WBON0000687

From: Jane MacLeod GRO
To: Tom Beezer GRO, Amy Prime GRO
Cc: Mark Underwood1 GRO, Rodric Williams GRO, Ben Foat GRO, andrew.parsons GRO, Dave Panaech GRO GRO
Subject: Re: Recusal application - draft documents [WBDUK-AC.FID26896945]
Date: Thu, 21 Mar 2019 07:38:50 +0000
Importance: Normal
Inline-Images: image001.png; image002.png; image003.png; imageedd7f1.PNG; image155c9b.PNG; image06c446.PNG

Thanks for the explanation Tom - as I said in my email, I suspected I had missed the point! It will be for AGQC to direct how the various documents are constructed to give him the best chance of winning the case.

On Comms - yes, we have a response in draft which will be finalised during the day. I will send over shortly. To that end, I need to be aware of proposed timings, so please let m know as this develops.

Jane

Jane MacLeod
Group Director Legal, Risk & Governance
Post Office
GRO

From: Tom Beezer GRO
Sent: Thursday, March 21, 2019 7:29 am
To: Jane MacLeod; Amy Prime
Cc: Mark Underwood1; Rodric Williams; Ben Foat; andrew.parsons; Dave Panaech
Subject: RE: Recusal application - draft documents [WBDUK-AC.FID26896945]

Jane

The answer to this Q gets into how the subject matter of the application is presented to the court and (most importantly) what evidence can be given on in a witness statement. Points that go through my mind are as follows:

- We had initially done a much more fulsome w/s so I suspect our initial reactions are somewhat aligned

- Lord Grabiner initially wanted no w/s and wanted to develop the narrative through the content of the Application Notice and mostly through oral argument. There are points in here about not wanting to give Green too much advance notice and about Lord Grabiner's faith in his own advocacy

- The "test" or bar that we have to meet for bias (real or apparent) is:

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- "*whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased*" [Porter –v- Magill 2 AC 357, para 103]

- When looking at whether that test is met the court (and the Court of Appeal) will look hard at the procedure adopted here. In other words the sequential trial structure and timings (and warnings given historically) that have got us to this point. That is something a witness statement **can** deal with as it is "story". We can set out (in short form) that narrative. Lord Grabiner's point is at one level you don't need to as it is all there in the court records and transcripts – one just needs to point to it during oral argument. That debate has been had, and the shorter witness statement you have seen is suggested to POL notwithstanding it gives Green a partial roadmap to our complaint.

- The important point to recognise is that a witness statement can say nothing really about the witnesses own view on whether the procedure adopted and what happened in the past amounts to bias as that is opinion. It is the court that has to form the view that historic actions meet the test (see above) not the witness. In this regard the court is *the fair minded observer* looking in. So the witness statement (and application notice) do deal mostly with procedure and backstory as the overlay (put another way, the second half of the argument) being "*and so that must be biased*" comes in oral argument to a degree but really is the function of the court to make that conclusion and not the witness.

One last non legal point – it is possible that once the recusal application is served it gets mentioned by the judge or Green. That could theoretically occur today. Unlikely but possible. If it does get mentioned is POL Comms'/PR ready to deal and brief both at court and more widely ?

Tom Beezer
Partner
Womble Bond Dickinson (UK) LLP

d:
m:
t:
e:

GRO

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From: Jane MacLeod [mailto: GRO
Sent: 20 March 2019 23:29
To: Amy Prime
Cc: Mark Underwood1; Rodric Williams; Ben Foat; Andrew Parsons; Tom Beezer; Dave Panaech
Subject: Re: Recusal application - draft documents [WBDUK-AC.FID26896945]

Amy

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I have read these quickly and suspect that I have missed the point of the witness statement. Reading it however suggests that The foundation of our claim is procedural unfairness. There is little about why we believe that there is the potential for bias (I have not correctly stated the test).

Sorry ...

Jane

Jane MacLeod

Group Director Legal, Risk & Governance

Post Office

GRO

From: Amy Prime GRO
Sent: Wednesday, March 20, 2019 9:33 pm
To: Jane MacLeod
Cc: Mark Underwood1; Rodric Williams; Ben Foat; andrew.parsons; Tom Beezer; Dave Panaech
Subject: Recusal application - draft documents [WBDUK-AC.FID26896945]

Jane

Please find attached the papers for the recusal application, on which we would welcome any comments. These are subject to a careful proofread by us in the morning.

Application notice

Standard form document explaining at high level the order sought.

Draft Order

Order which Post Office will be seeking from the Judge (recusal and Horizon Trial to be adjourned)

Witness Statement

The witness statement has evolved to become a simple, concise document which introduces (i) structure of the litigation; (ii) how the scope of the Common Issus Trial was set up; (iii) the dispute over admissibility of evidence; and then from these draws a conclusion that the judgment made findings / observations which fall to be decided at future trials and these findings give the impression that the judge has formed a view on these matters which will prevent him from taking an impartial view in future trials.

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We have been discussing with Counsel whether a witness statement was required, but a short statement has been seen as a convenient method by which to provide the Court with the required information.

This also connects into the approach being taken with the skeleton. The skeleton will cover the law / procedural matters but also itemise in more detail then the witness statement the paragraphs of the judgment where the judge has offended the principles, with cross reference to how the judge set up these issues. A shorter witness statements therefore prevents too much cross over with the matters to be dealt with in the skeleton argument. Lord Grabiner would then also expand on these points in his oral submissions.

If there are any questions please let either Tom or me know.

Kind regards

Amy

Amy Prime
Solicitor
Womble Bond Dickinson (UK) LLP

d:
m: GRO
t:
e:

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