

From: Andrew Parson [GRO]
Sent: Tue 23/04/2019 7:52:11 AM (UTC)
To: David Cavender [GRO]; Anthony Grabiner [GRO]
Cc: David Neuberger [GRO]; Anthony de Garr Robinson [GRO]; Tom Beezer [GRO]; Rob Smith [GRO]
Subject: DEN 28 RE: Post Office Group Litigation

All
Thank you all for your support over the weekend. I agree wholeheartedly with David Neuberger's comments below, and also share what I suspect is a growing frustration that the client will not move forward with this. I see that Rob has forwarded the dial in number. I've set it out below again just in case.

[GRO] (UK)

Conference ID: 4654027

Having spoken to Alan Watts, I suspect that he will want to test out thinking around the appeal on the call today. In particular, around the scope of the appeal and joining the two appeals together. One question that I anticipate from the Alan and the board is: what (if any) are the advantages of running the Common Issues and Recusal appeals separately?

Speak later

Andy

Andrew Parsons

Partner

Womble Bond Dickinson (UK) LLP

d: [GRO]
m: [GRO]
t: [GRO]
e: [GRO]

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From: David Cavender <[GRO]>
Sent: 22 April 2019 20:10
To: Anthony Grabiner [GRO]
Cc: David Neuberger <[GRO]>; Andrew Parsons <[GRO]>; Anthony de Garr Robinson <[GRO]>; Tom Beezer [GRO]; Rob Smith <[GRO]>

Subject: Re: Post Office Group Litigation

I have not seen one yet !

D.

Sent from my iPhone

On 22 Apr 2019, at 19:59, Anthony Grabiner [GRO] wrote:

I'm following the emails. Is there a dial in for the 11am call on Tuesday?

Tony

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

GRO

On 22 Apr 2019, at 16:45, David Neuberger

GRO

> wrote:

Dear Andrew,

I have looked at the various documents that you have sent with your emails of Thursday, Friday and Sunday.

I can't pretend to have read every word in it, but I think that the spreadsheet contains a pretty useful and accurate summary of the position, subject to the point that David Cavender makes.

The Opinions relating to other litigation (which I have only skim-read) make interesting reading.

As to the advice/draft advice to the client, it may help if I make the general point I that, while the recusal application and appeal are unusual (but not by any means very unusual) and could be characterised as aggressive (although I should make it clear that I remain of the view that it is justified), there would be absolutely nothing aggressive or unusual in the Post Office appealing against the judge's conclusions on those common issues in respect of which he found for the claimants. In that connection:

1. Appealing on a point of law is ultimately simply part of the litigation process;

1. Because an appeal need permission in order to proceed, a hopeless appeal is normally shut out before it can get under way;

1. Even ignoring the fact that I think that the Judge went wrong in a number of respects when considering and deciding the common issues, when it comes to issues of contractual interpretation there is frequently room for argument, and appeals to the Court of Appeal are pretty common;

1. On even a charitable view, a significant part of the Judge's reasoning is controversial and, given that 11,000 contracts are involved, if any course the PO took was likely to cause surprise in the legal world, it would be the course of not appealing.

1. I have been around too long to view the outcome of any litigation as guaranteed, but I would be surprised if the Judge's conclusions against the PO on the common issues were generally upheld (I use the word "generally" because there are a large number of issues, and some of them are susceptible of a nuanced

answer); to put the point another way, I would certainly expect an appeal to result in the PO being substantially better off in terms of success on the common issues than is currently the position.

1. Of course, it is ultimately a commercial decision for the PO board whether to appeal on the common issues, but, at least on the face of things, it could be said to be a little rum to consider it worth fighting about the common issues for days before the Judge, and then, when the Judge finds against the PO, to decide not to appeal in circumstances where the advice on prospects is optimistic.

With best wishes,
David Neuberger

From: Andrew Parsons [GRO]
Sent: 21 April 2019 19:57
To: David Cavender [GRO]; David Neuberger [GRO]; Anthony Grabiner [GRO]; Anthony de Garr Robinson [GRO]
Cc: Tom Beezer [GRO]; Rob Smith [GRO]
Subject: RE: Post Office Group Litigation

Thanks David

I agree with your comments below. PO is however looking for us, as a legal team, to avoid being seen as heavy-handed. Whether one calls the 4 terms "concessions" or "acknowledgements" or something else is perhaps smoke and mirrors. Some contrite language would go a long way with a client who is as nervous about giving a bad impression as it is about a bad legal outcome. We must however be clear with the client that what we are proposing is not accepting the judgment on these 4 terms.

