

---

**From:** Chisholm, Alex (BEIS) <[REDACTED]>  
**Sent:** Wed 20/03/2019 6:54:12 AM (UTC)  
**To:** Cooper, Tom - UKGI <[REDACTED]>  
**Subject:** Re: Recusal CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Good, thanks. The scope given to NR seemed a bit narrow to allow for that but maybe will evolve.  
Keep us 'posted'.

A

Get [Outlook for iOS](#)

---

**From:** Cooper, Tom - UKGI <[REDACTED]>  
**Sent:** Tuesday, March 19, 2019 11:10 pm  
**To:** Chisholm, Alex (BEIS)  
**Subject:** Re: Recusal CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

I thought you were writing the definitive tract on the topic!

Yes, I think your views are aligned with theirs. They would like to see written legal advice expressed in stronger language - and have advised the company accordingly. But they see the logic of the chain that gets you to recusal being the only option if we want to deal with the unfairness issue. In terms of the law they bow to the eminent lawyers now involved and aren't arguing.

Do you want me to confirm I'm the morning?

More generally I think whilst the recusal application may be the only way forward to try to make sure POL gets a fair hearing we mustn't lose sight of the bigger picture. POL has genuine issues to deal with here and I think I'm finally being heard about the need to have a resolution strategy and not just plough on through the process of all the hearings. The involvement of Norton Rose I hope can catalyse that discussion.

Tom

Sent from my iPhone

On 19 Mar 2019, at 22:00, Chisholm, Alex (BEIS) <[REDACTED]> wrote:

Fair comment? What does UKGI legal say?

Get [Outlook for iOS](#)

---

**From:** Chisholm, Alex (BEIS) <[REDACTED]>  
**Sent:** Tuesday, March 19, 2019 9:23 pm  
**To:** Cooper, Tom - UKGI  
**Subject:** Re: Recusal CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Very helpful.

I have now read all this legal advice.

Personally I find Justice Fraser in this case (as in the Magnox case) to be opinionated, exacting, and rather inclined to personalise matters. But not (to my layman's mind) obviously wrong or biased.

I also share the concern that a recusal attempt risks further antagonising him (if unsuccessful) and also positioning POL in public as aggressive and in denial about its shortcomings (which impression would be consistent with the judge's findings to date).

However my personal view of the case - formed from a rapid perusal of the judgement and all the legal commentary you kindly provided - does not matter as (a) I am not a lawyer and, anyway (b) the department is not controlling the case - that is properly a matter for POL and their advisors.

And I appreciate that POL have very properly decided this should be a matter for the Board to decide (ie not the Executive alone) and that they have sought the best external counsel (not just the current legal team) including from previously unengaged experts with unsurpassable credentials (former President of the Supreme Court).

Their collective advice is that the judge has shown unfairness in his procedure as well as legal errors in using post-contractual behaviours to inform his judgement of the nature of the contract itself. They also think that his many critical remarks about POL show bias. Further that this unfairness strikes so hard at the root of the case that it cannot be rectified other than by a recusal (voluntary or enforced) of the judge himself.

The advice properly recognises that a recusal attempt is a high bar and presents significant risks - I highlight the passages below.

"17. There are both legal and reputational risks of proceeding with the application for recusal.

The legal risks (an unsuccessful application, which would further antagonise the Judge, and material costs) are described in the WBD paper.

18. However there are significant reputational and stakeholder risks and these need to be set against the legal benefits. Challenging a judge for bias – particularly in these circumstances, will be seen as very aggressive behaviour by Post Office and will play directly into the criticism that Post Office is oppressive in its behaviour towards postmasters and in its conduct of the case, and will be construed as running counter to the recent messaging following the judgment that 'we are listening'. It could potentially have much greater media coverage than the judgment; will be heavily criticised by the CWU and vocal postmaster bodies, and will drive further parliamentary activity from MPs of both parties."

The advice also assesses the chances of success as reasonable - and the costs and risks of not appealing as significant, especially as this first case rather over-shadows what will follow in the three following.

Proceeding with the appeal and recusal attempt risks identifying the organisation's leadership today with the negative historic behaviours of which POL stands accused. But it is not obviously mistaken or otherwise inappropriate.

The Board will want to reflect carefully on all these matters. For my part I am satisfied that the POL Board is the right body to do this; and that it has been properly advised.

