

---

**From:** David Neuberger [GRO]  
**Sent:** Sat 11/05/2019 2:43:53 PM (UTC)  
**To:** Anthony Grabiner [GRO]  
**Subject:** DEN 37 RE: Group Litigation - recusal application - legally privileged and highly confidential

Tony,

Quite apart from the fact that it is annoying to be on the losing side (although in a battle, not the war), this is aggravating for a number of reasons.

1. It is simply wrong to refuse PTA on this: as I always have said, once a LJ feels that (s)he has to give detailed reasons, (s)he should realise that there is an arguable case (the test); quite apart from this, DC's email rightly identifies a number of errors;
2. Particularly as a former member of the judiciary, I hate seeing judges, especially senior judges, making a mess of things, and all the more so when it can lead to the unfortunately understandable view (which I do not share) of some sort of intra-judicial conspiracy;
3. The client misguidedly refused to follow our advice about running the two appeals together, which gives us an "out" in terms of our advice appearing wrong, but more importantly it has helped produce this unfair result ;
4. I am somewhat uncertain whether the PO should ask 3 LJ to consider the main proposed appeal: it could be said to indicate that we feel this is a marginal case for PTA when it is a no-brainer. Having said that, if Coulson can produce this low-grade material, one does wonder what he might do. I suppose that it is ultimately easy: given that DC feels strongly about it, and I understand why, I certainly do not feel like disagreeing. Anyway if we are going to the Judge first, we can wait to see what he says.
5. Coulson's judgment might frighten the PO. I would simply say that they should not be put off by two aberrant judges; aberrant may be unfair on Coulson, but his decision is poor/very poor.
6. I doubt that we want to amend the drafts you and I have approved on interpretation, but they will require revisiting on recusal. I still think the PO can suggest recusal, but should do so on the basis of Coulson has refused PTA but if after seeing the whole judgment the CA decides for itself that Fraser should not be hearing the case, they can still say so. It is a bit artful, but I think that the right course might be to drop the recusal part altogether and then to raise it once the PO gets PTA (if they do!).

David

---

**From:** Andrew Parsons [GRO]  
**Sent:** 11 May 2019 15:21  
**To:** David Cavender [GRO]; Anthony Grabiner [GRO] David Neuberger [GRO]; Gideon Cohen [GRO]; Owain Draper [GRO]  
**Cc:** Tom Beezer [GRO]; Amy Prime [GRO]  
**Subject:** Fwd: Group Litigation - recusal application - legally privileged and highly confidential

All

See below - requests for advice from the client. I think that David's email earlier today largely addresses points 1 and 2 but I'd welcome any other input.

In the meantime, I'll prepare a draft note answering the questions below and incorporating David's views. I'll circulate that tonight for comments.

Thank you and sorry this is landing over a weekend.

Kind regards  
Andy

**From:** Ben Foat  
**Sent:** Saturday 11 May, 15:00  
**Subject:** Group Litigation - recusal application - legally privileged and highly confidential  
**To:** Watts, Alan, Massey, Kirsten, Henderson, Tom, Andrew Parsons, Tom Beezer, Amy Prime, Rodric Williams, Mark Underwood1, Patrick Bourke

Cc: Alisdair Cameron, Diane Blanchard, Veronica Branton, Owen Woodley, Debbie.K Smith, Mohinder Kang, Rob Houghton, Mark R Davies

All

As you will know by now, we received the Court of Appeal's judgment in relation to Post Office's recusal application earlier today.

Post Office has not been successful in appealing against the trial judge's decision not to recuse himself. The judgment is critical of Post Office's application and permission to appeal the trial judge's recusal decision. At this stage there is little media activity but that may change over the weekend.

There are a number of steps that need to be worked through over this weekend:

1. A summary of the Court of Appeal's findings and our position (which can be adapted for various purposes) [HSF/WBD];
2. Further consideration of our approach to the substantive appeal given the number of statements which Lord Justice Coulson has made about the approach taken by Post Office in respect of the Common Issues trial. The Board subcommittee has approved the appeal approach last week but we need to advise the Board subcommittee whether this judgment should cause us to reconsider our approach or otherwise has any impact to the substantive appeal (not just the basis of the appeal ie the points of law; but the approach and tone) and provide (if any) recommendations to change; [HSF/WBD]
3. Implications to the current timetable including the existing Horizon trial which will resume on 4 June (ie this would continue) and also the hearing on Thursday 16 May (given the claimant's application for a delay); [HSF/WBD]
4. Costs consequences of this appeal; [WBD]
5. Comms statement (including internal comms position); [Patrick Bourke]
6. Updating the draft board paper which has already been prepared but will now need to be updated on the position, setting out the implications, and clarifying timetable and next steps (ie as above). [Mark Underwood/ Ben Foat to liaise with HSF/WBD]

Could the above points be progressed over the weekend. I will reach out to you individually over the weekend but may I suggest a call at 8.30 on Monday to discuss actions. Meeting invite and dial in details will be circulated.

