

**From:** David Neuberger [GRO]  
**Sent:** Sun 14/04/2019 10:50:49 AM (UTC)  
**To:** Anthony Grabiner [GRO]  
**Subject:** DEN 17 RE: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS

Dear Tony,

I have typed out a proposed email to Andrew Parsons, but I do not want to send it without putting it past you first. If you would prefer me not to send it, or to exclude some parts, or indeed to say more, please don't hesitate to say. If you want to share it with David and/or Gideon and/or Owain for their view, please feel free.

Dear Andrew,

I confirm that I would be available to talk tomorrow: I shall be working at home in the morning until 12.30 and shall be in chambers from about 3.00 until about 5.30.

As Tony says, he and I have discussed the position, and we see things very much the same way.

An appeal on the common issues aspect raises points which are legally very significant and, I believe, commercially very important to the clients, and on which I believe that the judge has gone badly wrong in a number of ways. An appeal on recusal aspect raises what I appreciate is a particularly sensitive issue for the clients both tactically and in terms of possible public perception.

As Tony says, I consider that the two aspects are, at least potentially, connected, and, for that reason, as well as on the individual merits of each of the two aspects, permission to appeal should in my view be given on both aspects. However, it would be perfectly possible to appeal on the common issues and not on the recusal – and indeed vice versa. I think that it would be quite remarkable if the PO did not get permission to appeal on the common issues aspect (or at least most of the points we are proposing to raise on that aspect); it would be less surprising, but in my view wrong, if permission to appeal on the recusal aspect was refused.

As to Tony's point 4, I think that there is a danger that our justified belief, and consequent sense of grievance, that the Judge has gone badly wrong may have made us over-suspicious of some sort of inappropriate collusion between the Judge and the CA. It would be perfectly proper, indeed sensible, for the Judge to have warned the CA of a possible forthcoming application which someone should look at urgently, although I cannot of course rule out the possibility that more was said (but even if it was, that is not by any means necessarily sinister). Coulson LJ is the LJ responsible for civil procedure, so it is not entirely surprising that the application ended up before him. The fact that he made an instant decision with regard to a stay is also unsurprising because that was urgent, and the fact that he has asked for the claimant's response is a [pretty good indication that he is considering the application on its merits, as one would expect. My one point of concern is that he has ruled in effect that the common issues and recusal application are separate: again, at least on the face of it, that is a perfectly rational view, although it is questionable whether he should have expressed a firm view on that without raising it with us (but I have not seen our application, so that may be unfair). At any rate, I think that that is a point which we should challenge in the reasonably near future if we are proceeding with the recusal aspect.

Yours sincerely,  
David Neuberger

Best,  
David

---

**From:** Anthony Grabiner [GRO] >  
**Sent:** 14 April 2019 11:19  
**To:** Andrew Parsons [GRO]  
**Cc:** Gideon Cohen [GRO]; Owain Draper [GRO]; David Cavender [GRO]; Stephanie Wood [GRO]; Amy Prime [GRO]; Tom Beezer [GRO]; David Neuberger [GRO] >  
**Subject:** Re: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS

Thanks for that Andrew. David N and I are both available to speak at a time tomorrow which will be convenient for Jane. Perhaps you would suggest a time? David and I are flexible.

As to the current thinking I've spoken this morning to David N, David C and Owain and I would add to the points I made in my email on Friday as below.

1. Owain and Gideon should press on as quickly as possible with preparation of the paperwork for the CofA application re the Common Issues judgment. This is a strong part of the case, it raises important questions of law and needs to be pursued because of the remaining trials and disputes between the parties.
2. We cannot progress the recusal appeal without specific instructions from the clients. I'm happy to participate in a conversation/conference with the client if that would be helpful. Ideally we would write a letter to the listing office pointing out the relationship between the two matters sooner rather than later but I think the timing is dependent on the matters in para 1. and this para 2.
3. The recusal matters are in the same judgment as the Common Issues and the idea of splitting them seems to me to be unrealistic. That said David N makes the point that even if the recusal claim is not pursued there is material in the judgment which might persuade the Court that there should be a different judge for the remaining cases and that this might be the result of a successful appeal on the Common Issues anyway.
4. I agree that the Fraser/Coulson axis does look a bit odd but we can't assume there's been some chicanery and we mustn't suggest it either.