The Department should maintain its clearly distinct and detached position, so that it is free and credible for dealing with the consequences as they unfold. Ministers may want to show appropriate concern about the criticisms and may express a desire for POL to act appropriately but should not comment substantively in ongoing litigation in which the department has a clear interest but no direct involvement.

Alex

Get [Outlook for iOS](#)

---

**From:** Cooper, Tom - UKGI <[REDACTED] GRO >  
**Sent:** Tuesday, March 19, 2019 7:11 pm  
**To:** Chisholm, Alex (BEIS)  
**Subject:** Fwd: Recusal CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Alex

Papers attached. We're told that Grabiner is more bullish than Neuberger. We're meeting him tomorrow.

We've asked if the advice is being firmed up before a decision is taken.

POL has also now added Norton Rose to act as shadow and advise the Board. They are joining the Board meeting tomorrow.

I'll be off the train at around 8.

Tom

Sent from my iPhone

Begin forwarded message:

**From:** <Tom.Cooper@[REDACTED] GRO >  
**Date:** 17 March 2019 at 22:55:01 GMT  
**To:** <Richard.Watson@[REDACTED] GRO >  
**Subject:** Fwd: Recusal CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Will need your help with this  
Tom

Sent from my iPhone

Begin forwarded message:

**From:** Thomas Cooper <tom.cooper1 [GRO]>  
**Date:** 17 March 2019 at 22:42:30 GMT  
**To:** "tom.cooper [GRO]" <tom.cooper [GRO]>  
**Subject:** Fwd: Recusal CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Get [Outlook for iOS](#)

---

**From:** Jane MacLeod  
**Sent:** Sunday, March 17, 2019 10:40:35 PM  
**To:** Tim Parker; Ken McCall1; Carla Stent1; Thomas Cooper; Shirine Khoury-Haq; Tim.Franklin1  
**Cc:** Alisdair Cameron; Paula Vennells; Veronica Branton  
**Subject:** Recusal CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

All

As flagged last week, the judgment in the Common Issues Trial was handed down on Friday in substantially similar form to the embargoed draft. We must now turn to the questions as to what are our legal options, and how do we address the consequences of the judgment from an operational perspective?

#### **Board Timetable**

We have arranged 2 board calls this week (Monday at 5.15 pm and Wednesday at 12.30 pm) in addition to the scheduled Board meeting on 25 March. We propose that we discuss the 'recusal option' at the Board call tomorrow (Monday) evening, as there are adverse consequences if we delay. Wednesday had been proposed to discuss the operational impacts and mitigating plans, however if thought appropriate, this discussion could be addressed at the scheduled Board meeting next Monday.

#### **Recusal**

Attached are the following papers:

- Draft paper from me ('Recusal 2019-3-18') which recommends the recusal application and retained counsel;
- Lord Neuberger's preliminary advice ('4852 001.pdf') as to appeal and recusal received on Thursday 14 March; and
- Advice from WBD ('Post Office - Recusal Note'), which has been reviewed by David Cavendar QC and which Lord Grabiner has seen, and verbally endorsed.

The Counsel team, with which I concur, recommends bringing an application for recusal. As set out in the attached papers, this is not without risk. However there are equally, risks of not bringing the recusal application (as set

out in both my and WBD's paper), and on balance my view is that the risks of not bringing the application for recusal (predominantly the risk of an adverse outcome in the current Horizon trial and the 'third trial' due to the Judge's decision that Post Office witnesses are 'unreliable') outweigh those of making the application, although this is a finely balanced consideration, and the Board may consider these risks differently.

Unfortunately Lord Grabiner has a prior commitment and cannot make the 5.15 board call tomorrow. At the time of writing I believe that Lord Neuberger QC will be available to dial in to the Board discussion, notwithstanding he is currently in South America.

I appreciate these are difficult decisions and the requirement for them to be made in a truncated timetable is not ideal. I am available during most of tomorrow (Monday) should anyone wish to discuss these ahead of the Board call.

Kind regards,

Jane

This email and any files transmitted with it are intended solely for the use of the individual(s) to whom they are addressed. If you are not the intended recipient and have received this email in error, please notify the sender and delete the email. This footnote also confirms that our email communications may be monitored to ensure the secure and effective operation of our systems and for other lawful purposes, and that this email has been swept for malware and viruses.

---

This email has been scanned by the Symantec Email Security.cloud service.  
For more information please visit <http://www.symanteccloud.com>

---

---

This email has been scanned by the Symantec Email Security.cloud service.  
For more information please visit <http://www.symanteccloud.com>

---