
From: Creswell, Carl (Better Regulation Executive); [REDACTED] GRO
Sent: Fri 24/05/2019 9:02:01 AM (UTC)
To: Cooper, Tom - UKGI; [REDACTED] GRO
Cc: Watson, Richard - UKGI; [REDACTED] GRO; Aldred, Tom - UKGI; [REDACTED] GRO; Clarke, Stephen - UKGI; [REDACTED] GRO
Subject: RE: Post Office Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD - OFF SEN COMMERCIAL

Thanks, Tom – and understood!

I'm in on Tuesday and have a fair bit of free time, so perhaps we could talk then if you're available.

Have a good weekend!

Carl.



Carl Creswell
Director, Professional Business Services, Retail and Post
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From: Cooper, Tom - UKGI; [REDACTED] GRO
Sent: 24 May 2019 09:59
To: Creswell, Carl (Better Regulation Executive); [REDACTED] GRO
Cc: Watson, Richard - UKGI; [REDACTED] GRO; Aldred, Tom - UKGI; [REDACTED] GRO; Clarke, Stephen - UKGI; [REDACTED] GRO
Subject: Re: Post Office Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD - OFF SEN COMMERCIAL

Carl

Don't worry. All good questions.

It's best to talk through this face to face rather than over email. Should we catch up next week?

The judgement itself isn't a surprise. If the court of Appeal turns it down that would count as a real setback- probably the biggest so far by some margin.

Tom

Sent from my iPhone

On 24 May 2019, at 09:19, Creswell, Carl (Better Regulation Executive); [REDACTED] GRO wrote:

Hi Tom,

Thanks very much for sharing this all so promptly.

I suspect that this latest development will strengthen Ministers' concerns about POL's approach to the litigation, so I'm trying to get around the scale of the implications.

My reading of it is that the decision not to let them appeal and require going to the Court of Appeal is completely straightforward and anything different would have been a surprise (because it was the same judge). But the costs order is the worrying bit because it will increase the liability for POL beyond any damages. Presumably that's only for this first case, but it might set a worrying precedent for the future. Hope that's all right?

Do you think there's an argument that it should change our assessment of whether it's desirable for POL to consider settling at this stage? I imagine the eventual liabilities will be high enough for the claimants to want to keep pressing on, but at what point would POL think it is better to cut their losses? I know we'll have to balance all sort of Accounting Officer issues and might not be able to put pressure on them to settle early, but do we have any options here? Even though the new lawyers seem to be saying that POL has a case, it feels to me like this is going to run and run (and perhaps not end well, given what the judge has already said).

Sorry if this seems like I'm asking naïve questions that people have been over already, but it would help me get a better sense of our overall position on this issue.

Carl.

<image002.png><image003.jpg>

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From: Cooper, Tom - UKGI **GRO**
Sent: 23 May 2019 20:43
To: Tolhurst, Mpst (BEIS) **GRO**; Permanent Secretary
GRO Creswell, Carl (Better Regulation Executive)
GRO Watson, Richard - UKGI **GRO**; Aldred, Tom -
UKGI **GRO**; Clarke, Stephen - UKGI **GRO**
Subject: Fwd: Post Office Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Please see below.

Tom

Sent from my iPhone

Begin forwarded message:

From: Ben Foat **GRO**
Date: 23 May 2019 at 19:57:25 BST
To: "Cooper, Tom - UKGI" **GRO**, Alisdair Cameron
GRO Tim Parker **GRO** Ken
McCall **GRO**
Cc: Rodric Williams **GRO** "Watts, Alan"
GRO "Massey, Kirsten" **GRO** "Henderson, Tom"
GRO Veronica Branton **GRO**

Subject: Post Office Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Post Office Group Litigation High Level Summary - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

AI,

We were in court today before the Managing Judge His Honour Mr Justice Fraser to seek permission to appeal the Common Issues Judgment and determine how the costs of the Common Issues trial should be treated. The Judge did not have to consider the costs of the Recusal Application as these had been settled between the parties beforehand.

1. Permission to Appeal

As expected, the Judge did not agree there was a real possibility of Post Office successfully appealing his Common Issues Judgment and did not give us permission to appeal any aspect of it:

- On Errors of Law, the Judge believed he had correctly considered and applied the law on “relational” contracts and obligations of good faith. The Judge did however note that the Court of Appeal might be interested in these issues, but that that would be for them to decide from the documents we file when seeking permission from that Court.
- On Procedural Unfairness, the Judge felt he had addressed and rejected these issues when he dismissed the Recusal Application.
- On Errors of Fact, the Judge did not consider he has made any findings on an issue for which no evidence had been put before him, or where he had plainly misunderstood the evidence which was before him, and therefore we had not satisfied the test for an appeal on any facts.

The Judge initially indicated he would elaborate on these points in a written note to follow today’s hearing. If the Judge does issue a written note on permission to appeal (and he is not obliged to), experience suggests that he may use that opportunity to criticise Post Office.

2. Common Issues Costs

The Judge exercised his discretion and awarded the Claimants their costs of the Common Issues trial, rather than reserving this question until later in the litigation when the full impacts of the Judgment would be determined.

The Judge found that the importance of the Common Issues to the litigation as a whole, the long period of time and expense taken to get to the trial, and the length of time still required before the case will be fully resolved, justified costs being awarded now. He accepted Post Office’s submission that a discount should be applied although lower than we sought. He applied a 10% discount to the Claimants’ costs, reflecting that Post Office had been successful on some of the Common Issues, but not a greater discount because he felt Post Office had unnecessarily contested some matters of fact.

Post Office was successful in arguing against the Claimants submission for their costs to be assessed on the penal “indemnity basis”, which is used when a party is found to have

conducted the litigation unreasonably.

A full assessment of the Claimants' claimed costs of £7.7m will still need to be carried out. However, the outcome of today's hearing is that Post Office has been ordered to make an payment on account of those costs of c.£5.5m within 21 days. The precise calculation of this payment is being finalised with the Claimants.

3. Next Steps

The next steps in the litigation are:

- Review and file with the Court of Appeal the application for permission to appeal the Common Issues Judgment once the approach has been determined. This must be done by 13 June 2019.
- Continue preparations for the resumption of the Horizon Issues trial on 4 June 2019.

We will arrange a further Steerco and Board Subcommittee shortly but the necessary work for the above continues.

I hope this is helpful. Please let me know if you need anything further.

Kind regards,
Ben

<image004.png>

Ben Foat

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Highly Commended for 'Excellence In-house' at the Law Society Excellence Awards 2018 Mobile number: GRO

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