POL00022883

Message

From: Tom Beezer GRO
Sent: 20/03/2019 06:47:49
To: Jane MacLeod GRO
CC: Andrew Parsons GRO; Rodric Williams GRO; Amy Prime GRO; Ben.Foat GRO
Subject: RE: Post Office Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE [WBDUK-AC.FID26896945]
Attachments: 4852_001.pdf; PO - Recusal.pdf; AGQCconf'note18-3-2019.docx

Jane, all

Lord Grabiner Note of Conference of 18th March 2019:

See attached. Jane, this is my note based on your notes (thanks for the PDF) and my own notes. This is a formatted version of what was said. I have sought to make the note a more "normal" note of a con' but some very strident comments were made by Lord Grabiner (in your favour). I attach the draft now so you can circulate it if you wish. You and I have a level of confidence that we captured accurately what was said to us so I think it is capable of circulation as a draft. What was said was quite stark and simple, hence the note being quite short. In terms of getting it blessed by Lord Grabiner, I have sent the note to Gideon for his comments and (if possible) an "OK" from Lord Grabiner this morning.

The note is the Word Doc' attached. The PDFs are the Lord Neuberger note and the DCQC note. Once finalised I will have all 3 made into one PDF so it stands as one document as each refers to, and in integral to, the other (hence my attaching the PDFs again here).

Documents needed for recusal application:

For a recusal application the moving parts are:

- **Application Notice** – draft has been done.
- **Draft Order** – draft has been done.
- **Letter to Freeths** to put on notice and serve – to be done. This is a short piece of work.
- **Draft witness statement** in support – large work stream. Early draft is in circulation as of late last night. This is substantially underway. The witness statement is essentially a central repository and record of "*who said what*" on trial sequencing, disclosure and scope of CIT in historic hearings to show this Judge has gone way beyond what he said he would do, and then criticises POL for sticking to the rules he set up.
- **Skeleton Argument** – an update from Gideon on this is that "*I spent much of [*yesterday*] drafting it with AGQC. We are well advanced - and anyway we will obviously not be putting this in with the application notice*."

Possible Timings.

Looking at the above list of moving parts I think that (if POL Board say "go") we could be in a position to serve the Application Notice on Thursday. That service of the Application Notice on the Court and Freeths is a private matter and it would not become public (save for potential leaks/briefings) until the Application was heard. As to when it could be heard, Gideon comments:

> *"[*Hearing*] Won't be Friday, because it will be contested and the other side will want to put in a skeleton argument. I think back end of next week would be the very earliest. [*And in a further e mail*] The immediate question to consider, following discussion with AGQC (cc'ed), is whether we should be putting in a WS at all. Interested to know what others' views are on that. If not, I think we will have to beef up the Application Notice a bit to spell out our key contentions, at least by listing the areas in which the Judge made improper findings.*

So there are still pieces moving around as to scope and format on witness statement verses Application Notice etc but what I take from the above is as follows:

- If Post Office Board say "yes" then we will be serving an Application this week.
- There will be no hearing on the recusal this week.
- It is likely that the Judge will make time in his diary next week (being "Brexit Week" at the Courts, so the Horizon Trial is paused anyway) to hear this matter.
- It is likely he will refuse to recuse himself and I think it unlikely he will adjourn the Horizon Trial of his own volition.

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- We will then seek an appeal of the refusal to recuse to the Court of Appeal on an urgent basis and that could be in week commencing 1st April, although the further out we go the less firm my predictions are.

The caveat here is that I have Andy's warnings ringing in my ears that this Judge makes some odd orders and it is not beyond him to make some strange orders as to timing and sequencing. With that in mind I have alerted the Clerks at OEC to be all over the listing of any hearing issue to make sure (so far as is humanly possible) that any hearing of the Application for recusal happens when Lord Grabiner is free to attend Court. We cannot guarantee that, but we can do all in our collective power to make it happen and I am onto that issue.

One point to be aware of is privilege. Here we do have Litigation Privilege in existence (for the obvious reason…there is ongoing lit'…!) but please do make sure that your interaction with people in the business (outside the client group) and with (say) UKGI is ***for the dominant purpose of the litigation***. That is a vitally important point as we cannot lose privilege in these documents.

All comments gratefully received.

Tom Beezer
Partner
Womble Bond Dickinson (UK) LLP

d:
m: GRO
t:
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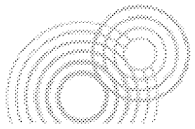

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From: Jane MacLeod GRO
Sent: 19 March 2019 20:05
To: Tom Beezer
Cc: Andrew Parsons; Rodric Williams; Amy Prime
Subject: FW: Post Office Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Tom

See correspondence below from the UKGI GC requesting:

- Update on proposed timing – could we get an update on readiness please - that is tomorrow morning can we say whether we'll be ready to serve immediately/ Thursday /later? And
- Written advice from LGQC by way of confirmation of our con yesterday.

