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**From:** David Neuberger [GRO]  
**Sent:** Tue 09/04/2019 4:42:58 PM (UTC)  
**To:** Anthony Grabiner [GRO]  
**Subject:** DEN 13 RE: Post Office

Tony I've had a very fast canter through. Some disjointed and very preliminary thoughts (without having gone back to the original judgment or to my Note or your skeleton). It's an exhaustive and exhausting judgment, and the first 70 paragraphs on the law are like a first term law student's essay, but one has to be forgiving as, right or wrong, he is under serious professional attack, and he has dug deep to try and justify each and every finding. The problem we now face arises from two bad decisions of his - first not to shut out irrelevant evidence and second not to control himself to making only necessary findings, but we can probably only complain about the second. Overall, this judgment is a bit of a curate's egg. Some silly points - eg the waiver argument and the point that he made some findings in favour of the PO. On the other hand, some of his points have force - especially our cross-examining and/or making submissions on some of the issues we now complain about his making findings, and, possibly, in relation to one or two facts which are relevant to the interpretation issues. My feeling is that he has an arguable defence on some of the findings we complain about, but not on others, but how many of each and how good his defence is on the ones where he has a defence, I have not had the time to study properly or think about.

David

-----Original Message-----  
From: Anthony Grabiner [GRO]  
Sent: 09 April 2019 16:53  
To: David Neuberger [GRO]  
Cc: David Cavender [GRO]; Gideon Cohen [GRO]  
Subject: Re: Post Office

David,

On the waiver he says: 'It might be thought the PO took its chance on how the evidence of fact in Horizon unfolded ... before issuing the recusal application.' Last sentence para 72.

That is truly outrageous. It's not a finding. It's an offensive speculation which he never put to me in argument. The few days between getting the draft judgment and deciding to apply were spent with you, the board of the client and then me.

This fellow can't help himself.

T

Lord Grabiner QC  
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Temple  
London, EC4Y 9AR

[GRO]

> On 9 Apr 2019, at 15:10, David Neuberger [GRO] wrote:  
>  
> Dear Tony,  
>  
> Sounds like par for the course.  
> I am in Zurich today, but will be in chambers tomorrow.  
>  
> Best,  
> David  
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