

From: Helen Davies <[REDACTED] GRO>
To: Andrew Parsons <[REDACTED] GRO>, Amy Prime <[REDACTED] GRO>
Cc: "Owain Draper" <[REDACTED] GRO>, Gideon Cohen <[REDACTED] GRO>, Tom Beezer <[REDACTED] GRO>
Subject: RE: Cover letter [WBDUK-AC.FID26896945]
Date: Wed, 26 Jun 2019 10:28:48 +0000
Importance: Normal
Attachments: Amended_Cover_letter.docx
Inline-Images: image001.png; image002.png; image003.png; image004.png

Dear Andy,

The issue of who decides on the constitution of the panel to hear an oral application is not clear from the CPR.

CPR 52.5(2) provides that the judge considering the application on paper may direct that it be determined at an oral hearing. CPR 52.5(3) then provides that the oral hearing is to be listed before that judge unless “the court directs otherwise”. The contradistinction of the reference to the judge who made the direction and the court in CPR 52.5(3) strongly suggests that there is a role here for the Court in a broader sense than the single lord justice to whom the paper application is made – but as I say it is not clear. There is therefore a risk that ultimately it will be solely Coulson LJ who makes the decision – although the purpose of copying the letter to the Master of the Rolls using this issue in CPR 52.5 as the peg to do so is of course to seek to ensure so far as possible that it is not just Coulson LJ who makes this decision.

The reason for the words in brackets (or something along those lines) is to try to ensure that the Master of the Rolls does not just think this is something he should leave to Coulson LJ. Many appeals to the Court of Appeal raise important points of law without it being possible to suggest the Master of the Rolls should intervene to ensure that a panel of 3 judges hears an oral application (the CPR presumption of course being it will just be one – CPR 32.5(3)). So for my part at least I do not think that reliance solely on the importance of the appeal will produce a result of this being looked at by anyone other than Coulson LJ.

I do of course however understand the concern about raising this point – and there is a risk of course that it will annoy Coulson LJ. Really therefore what we are balancing is whether that risk is one worth running in order to seek a panel of 3 in the only way that seems open under the rules, or whether we just take our chances in front of Coulson LJ alone. The reason the draft refers solely to the objective issue of them being members of the same court is that seems to me the least aggressive way in which to raise the concern. Referring instead for example to specific issues to do with Coulson LJ’s approach previously would to my mind at least look more like direct criticism of him.

All that said the Counsel team have been considering this further and there are a few additions we think could be made to the draft to reduce the focus a bit from the last para. I attach a slightly revised draft for your consideration.

I am afraid today is rather tricky for me but could discuss tomorrow morning.

Best wishes

Helen

From: Andrew Parsons [GRO]
Sent: 25 June 2019 18:23
To: Helen Davies; Amy Prime
Cc: Owain Draper [GRO]; Gideon Cohen; Tom Beezer
Subject: RE: Cover letter [WBDUK-AC.FID26896945]

Helen

Thank you.

I have forwarded your suggestion to Post Office and suspect we may need a call with you to discuss either tomorrow / Thursday. In the meantime, we have received two immediate questions:

Who makes the decision as to whether 3 judges will hear the appeal. If its Coulson and we can't appeal or review that decision then we need to take out the square brackets. This is likely to infuriate him.

[What are t]he reasons why we think the information in the brackets is necessary. We are basically suggesting perceived bias and we need 3 judges as a result because we don't trust him. We would need to have more evidence than what is there. Given his recusal judgment findings we are likely to alienate him further.

The context to this is that we suspect that Post Office's management team would be more likely to support the approach below if it is premised on the importance of the appeal alone. The Fraser-Coulson connection is more risky – both from a legal perspective but also from a commercial / reputation perspective.

Thanks
Andy

Andrew Parsons

Partner

Womble Bond Dickinson (UK) LLP

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From: Helen Davies <GRO>
Sent: 25 June 2019 16:04
To: Andrew Parsons <GRO>; Amy Prime <GRO>
Cc: Owain Draper <GRO>; Gideon Cohen
<GRO>
Subject: Cover letter

Dear Andy,

In light of the terms of Coulson LJ's Order of last week I have been revisiting in my mind the question of whether there is anything we can or should be doing to seek to ensure that the permission application is not finally determined by Coulson LJ sitting alone. Whilst I am very aware that I previously expressed the view that we should proceed on the basis that he will be objective in relation to the permission application notwithstanding the background, I have to confess that I was surprised by both the content and also the tone of the Order and in light thereof I think we should revisit this issue.

As we previously discussed there is in fact limited opportunity in the rules to achieve that outcome but there is provision in CPR 52.(2) and (3) which can enable a direction for an oral hearing in an appropriate case and moreover which can be directed to be heard by a panel comprising judges other than the just the original single LJ. I have revisited in my mind the question therefore of whether we want to refer to this provision. I attach a draft letter which would accompany the revised Skeleton which seeks to do so in a way which doesn't undermine the strength of the application.

There is an obvious risk to this course in that Coulson LJ could be further driven by it to seek to find ways to refuse the application – but equally on the premise that risk already exists this seems to me at least potentially to be a way of seeking best to protect Post Office's interests. You will see how I have sought to refer to the potential link between Coulson LJ and Fraser J in what seems to me to be the most neutral terms

and hence least potentially inflammatory. If this is going to be copied to the Master of the Rolls as I think it should be I think we probably need to include something along this line to get him thinking that he should take an interest.

I therefore attach a draft for consideration and no doubt discussion.

Best wishes

Helen

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