



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: A2/2018/0962



McNEIL and others –v– COMMISSIONERS OF HER MAJESTY'S
REVENUE AND CUSTOMS

ORDER made by the Rt. Hon. Lord Justice Underhill

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision:

Permission granted

Reasons

1. I see serious difficulties in the Appellants' case, but I have concluded that I cannot say that it has no realistic prospect of success: this area of law is far from straightforward and a summary decision should only be made in a clear-cut case. The issue is in any event an important one and would benefit from consideration by this Court.
2. I note the objections in the Respondents' para. 19 representations to some aspects of the way in which the Appellants' case is developed in the skeleton argument. None of those objections seems to me to be of a character that requires me to qualify the grant of permission: they can be deployed so far as necessary at the hearing.

Information for or directions to the parties

If, which I am not to be taken as encouraging, the Respondent's Notice seeks to raise the *Armstrong* issue, briefly considered by Simler P at paras. 71-74, that may justify raising the estimate from one and a half days (see below) to two. This point should be drawn to the attention of the Listing Office if it arises.

Mediation:

Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)?

Yes/No (delete as appropriate)

Pilot categories:

- | | |
|---|---|
| <ul style="list-style-type: none"> • Personal injury and clinical negligence cases; • All other professional negligence cases; • Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual; | <ul style="list-style-type: none"> • Boundary disputes; • Inheritance disputes. |
|---|---|

If yes, is there any reason not to refer to CAMS mediation under the pilot?

Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation?

Yes/No (delete as appropriate)

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment) 1.5 days
- b) any expedition

Signed: *Nicola Martin*

Date: 3 August 2018

By the Court

Notes

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –

- a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **A2/2018/0962**



By the Court

**DATED 3RD AUGUST 2018
IN THE COURT OF APPEAL**

D MCNEIL & ORS

- and -

COMMISSIONERS FOR HM REVENUE & CUSTOMS

ORDER

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Employment Appeal Tribunal (1 Judge)
Ref: UKEATPA/0183/17/RN