From: Andrew Parsons	GRO	Þ			
To: Owain Draper <	GRO	>, David Neube	rger		
< GRO	>, Gide	eon Cohen <	GRO	>, "Anth	nony
Grabiner" <	GRO	>			
Cc: David Cavender <	GRO	>, Stephani	e Wood ⊲	GRO	>
Amy Prime <	GRO	>, Tom Beezer <	{	GRO	>, Rob
Smith < GRO	>				

Subject: RE: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS [WBDUK-

AC.FID26896945]

Date: Sun, 14 Apr 2019 18:53:20 +0000

Importance: Normal

Inline-Images: image38eaed.PNG; imagef13e68.PNG; imagedaee7c.PNG

All

I've spoken to the client. In order to move forward with the proposed plan of writing to the listing office this week, the client needs clarity on exactly what is to be communicated. Please could someone on the Counsel team prepare a draft letter for consideration?

The difficulty for Post Office is that its shareholder (ie. the government) wants approval of the decision on whether to appeal and, if so, what and how to appeal. That limits what we can say to the Court until that approval is given, which is not likely to happen for at least two weeks. A letter that has conditional and caveated language ("PO expects to appeal" rather than "PO will appeal") is more likely to get approved but of course carries less weight, and so there may be a tension between what we would like to say and what the client can approve at this stage.

Please could you therefore prepare two letters: one that is written as the legal team would like and a second one that is limited to what is necessary and in non-committal language. I suspect the second one may be unsatisfactory for our purposes but we can then present both options to the client for their instructions. Of course if there is a way to achieve all objectives in one letter then that would be perfect! Owain / Gideon – I suspect one of you will be holding the pen, so please do feel free to call me to discuss before drafting anything if that would help.

Please can we also pencil in a call for 5pm tomorrow for 30 minutes if that fits everyone's diaries? I will circulate conference call details. This will be with the Counsel team, Jane MacLeod and me to discuss the letter. It would be good to have the draft letter(s) in advance of the call.

Kind regards

Andy

Andrew Parsons

Partner

Womble Bond Dickinson (UK) LLP

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m:	GRO

t: GRO GRO
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From: Owain Draper < GRO > Sent: 14 April 2019 13:59 To: Andrew Parsons < GRO >; David Neuberger < GRO >; Gideon Cohen < GRO >; Anthony Grabiner < GRO > Cc: David Cavender < GRO >; Stephanie Wood < GRO >; Amy Prime < GRO >; Tom Beezer < GRO > Subject: Re: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS [WBDUK-AC.FID26896945]
Thanks, Andy.
The plan is to produce a shorter Grounds and to prepare a Skeleton Argument that takes from both the existing draft Grounds and the Written Closing.
We will have a better feel for the timing once I get properly into the drafting. I expect to have a good idea by the end of tomorrow.
Kind Regards,
Owain
Owain Draper
One Essex Court, Temple
EC4Y 9AR
Switchboard: GRO
www.oeclaw.co.uk <http: www.oeclaw.co.uk=""></http:>
The content of this email is confidential and may subject to legal professional privilege. If you are not the intended recipient, please delete it permanently and inform the sender.
From: Andrew Parsons < GRO Date: Sunday, 14 April 2019 at 13:18 To: David Neuberger < GRO , Gideon Cohen < GRO , Anthony Grabiner < GRO
Thank you David and Tony.

WBD_000576.000002

The plan laid out in your emails is helpful and clear. The challenge will be getting the client lined up with it. I will speak to the client and confirm asap as to whether they would like to speak / meet with you on Monday.

Although we will need to work through Post Office's governance processes to get decisions, the other key obstacle to progress is preparation of the Skeleton Argument for the main appeal. Do we have a target date for this? This is probably more a question for David Cavender, Gideon and / or Owain.

Once we have this target date, I can then work backwards to build a plan for how to get this signed off at PO. It may also help the C of A if we confirm that the main appeal will be lodged by a firm date.

