

## Message

**From:** David Cavender [GRO]  
on behalf of David Cavender [GRO]  
**Sent:** 10/04/2019 10:02:48  
**To:** Andrew Parsons [GRO]; Amy Prime [GRO]  
**CC:** Owain Draper [GRO]; Gideon Cohen [GRO]; Stephanie Wood [GRO]; Anthony Grabiner [GRO]  
**Subject:** Grounds of Appeal - Main Appeal  
**Attachments:** Post Office. Grounds of AppealdraftforSOLS.docx

Dear Andy,

As promised I attach the first draft of the Grounds of Appeal. It is still work in progress and a number of references are still to be inserted – but the size and scope are now clear. That size is a problem in itself – but that is caused by the fact that very many issues were before the Court and this Judge got very many points wrong. The overwhelming majority of the points appealed are pure points of law. I have tried to tread as lightly as possible on appeals on the facts. There are three categories of these:

- (a) Mr. Bates: receipt of SPMC contract. On its face this may seem to be unnecessary – and that might end up being the conclusion following review. But I like it because it is a clear example where the Judge has wholly ignored the documents to get to the conclusion that he wants (paragraph 121).
- (b): Findings adverse to PO behaviour and witnesses – these overlap with some of the recusal grounds and are relevant to the claim for indemnity costs (paragraphs 122 to 137).
- (c) Litigation conduct of PO- relevant to indemnity costs arguments made by the Claimants (paragraphs 138 to 140).

You will see that I have asked for expedition, and I have raised all the unfairness points. I have used these to seek to give the Court of Appeal a choice to *not* send the case back to the Judge on “case management” grounds – as an alternative to recusal – effectively “recusal light”. I am not entirely sure that this works – but think it might be worth a try ?

You will see that I have suggested that we accept certain modified implied terms identified by the Judge under the “necessary” rubric – in particular implied terms (t)(a)(b) and (c). You will see that I have significantly narrowed them (from the from argued for by the Claimants) to make them workable and sensible. Indeed, if the Judge had actually sought to give meaning and (generous) effect to the “necessary co-operation” term as we urged him to do – then he may well have found that terms in this form would have fallen under the umbrella of that agreed implied term. At all events, given where we are, we need to signal to the Court of Appeal that we are not mindlessly appealing every single point on which we lost – and have given the matters further sober thought. This approach will assist with that task and perhaps with any concern on this score that the PO board may have.

This is my draft but I have received very helpful input and amendments from Owain, Gideon and Stephanie. I suggest you get someone your end to go through it with a toothcomb to ensure that there are no *other* holdings or findings PO wants to appeal.

I assume that you will send this to Lord Neuberger to review with the extended timeline we discussed ?

Happy to discuss.

Kind Regards

David.

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