
From: David Neuberger [GRO]
Sent: Wed 24/04/2019 6:43:14 AM (UTC)
To: Andrew Parsons [GRO]
Cc: David Cavender [GRO]; Anthony Grabiner [GRO]
Subject: DEN 32 Re: Board Sub- Committee
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Attachment: image003.png
Attachment: image7da291.PNG
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Attachment: imageafa9cf.PNG
Attachment: image002.png

Thanks for that.
Interesting.
David

Sent from my iPhone

On 23 Apr 2019, at 23:58, Andrew Parsons [GRO] wrote:

Fyi below.

HSF are going to oppose hearing the two appeals together at the meeting tomorrow.

A

From: Watts, Alan
Sent: Tuesday 23 April, 20:24
Subject: RE: Board Sub- Committee
To: Andrew Parsons
Cc: Massey, Kirsten, Henderson, Tom

Thanks Andy

I wasn't aware of the costs hearing so I am grateful for that. I assume the C's haven't put anything meaningful in on that yet. I understand that the PO would like to avoid that but that will be difficult – we would have to start giving some thought to an interim payment which no doubt they will seek but impossible to do without some information on what their costs actually are!

From: Andrew Parsons [GRO]
Sent: 23 April 2019 18:27
To: Watts, Alan
Cc: Massey, Kirsten; Henderson, Tom
Subject: Re: Board Sub- Committee

Alan
Thank you for the heads up. Very much appreciated.
A few quick thoughts....
I agree with the timetable save for the assumption that joining the appeals will lead to

expedition as rapidly as you suggest. I think there is an equally good chance that the joint appeal will take longer due to needing more Court time. I think the timetable should therefore show both an expedited and non-expedited route on the conjoined appeal.

Fraser J strongly favours speed of resolution over any other factor. If permission is not granted on the recusal, he will press on with Horizon and Trial 3 in November as currently listed unless the Court of Appeal stops him. I think it is unlikely we can stop the Horizon trial based on the Common Issues appeal alone, but might be able to stop Trial 3. This then leads to a busy Summer finishing off Horizon and then refocusing on the CI appeal, perhaps in the Autumn. I would therefore question whether splitting the appeals does create breathing space for settlement. The only way I can see to create such space is to pause all trials and that will hopefully come from permission on the recusal.

I agree with you that it is important not to rush the CI grounds of appeal. But we effectively have a hard stop on 14 May, being the deadline for skeletons for the hearing before Fraser J on 16 May. Do you envisage trying to move back this date or are you hoping to make use of the 21 days after this date? Otherwise, there may not be much difference in the timing for preparing the appeal to go before Fraser J or before the Court of Appeal.

One last point to note, are you aware that there is a costs hearing on 23 May at which one very possible outcome is that PO is ordered to pay the costs of the Common Issues? I can't recall the exact number, but something around £7m has been floated by the Cs. For many obvious reasons PO would like to avoid this. I suspect Fraser J will push on with costs whether he gives permission to appeal or not. I think the only way to stop that outcome is the early intervention of the Court of Appeal.

As you say, there are no straightforward answers!

On balance, I see a greater need for the recusal and would focus activity on the Common Issues appeal accordingly. It's difficult to convey the overwhelming sense one gets sat in Court that Fraser has decided all the issues already and no matter what outcome PO gets on the CI appeal, Fraser will find a way to put the blame back on PO.

Kind regards

Andy

From: Watts, Alan

Sent: Tuesday 23 April, 16:58

Subject: Board Sub- Committee

To: Andrew Parsons

Cc: Massey, Kirsten, Henderson, Tom

Dear Andy,

Thank you again for the call with the wider team this morning which was very helpful. As you know we will be asked for our views at the Board meeting tomorrow and while I think we're agreed with the legal team on (a) the need to appeal the Common Issues judgment and (b) the grounds for appeal, we are less convinced on the strategy of having both leave to appeals being considered together.

We appreciate that it is a finely balanced decision but are coming down against the idea of making an early application for leave on the Common Issues directly to the Court of Appeal principally for the following reasons:

As I mentioned on the call we think that the Post Office's primary focus should be to succeed in the Common Issues appeal. It is therefore important that the grounds for the Common Issues appeal are not rushed if that is going to need to happen otherwise. Instead adequate time needs to be given to presenting the best appeal case possible.

Again, as mentioned on the call we do not necessarily agree that the Common Issues appeal will be of great help to the Recusal appeal and we think that there must be a risk that the Court

of Appeal will refuse recusal if it is in a position to deal with the substance of the matter in the Common Issues appeal at the same time. In addition, there must be a risk that the Recusal appeal taints the Common Issues appeal, particularly if Coulson J is being asked to consider both at the same time. We obviously heard the various counter arguments on the call but are not convinced that this approach serves the Common Issues appeal.

In general, we think that it is in the Post Office's interests to slow down the court process if at all possible to allow time for settlement discussions. A fast-tracked Common Issues appeal (which would presumably happen if conjoined with Recusal) may impact the settlement process, in particular on the Claimants' side, if the parties are too heavily engaged in preparing for an appeal to focus on settlement discussions.

We also do not think that the Post Office should discount the reaction of Fraser J, who we must assume will remain in place for the foreseeable future, if the Post Office seeks leave to appeal directly from the Court of Appeal. It is still fairly unorthodox to bypass the Trial judge on permission to appeal which was one of the points David Neuberger made on the call. If we could guarantee that he would not be the Judge going forward then that wouldn't be an issue but we obviously can't.

Of course we appreciate the various counter arguments and certainly agree that both viewpoints should be aired at the meeting tomorrow morning. I wanted to give you a heads up that this is where we're at right now in case it would be useful to discuss before the meeting tomorrow morning. As discussed ultimately this may all be out of our control as the CA might just decide to do what it wants!

AI has also asked to see how a future timeline works "if we conjoin and fail, conjoin and win on some contract law but not recusal, win on both, take them separately (and the versions of win and lose on that)". I've attached a first draft based on our basic understanding of how things are expected to progress. It gets fairly complicated fairly quickly. Would you mind taking a look and making any necessary changes so that we can circulate this evening?

Many thanks,

Regards

Alan

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