Many thanks,

Jane

Jane MacLeod
Group Director of Legal, Risk & Governance

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Ground Floor
20 Finsbury Street
LONDON
EC2Y 9AQ

Mobile number: GRO

From: Jane MacLeod
Sent: 19 March 2019 20:00
To: 'Watson, Richard - UKGI' <GRO
Cc: Cooper, Tom - UKGI <GRO
Subject: RE: Post Office Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Thanks Richard

Our advice is that the application should be made this week. Ideally if we approve it tomorrow, then (I think) the earliest timing is as follows:

- the application would be served on the claimants and the judge on Thursday
- application to be heard on Friday.

At that point the judge could accept and recuse himself, reject the application (in which case we would appeal) , or he might ask to consider it over the weekend and/or suggest another judge hears the application. Counsels' view is that he will say 'no' either immediately or after consideration.

So, the point at which it would become public is definitely at the hearing, and potentially earlier following service of the notice of the application on the Claimants (if they choose to make it public) – so Thursday on the above timetable.

I will get confirmation on the state readiness and recommended timing for the calls for tomorrow.

Kind regards,

Jane

Jane MacLeod
Group Director of Legal, Risk & Governance
Ground Floor
20 Finsbury Street
LONDON
EC2Y 9AQ

Mobile number: GRO

From: Watson, Richard - UKGI [GRO
Sent: 19 March 2019 19:50
To: Jane MacLeod <GRO
Cc: Cooper, Tom - UKGI <GRO
Subject: Re: Post Office Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Jane

If a decision to make the application is made tomorrow when do you think the application will be lodged with the court, and presumably the claimants at the same time - good to understand when it would become public?

Kind regards

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Richard

Sent from my BlackBerry — the most secure mobile device
From: Richard.Watson GRO
Sent: 19 March 2019 7:24 pm
To: jane.macleod GRO ; rodric.williams GRO
Cc: Tom.Cooper GRO
Subject: Re: Post Office Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Jane

Thanks for the call earlier. As discussed I think it is essential that the board have the clearest possible advice on the recusal application and its merits from Lord Grabiner in writing. It needn't be long, could refer to Lord Neuberger's advice and could be a note approved by him.

kind regards

Richard

Sent from my BlackBerry — the most secure mobile device
From: Richard.Watson GRO
Sent: 19 March 2019 4:37 pm
To: jane.macleod GRO ; rodric.williams GRO
Cc: Tom.Cooper GRO
Subject: Re: Post Office Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Jane

I understand from Tom that Neuberger's advice is to the effect that if POL want to appeal on procedural unfairness then they must make a recusal application. Is the legal advice being updated in advance of tomorrow's board meeting to reflect this? Does Lord Grabiner agree with Neuberger's advice? So far the lawyers appear to say the prospects of success are "reasonable". Is Counsel willing to express that in percentage terms?

Sorry for the questions but it will help handling at our end to have a clearer understanding of what legal advice the board are being given regarding recusal and what the prospects of success are

Happy to discuss. I'm on GRO

Kind regards

Richard

Sent from my BlackBerry — the most secure mobile device
From: jane.macleod GRO
Sent: 18 March 2019 6:57 am
To: Richard.Watson GRO ; rodric.williams GRO
Cc: Tom.Cooper GRO
Subject: RE: Post Office Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Thanks for the clarification Richard – my apologies if I misunderstood.

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I will separately forward over the relevant information.

Kind regards,

Jane

Jane MacLeod

Group Director of Legal, Risk & Governance

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20 Finsbury Street

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Mobile number: GRO

From: Watson, Richard - UKGI [GRO]
Sent: 18 March 2019 09:49
To: Jane MacLeod <jane.macleod GRO >; Rodric Williams <[GRO]>
Cc: Cooper, Tom - UKGI <Tom.Cooper GRO >
Subject: RE: Post Office Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Jane

Tom has forwarded your below email.

As I explained when we spoke, the concern from our end is HMG being seen as not upholding the independence and integrity of the judiciary, hence the concern about Tom making a decision as a Director of POL on whether to make a recusal application. However, it is perfectly proper that Tom, as a director, should to ensure the Board fully realised the seriousness of what was proposed including the impact on the shareholder (and the difficulties

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of distinguishing between strategic direction and operational matters in Parliament and the media) as well as the wider litigation strategy, that the Board had taken and properly considered legal advice, and finally has reflected properly on whether there was bias or (painful as it is) inferences/findings drawn ultimately properly from hearing the evidence expressed in pithy and robust language. In supporting Tom I would like to receive the information relating to the recusal issues.

Apologies if I suggested otherwise in our call.

Happy to discuss

Kind regards

Richard

Richard Watson|General Counsel

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From: Jane MacLeod
Sent: Monday, March 18, 2019 8:32:12 AM
To: Thomas Cooper
Cc: Rodric Williams
Subject: Post Office Litigation - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Tom

Please find attached the note referred to.

In my call with Richard on Friday, he gave me the impression that the UKGI legal team would not want to be seen to have received the information relating to the Recusal issues. To that end I have not provided any of the advice to him. If that position has changed, would you please ask him to let me know?

Kind regards,

Jane

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