Kind regards Andy

Andrew Parsons

Partner

Womble Bond Dickinson (UK) LLP

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From: David Neuber	ger <	GRO	>			
Sent: 14 April 2019	1:56					
To: Andrew Parsons	< (GRO	>; Gideon C	Cohen <	GRO	; Anthony
Grabiner <	GRO	>				
Cc: Owain Draper <	GRO	>; Dav	id Cavender <	GRO) >;	Stephanie Wood
< GRO	; Amy Prin	1e <	GRO	; Tom Beezei	• <	GRO
Subject: RE: A1/2019	9/0855 POST (OFFICE LIMI	TED V BATES	S AND OTHER	RS	

Dear Andrew,

I confirm that I would be available to talk tomorrow: I shall be working at home in the morning until 12.30

and shall be in chambers from about 3.00 until about 5.30.

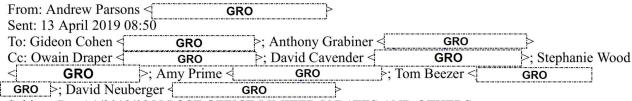
As Tony says, he and I have discussed the position, and we see things very much the same way.

An appeal on the common issues aspect raises points which are legally very significant and, I believe, commercially very important to the clients, and on which I believe that the judge has gone badly wrong in a number of ways. An appeal on recusal aspect raises what I appreciate is a particularly sensitive issue for the clients both tactically and in terms of possible public perception.

As Tony says, I consider that the two aspects are, at least potentially, connected, and, for that reason, as well as on the individual merits of each of the two aspects, permission to appeal should in my view be given on both aspects. However, it would be perfectly possible to appeal on the common issues and not on the recusal – and indeed vice versa. I think that it would be quite remarkable if the PO did not get permission to appeal on the common issues aspect (or at least most of the points we are proposing to raise on that aspect); it would be less surprising, but in my view wrong, if permission to appeal on the recusal aspect was refused.

As to Tony's point 4, I think that there is a danger that our justified belief, and consequent sense of grievance, that the Judge has gone badly wrong may have made us over-suspicious of some sort of inappropriate collusion between the Judge and the CA. It would be perfectly proper, indeed sensible, for the Judge to have warned the CA of a possible forthcoming application which someone should look at urgently, although I cannot of course rule out the possibility that more was said (but even if it was, that is not by any means necessarily sinister). Coulson LJ is the LJ responsible for civil procedure, so it is not very surprising that the application ended up before him. The fact that he made an instant decision with regard to a stay is also unsurprising because that was urgent, and the fact that he has asked for the claimant's response is a pretty good indication that he is considering the application on its merits, as one would expect. My one point of concern is that he has ruled in effect that the common issues and recusal application are separate: again, at least on the face of it, that is a perfectly rational view, although it is questionable whether he should have expressed a firm view on that without raising it with us (but I have not seen our application, so that may be unfair). At any rate, I think that that is a point which we should challenge in the reasonably near future if we are proceeding with the recusal aspect.

Yours sincerely, David Neuberger



Subject: Re: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS

Tony. Thank you for your email.

I agree with the proposed strategy and flag a few further points to consider below.

- 1. Jane MacLeod, General Counsel at Post Office, has asked whether it is worth us speaking to the Cs about whether they want the appeals heard together or separately. I can see pros (eg. cost saving) and cons (eg. better chance to oppose permission on the recusal) for them taking either approach but if they do support the appeals moving together that would, I presume, put more pressure on the C of A.
- 2. There is some reluctance inside PO to putting the appeals together and skipping over Fraser J for permission on the main appeal. They are keen to avoid any step that looks aggressive or heavy handed. I believe that we should be able to persuade them on both points, but we would need instructions before taking either step.

With the above in mind, are you and David Neuberger (copied) around on Monday to discuss this with Jane and me? If so, please let me know what time would suit you and whether a call or meeting is easier. David Cavender - you are welcome to join us but I appreciate you are on holiday.