Enjoy the weekend!

Tony

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

**GRO**

On 13 Apr 2019, at 08:50, Andrew Parsons <**GRO**> wrote:

Tony. Thank you for your email.

I agree with the proposed strategy and flag a few further points to consider below.

1. Jane MacLeod, General Counsel at Post Office, has asked whether it is worth us speaking to the Cs about whether they want the appeals heard together or separately. I can see pros (eg. cost saving) and cons (eg. better chance to oppose permission on the recusal) for them taking either approach but if they do support the appeals moving together that would, I presume, put more pressure on the C of A.

2. There is some reluctance inside PO to putting the appeals together and skipping over Fraser J for permission on the main appeal. They are keen to avoid any step that looks aggressive or heavy handed. I believe that we should be able to persuade them on both points, but we would need instructions before taking either step.

With the above in mind, are you and David Neuberger (copied) around on Monday to discuss this with Jane and me? If so, please let me know what time would suit you and whether a call or meeting is easier.

David Cavender - you are welcome to join us

**GRO**

Kind regards  
Andy

From: Anthony Grabiner  
Sent: Friday 12 April, 17:50  
Subject: Re: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS  
To: Gideon Cohen

Cc: Owain Draper, Andrew Parsons, David Cavender, Stephanie Wood, Amy Prime, Tom Beezer, David Neuberger

Dear all,

I've been following the emails and have discussed them with David Neuberger.

1. The order made by Coulson LJ means that we have some breathing space because it asks for a response from the other side on 25/4.

2. We think a letter should go from our solicitors to the CofA listing office asking the Court to take into account the fact that an appeal application is being prepared in respect of the Common Issues judgment and that the Court should deal with both matters together.

3. The preparation of the grounds of that appeal and the production of the supporting skeleton argument is extremely urgent and needs to be done ASAP. There's no point in bothering to ask Fraser J for permission to appeal. He's bound to refuse it and these days we're entitled to go straight to the CofA.

4. We share the concerns expressed in the flurry of emails. It looks as if Fraser J has been speaking either to the listing office or even to Coulson LJ. Otherwise it would be a remarkable coincidence that of all the LJ's presented with the papers they ended up by chance in front of the former TCC Judge although this is not a TCC case. I've asked Owain to dig out the references from the transcripts of the recusal arguments and the judgment day because my recollection is that Fraser J said on both occasions that the CofA was expecting an appeal application. Owain will circulate the extracts.

5. If we make no progress we will have to consider communicating with the listing office and the Master of the Rolls as to what has been going on here. In principle conversations about the merits as between the first instance Judge and the Lord Justice who ends up ruling on the leave to appeal point would, I think, be most inappropriate but that's a serious allegation to be making. Also we couldn't take that step without a detailed discussion with and instructions from Post Office. This is a very delicate matter.

6. David N and I plan to meet on Sunday to draft a suitable letter to be addressed to the listing office on Monday.

7. All suggestions welcome either on the contents of the draft or the suggested strategy.


Regards,

Tony

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

Tel:   
Mob: 

On 12 Apr 2019, at 16:44, Gideon Cohen

 > wrote:

Must be the same one. Not sure there is anything we can do about it now, though. Even assuming that his approach to the appeal will be guided strictly by legal principle.

On 12 Apr 2019, at 18:39, Owain Draper

[redacted] > wrote:

If there is only one Peter Coulson, we should get our hands on Coulson on Construction Adjudication. It has a chapter on bias.