I've attached the latest draft of the PO board paper, which I hope is very close to the final version.

Post Office have asked for the board meeting to start 30mins earlier at 8:30. Is that ok for everyone?

Kind regards
Andy

Andrew Parsons
Partner
Womble Bond Dickinson (UK) LLP

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m:
t:
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GRO GRO

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From: David Cavender <GRO>
Sent: 21 April 2019 13:44
To: Andrew Parsons <GRO>, David Neuberger <GRO>; Anthony Grabiner <GRO>; Anthony de Garr Robinson <GRO>
Cc: Tom Beezer <GRO>
Subject: RE: Post Office Group Litigation

Dear Andy,

Many thanks for this. I have reviewed the Excel spreadsheet and have no comments.

However, one point of tension we need to be aware of is the nature of the suggested “concession” that applies to implied terms (a) (b) (c) and (t). Strictly speaking we are not formally making any “concession”. We are going to appeal the decision of the Judge that it was “necessary” imply those 4 implied terms. We are then going to identify in the skeleton when dealing with the Agreed Implied terms (i.e. Necessary co-op and Stirling) that obligations of the kind identified in those 4 implied terms are capable of fitting within umbrella of such Agreed implied terms. Normally, whether or not such obligations did in fact arise under the Agreed Implied terms is something that would be determined at a trial dealing with breach.

However, given the way this matter has evolved (and given it is Group Litigation) it is perfectly possible that Court of Appeal might want to salvage something from the wreckage of the Judgment and indicate (or actually hold) that the obligations in implied terms (a)(b)(c) and (t) are within or are “incidences” of the Agreed Implied terms. This is quite a subtle point for the client to understand- but it is an important one as we want to be able to go to the Court of Appeal (with the Agreed Implied terms and the other concessions we made) and then stand behind the contracts and ask the court to enforce them in accordance with their terms. If both sides are saying the contracts need to be re-written then it quickly becomes an unedifying and unpredictable horse trade.

Best,

D.

David Cavender QC

<image005.jpg>

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From: Andrew Parsons <[REDACTED]>

Sent: 18 April 2019 17:36

To: David Cavender <[REDACTED]>; David Neuberger

<[REDACTED]>; Anthony Grabiner

<[REDACTED]>; Anthony de Garr Robinson

<[REDACTED]>

Cc: Tom Beezer <[REDACTED]>

Subject: Post Office Group Litigation

All

There have been some changes at Post Office that I need to update you on. I'd be very grateful if you could

deal with this sensitively, which I'm sure you would anyway.

Post Office have decided that they need full-time support at board level to oversee the Group Litigation. They have therefore instructed Alan Watts at Herbert Smith to advise them in place of their General Counsel, Jane MacLeod. This has made Jane's position very difficult and through mutual agreement she is leaving Post Office. Alan is currently reading in and they'll be a handover during the course of next week. This is not public knowledge yet within Post Office or my team here at WBD, so please can we keep this information contained to those on this email.

I suspect that this change has been one of the reasons why we have struggled to get instructions on the Common Issues appeal. The board meeting is still going ahead at 9am next Wednesday and Rob Smith has kindly arranged a conference call on Tuesday at 11am for Tony G, David N, David C and me to discuss this. Alan would like to join that call as would Rodric Williams, the in-house litigator at Post Office.

The purpose of the call is for me to download to you the current thinking at the client and also to plan in outline what we intend to say to the PO board.

In advance of the call you may wish to review the attached documents:

1. An advice note that David C and I submitted to the CEO last week.
2. A draft board paper (that will be revised over the weekend). This is an internal PO paper so the legal team does not need to sign this off, but I'm happy to discuss this next Tuesday.
3. A draft spreadsheet setting out issue-by-issue the grounds of appeal (prepared by me and quickly reviewed by David C). PO want to send this with the board paper so David C if you get a chance to review this over the weekend that would be appreciated.

Have a lovely Easter.

Kind regards
Andy

Andrew Parsons
Partner
Womble Bond Dickinson (UK) LLP

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e:

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