Kind regards

Andy

From: Anthony Grabiner Sent: Friday 12 April, 17:50

Subject: Re: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS

To: Gideon Cohen

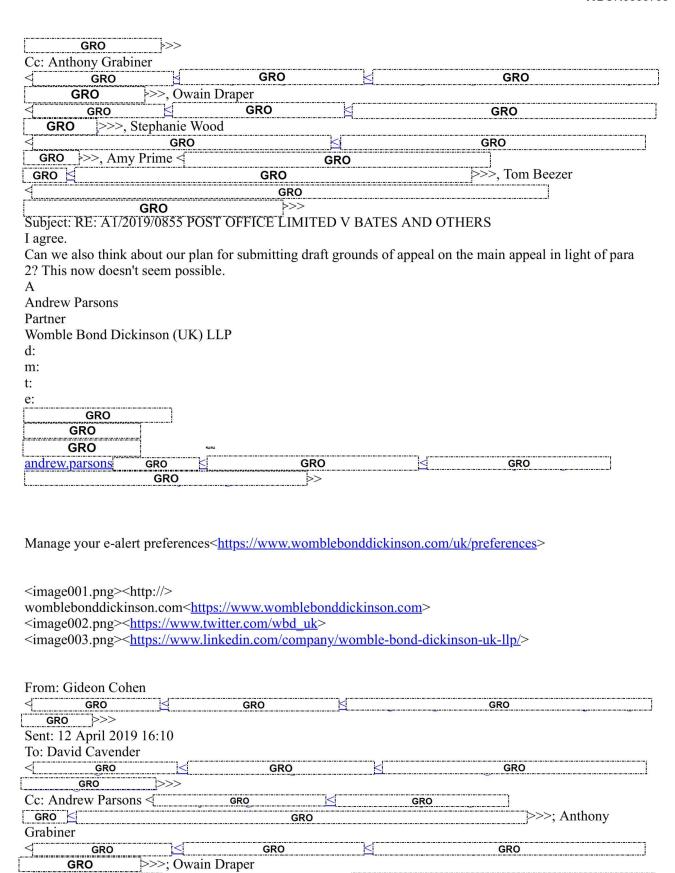
Cc: Owain Draper, Andrew Parsons, David Cavender, Stephanie Wood, Amy Prime, Tom Beezer, David

Neuberger Dear all,

I've been following the emails and have discussed them with David Neuberger.

- 1. The order made by Coulson LJ means that we have some breathing space because it asks for a response from the other side on 25/4.
- 2. We think a letter should go from our solicitors to the CofA listing office asking the Court to take into account the fact that an appeal application is being prepared in respect of the Common Issues judgment and that the Court should deal with both matters together.
- 3. The preparation of the grounds of that appeal and the production of the supporting skeleton argument is extremely urgent and needs to be done ASAP. There's no point in bothering to ask Fraser J for permission to appeal. He's bound to refuse it and these days we're entitled to go straight to the CofA.
- 4. We share the concerns expressed in the flurry of emails. It looks as if Fraser J has been speaking either to the listing office or even to Coulson LJ. Otherwise it would be a remarkable coincidence that of all the LJ's presented with the papers they ended up by chance in front of the former TCC Judge although this is not a TCC case. I've asked Owain to dig out the references from the transcripts of the recusal arguments and the judgment day because my recollection is that Fraser J said on both occasions that the CofA was expecting an appeal application. Owain will circulate the extracts.
- 5. If we make no progress we will have to consider communicating with the listing office and the Master of the Rolls as to what has been going on here. In principle conversations about the merits as between the first instance Judge and the Lord Justice who ends up ruling on the leave to appeal point would, I think, be most inappropriate but that's a serious allegation to be making. Also we couldn't take that step without a detailed discussion with and instructions from Post Office. This is a very delicate matter.

discussion with and instructions from		•	
6. David N and I plan to meet on Sun	iday to draft a su	intable letter to be address	ised to the listing office on
Monday.	.1	1 1 0 1	1 - 1 - 1
7. All suggestions welcome either on	the contents of	the draft or the suggeste	d strategy.
Regards,			
Tony			
Lord Grabiner QC			
One Essex Court,			
Temple,			
London, EC4Y 9AR			
Tel GRO			
Mob GRO			
On 12 Apr 2019, at 16:44, Gideon Co	ohen		
< GRO ⊴	GRO		GRO
GRO >>> wrote:			
Must be the same one. Not sure there			ugh. Even assuming that his
approach to the appeal will be guided		l principle.	
On 12 Apr 2019, at 18:39, Owain Dra	aper		
< GRO ⊠	GRO	M	GRO
GRO >>> wrote:			
If there is only one Peter Coulson, we	e should get our	hands on Coulson on Co	onstruction Adjudication. It has
a chapter on bias.			
From: Andrew Parsons <		GRO	
GRO 🖺	GRO		>>>
Date: Friday, 12 April 2019 at 16:19			
To: Gideon Cohen			
< GRO ≤	GRO		GRO
GRO >>>, David Cavender			
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>>>; Amy Prime

