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**From:** Anthony Grabiner [GRO]  
**Sent:** Fri 22/03/2019 11:03:46 PM (UTC)  
**To:** David Neuberger [GRO]  
**Subject:** DEN 9 Re: Speaking note - PO (1).docx

You are a star if I may say so. We've dealt with some of this in a witness statement we've already served - in particular the pre hearing arguments - but I will incorporate them into the submissions.

I will try not to bother you further but you're just your own worst enemy - too good.

**IRRELEVANT**

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

**GRO**

> On 22 Mar 2019, at 22:49, David Neuberger [GRO] wrote:

>

> Dear Tony,

>

> He does sound a bit of a horror. And, like you, I would be surprised if he recused himself.

>

> I have pootled through your speaking note pretty quickly. I think it's very good stuff, and have four points:

>

>

> A. I wonder whether somewhere we should set out the occasions pre-hearing, at the opening, and at the closing when DC made the point, and indeed the Judge appeared to accept it, that evidence on issues which were irrelevant to interpretation should not be given and/or once given should be ignored. First, it removes any argument that the PO somehow waived its right to take the point that the findings we complain about were inappropriate. Secondly, in my view, it underlines the unfairness of the Judge making the findings which the PO now complains of. Thus, the point made re disclosure and witness statements at the end of your para 6 on P2 was I think made by DC to the Judge

>

> B. PP 39-40 Criticisms of PO witnesses. Given that Mr Beal and Mrs Van Den Bogard gave evidence it could be said that the Judge was entitled to make findings as to their defects as witnesses and it is the sort of thing which a litigant has to put up with in proceedings involving more than one hearing/trial.

>

> So, assuming that it is correct, should we not make the point that the defects the Judge identifies in his paras 375 and 544 in Mr Beal's evidence related/must all have related to matters which were irrelevant to the interpretation issues before the Judge, and Beal was only dealing with these issues because the Judge had allowed in irrelevant evidence from the Claimants and/or the Judge allowed Green to cross-examine on irrelevant issues?

>

> Similarly, when it comes to the Judge's finding in his paras 425 and 544 as to the inadequacy of Mrs Van Den Bogerd's evidence, it is, if I understand things correctly, plainly unfair in para 544 to have stigmatised her as a witness based on irrelevant matters put to her by Green – the point is particularly clear when it comes to her not being up to snuff on Abdulla issues, when all those issues were irrelevant.

>

> C. P 45, para 56. First sentence, a red rag to a bull? I would like to be in court when you say that. I wonder whether it could be framed as representing what Lord Hope's fair-minded and informed observer may think?

>

> D. P 46 After, say, Para 62, I think we could add that the various self-exculpatory statement which the judge made on more than one occasion involve him recognising that he should not be making findings of fact on the issues concerned. So, the fair-minded and informed observer would wonder what on earth he was doing making those findings, even subject to a disclaimer. The natural conclusion is that he must have felt, or at the very least probably did feel, very strongly about those issues, as otherwise he would not have trespassed beyond what he recognised was his remit. Ergo, it serves to heighten rather than to diminish his perceived bias.

>  
> **IRRELEVANT**  
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> Hope you enjoy the thriller.

>  
> With best wishes,  
> David

>  
> -----Original Message-----

> From: Anthony Grabiner [redacted] **GRO**  
> Sent: 22 March 2019 19:26  
> To: David Neuberger [redacted] **GRO**  
> Subject: Speaking note - PO (1).docx

>  
> Dear David,

>  
> The Judge has directed a hearing for next Wednesday week - typically that was a date he was told was not convenient for me but that case has now settled so his rather pathetic attempt to dodge me has failed. That behaviour does rather confirm our suspicions about his Smith characteristics.

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> I'm attaching the current draft of my speaking note so if you're short of reading matter you can have a glance but feel free not to bother.

>  
> After the introductory paras I've set out the offending paras and put in bold the bits we complain about. He's ordered us to identify the matters we complain about and I'm minded to send him a version of this. It's too late for him to change and it may persuade him to be sensible - somehow I doubt that.

>  
> There are also a number of offensive and very prejudicial asides which I've addressed towards the end.

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> I think he will say he can and will keep an open mind but on the material I don't think that can be taken seriously.

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> I've secured a copy of your recommended spy thriller and I hope to get to it this weekend. Also I hope that despite these unreasonable intrusions you [redacted] **GRO** are having a fun break.

>  
> All best,

>  
> Tony

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