
From: David Neuberger <[redacted]@GRO>
Sent: Thur 20/06/2019 4:58:40 PM (UTC)
To: Anthony Grabiner <[redacted]@GRO>
Subject: DEN 42 Re: Post Office

Dear Tony,

I have now spoken to a couple of serious lawyers who have volunteered unprompted by me the view that the Fraser judgment is not only wrong but risks setting a dangerous precedent.

I wonder if it is worth Helen Davies considering including a paragraph suggesting that bearing in mind the facts that

- 1 the PO's case is plainly arguable (and according to Chitty - no less - right)
- 2 The Judge's decision directly affects over 10,000 contracts across the country,
- 3 The Judge's decision as to the existence and effect of relational contracts has very wide implications on the interpretation not merely of long term contracts but contracts determinable on notice, and
- 4 The CA has not so far really considered the existence, extent or effect of relational contracts,

The judges decision to refuse pta was wholly unreasonable and, had it been a no -judicial decision would have been plainly JR-able. (It is tempting to add that it should also cause Coulson to reconsider his decision on bias but that may be a step too far.)

Apart from being strong stuff it might make Coulson think a bit more carefully about how refusing pta might go down in the legal - even the judicial - world.

Best
David

Sent from my iPhone

> On 19 Jun 2019, at 18:19, Anthony Grabiner <[redacted]@GRO> wrote:

>
> Dear David,
>
> I've now spoken to Helen Davies who's been instructed to replace David C. She decided to pursue the application to appeal without asking for two or three LJ's on the basis that it was a straightforward matter. She's now rather shocked by what has happened. It went to Coulson who promptly restricted the page count for the supporting skeleton. It seems also that Fraser has now delivered an 18 page judgment explaining why he refused permission on the substantive appeal. He has apparently relied on matters in the new trial although it is still being argued and no judgment has been delivered. She says there are indications that Fraser and Coulson must have been speaking.

>
> She will think about the position. I've suggested she should consider a letter to the MR but of course I'm not involved any more and she could need instructions from the client before she could do that. As we've previously discussed once Coulson refuses the application - which I'm certain he will do - it will be very difficult, if not impossible, to put matters right.

>
> I'm appalled by the whole story.

>
> In exasperation,

>
> Tony

>
> Lord Grabiner QC
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