WBD – could you ensure that the Counsel team provide the necessary support here given 1 and 2 and the short timeframe to file the relevant documents for the substantive appeal.

Apologies for the urgency but given the materiality of the issue we need to support the business. Thank you for your support in advance.

If you want to discuss or have any questions, please contact me either on email here or my personal mobile is: GRO

Kind regards

Ben



Ben Foat

Legal Director

Ground Floor

20 Finsbury Street

LONDON

EC2Y 9AQ

Highly Commended for 'Excellence In-house' at the Law Society Excellence Awards 2018

Mobile number:

**GRO**

This email and any attachments are confidential and intended for the addressee only. If you are not the named recipient, you must not use, disclose, reproduce, copy or distribute the contents of this communication. If you have received this in error, please contact the sender by reply email and then delete this email from your system. Any views or opinions expressed within this email are solely those of the sender, unless otherwise specifically stated.

POST OFFICE LIMITED is registered in England and Wales no 2154540. Registered Office: Finsbury Dials, 20 Finsbury Street, London, EC2Y 9AQ.

\*\*\*\*\*

This email and any attachments are confidential and intended for the addressee only. If you are not the named recipient, you must not use, disclose, reproduce, copy or distribute the contents of this communication. If you have received this in error, please contact the sender by reply email and then delete this email from your system. Any views or opinions expressed within this email are solely those of the sender, unless otherwise specifically stated.

POST OFFICE LIMITED is registered in England and Wales no 2154540. Registered Office: Finsbury Dials, 20 Finsbury Street, London EC2Y 9AQ.

\*\*\*\*\*

"Post Office Limited is committed to protecting your privacy. Information about how we do this can be found on our website at [www.postoffice.co.uk/privacy](http://www.postoffice.co.uk/privacy)"

**Andrew Parsons**  
Partner  
Womble Bond Dickinson (UK) LLP

d: **GRO**  
m:  
t:  
e: **GRO**

[Manage your e-alert preferences](#)



womblebonddickinson.com



**Please consider the environment! Do you need to print this email?**

---

The information in this e-mail and any attachments is confidential and may be legally privileged and protected by law. [d.neuberg@womblebonddickinson.com](#) only is authorised to access this e-mail and any attachments. If you are not [d.neuberg@womblebonddickinson.com](#), please notify [andrew.parsons@womblebonddickinson.com](#) as soon as possible and delete any copies. Unauthorised use, dissemination, distribution, publication or copying of this communication or attachments is prohibited and may be unlawful. Information about how we use personal data is in our [Privacy Policy](#) on our website.

Any files attached to this e-mail will have been checked by us with virus detection software before transmission. Womble Bond Dickinson (UK) LLP accepts no liability for any loss or damage which may be caused by software viruses and you should carry out your own virus checks before opening any attachment.

Content of this email which does not relate to the official business of Womble Bond Dickinson (UK) LLP, is neither given nor endorsed by it.

This email is sent by Womble Bond Dickinson (UK) LLP which is a limited liability partnership registered in England and Wales under number OC317661. Our registered office is 4 More London Riverside, London, SE1 2AU, where a list of members' names is open to inspection. We use the term partner to refer to a member of the LLP, or an employee or consultant who is of equivalent standing. Our VAT registration number is GB123393627.

Womble Bond Dickinson (UK) LLP is a member of Womble Bond Dickinson (International) Limited, which consists of independent and autonomous law firms providing services in the US, the UK, and elsewhere around the world. Each Womble Bond Dickinson entity is a separate legal entity and is not responsible for the acts or omissions of, nor can bind or obligate, another Womble Bond Dickinson entity. Womble Bond Dickinson (International) Limited does not practice law. Please see [www.womblebonddickinson.com/legal](http://www.womblebonddickinson.com/legal) notices for further details.

Womble Bond Dickinson (UK) LLP is authorised and regulated by the Solicitors Regulation Authority.

---

This email has been scanned by the Symantec Email Security.cloud service.  
For more information please visit <http://www.symanteccloud.com>

---