From: Andrew Parsons [redacted] GRO

[redacted] GRO >

Date: Friday, 12 April 2019 at 16:19

To: Gideon Cohen [redacted] GRO >>, David Cavender

[redacted] GRO >

Cc: Anthony Grabiner <[redacted] GRO >, Owain

Draper [redacted] GRO >, Stephanie Wood

[redacted] GRO >>, Amy Prime [redacted] GRO

[redacted] GRO >, Tom Beezer [redacted] GRO

[redacted] GRO >

Subject: RE: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS

I agree.

Can we also think about our plan for submitting draft grounds of appeal on the main appeal in light of para 2? This now doesn't seem possible.

A

Andrew Parsons  
Partner  
Womble Bond Dickinson (UK) LLP

d:  
m:  
t:  
e:



andrew.parsons@ [redacted] GRO

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<image003.png><https://www.linkedin.com/company/womble-bond-dickinson-uk-llp/>

From: Gideon Cohen <[redacted] GRO >>  
Sent: 12 April 2019 16:10  
To: David Cavender <[redacted] GRO >>  
Cc: Andrew Parsons; [redacted] GRO >>;  
Anthony Grabiner; [redacted] GRO >>; Owain  
Draper <[redacted] GRO >>; Stephanie Wood  
<[redacted] GRO >>; Amy Prime <[redacted] GRO >>;  
[redacted] GRO >>; Tom Beezer <[redacted] GRO >>  
[redacted] GRO >>

Subject: Re: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS [WBDUK-AC.FID123887118]

I'd think the chances of us not getting permission just went from negligible to rather high.

> On 12 Apr 2019, at 18:04, David Cavender

<[redacted] GRO >> wrote:

>

> Yes !

>

> It looks very much like this is what Fraser J set up in advance - with his mate the former head of the TCC - unless you believe in co-incidences. This is very bad news.

>

> Best

>

> D.

>

>

**Andrew Parsons**

Partner

Womble Bond Dickinson (UK) LLP

d: [redacted] GRO  
m: [redacted] GRO  
t: [redacted] GRO  
e: [andrew.parsons@womblebonddickinson.com](mailto:andrew.parsons@womblebonddickinson.com) [redacted] GRO

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Sent from my iPhone

>

>> On 12 Apr 2019, at 16:01, Gideon Cohen

[redacted] >> wrote:

>>

>> Does this indicate that Coulson will decide the permission application? Ex-construction lawyer, TCC judge...

>>

>>> On 12 Apr 2019, at 17:45, Andrew Parsons <[redacted]>

[redacted] > wrote:

>>>

>>> FYI

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>>>

>>>

>>> Andrew Parsons

>>> Partner

>>> Womble Bond Dickinson (UK) LLP

>>>

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>>> m

>>> t:

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>>> [www.womblebond Dickinson.com](http://www.womblebond Dickinson.com)<<http://www.womblebond Dickinson.com>>

>>>

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

>>> From: Civil Appeals - Associates

[redacted]

>>> Sent: 12 April 2019 15:25

>>> To: Andrew Parsons [redacted]

[redacted]

>>> Cc: 'james.hartley' [redacted]

<james.hartley [redacted]>

>>> Subject: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS

>>> Importance: High

>>>

>>>

>>> Good Afternoon

>>>

>>> Please see attached order for your attention

>>>

>>> Kind Regards

>>>

>>> Ann-Marie Smith

>>> Associates' Office

>>> Civil Appeals Office Room E311

>>> Royal Court of Justice

>>> Strand

>>> London

>>> WC2A 2LL

>>> DX 44450 STRAND

>>> Tel

>>> Fax

>>> [civilappeals.associates](mailto:civilappeals.associates) [redacted] <<mailto:civilappeals.associates>> [redacted]

>>> [www.gov.uk/hmcts](http://www.gov.uk/hmcts)<<http://www.gov.uk/hmcts>>

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