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>>>; Stephanie Wood

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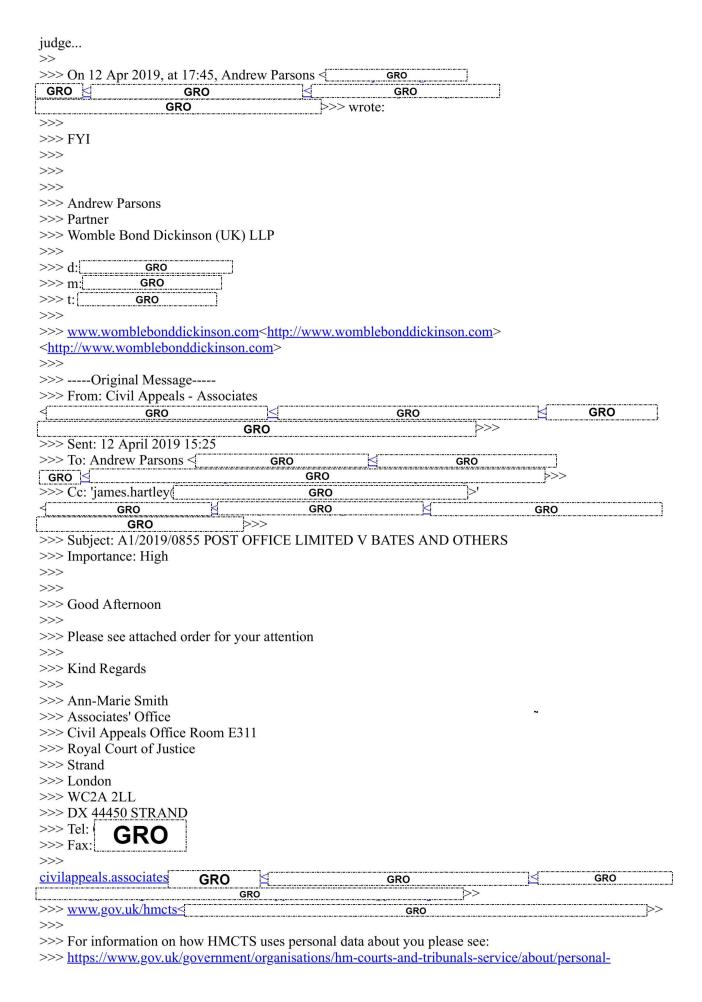
GRO

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GRO

>>>; Tom Beezer

GRO >>>						
Subject: Re: A1/2019/0855 POST OFFICE LIMITED V BATES AND OTHERS [WBDUK-						
AC.FID123887118] I'd think the chances of us not getting permission just went from negligible to rather high.						
> On 12 Apr 2019, at 18:04, David Cavender	s from negligiote to runter mgm					
GRO GRO	GRO					
GRO >>> wrote:						
> Yes!						
>						
> It looks very much like this is what Fraser J set up in adv	vance - with his mate the former head of the TCC -					
unless you believe in co-incidences. This is very bad news	.					
> Post						
> Best >						
> D.						
>						
>						
Andrew Parsons						
Partner						
Womble Bond Dickinson (UK) LLP						
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andrew.parsons GRO GRO	>					
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Court Court into the court						
Sent from my iPhone						
>> On 12 Apr 2019, at 16:01, Gideon Cohen						
>> On 12 Apr 2019, at 16:01, Gideon Cohen GRO GRO GRO	GRO					
GRO						
>> >> >> Does this indicate that Coulson will decide the permiss	tion application? Ex-construction lawyer TCC					
2005 this maleute that Coulson will decide the perimiss	ion application. Ex-constitution lawyer, 100					



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