the final version to Tony ?

Best

D.

Sent from my iPhone

On 16 Mar 2019, at 11:58, Anthony Grabiner <GRO>
wrote:

I've read Gideon's note on the background and DN's observations note of 14/3. I plan to read the draft judgment between now and Monday morning but for present purposes I assume the correctness of the passages in Gideon's note and I also agree with DN's analysis.

When do we expect to get the revised version of the judgment? In principle the substance of the final version should be the same as the draft. If it turns out to be dramatically different, eg because the Judge has deleted passages we currently criticise, I doubt if that would undermine our attack: indeed it may reinforce it on the ground that having made up his mind and/or behaved inappropriately as we allege the Judge now seeks to conceal his bias in the revised draft.

When the final version of the judgment is available it seems to me that we should be asking the Judge to adjourn the current hearing pending appeal in respect of the judgment; to give permission to appeal against the judgment; and to recuse himself on the grounds of actual and apparent bias. If the Judge refuses all, any or some of those applications I think an application should promptly be made to the C of A, if necessary in respect of all three points.

Meanwhile the draft application documents should immediately be prepared including a draft grounds of appeal document. I appreciate that the clients have yet to decide whether or not they wish to proceed along these suggested lines.

Regards,

Tony

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

GRO

On 15 Mar 2019, at 11:13, David Cavender

<GRO> wrote:

I agree. Not least because she is also on the appeal team. And there is an obvious overlap between the "unfairness" ground on the appeal and the

basis (at least in part) for the recusal.

Best,
D.

David Cavender Q.C. <image003.jpg>

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From: Gideon Cohen

Sent: 15 March 2019 10:49

To: Rob Smith <k>; Anthony Grabiner ; David Cavender < >

Subject: RE: Post Office

Rob,

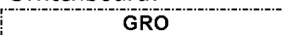
Yes, please bring Stephanie on board if you can. We don't know exactly what the timetable will be, but there could be a lot to do quite quickly.

Best

Gideon
Gideon Cohen
Barrister

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From: Rob Smith
Sent: 15 March 2019 10:42
To: Anthony Grabiner; David Cavender; Gideon Cohen
Subject: Post Office

Tony,
The solicitors have confirmed that they would like you to read up and get fully up to speed on the issues. They are yet to decide if they will make the application but want to be in a position to make the application as quickly as possible if they decide to go.
David, if you have not already can you bring Tony up to speed on all the goings on. Gideon you are the junior to Tony. If you feel that Stephanie is needed to assist please let me know.

Thanks
Rob
Robert Smith
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<image004.gif>

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