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**From:** Watson, Richard - UKGI[/O=HMT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E8568E9D213F4097A7A65F3DA4F63CC1-WATSON, RICHARD (RWA)]  
**Sent:** Wed 20/03/2019 8:13:56 AM (UTC)  
**To:** Cooper, Tom - UKGI[GRO] Alex Chisholm[GRO]  
**Cc:** Gareth.evans[GRO] Kilgariff, Patrick (Legal)[GRO]  
**Subject:** Re: Fwd: Alternatives to recusal? CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. DO NOT FORWARD

Tom

Thanks. Also copying in Gareth and Patrick.

I touched on alternatives in my discussion with Jane yesterday and I had understood they had been through those but certainly good to raise this challenge. Effectively it seems another way of making a recusal application so presumably raises the same presentational issues and risks, but tactically it might be a better approach.

Kind regards

Richard

Sent from my BlackBerry — the most secure mobile device

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**From:** Tom.Cooper[GRO]  
**Sent:** 20 March 2019 7:03 am  
**To:** Alex.Chisholm[GRO] Richard.Watson[GRO]  
**Subject:** Fwd: Alternatives to recusal? CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. DO NOT FORWARD

FYI

Sent from my iPhone

Begin forwarded message:

**From:** Thomas Cooper[GRO]  
**Date:** 20 March 2019 at 07:00:16 GMT  
**To:** "tom.cooper[GRO]"  
**Subject:** Fwd: Alternatives to recusal? CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. DO NOT FORWARD

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**From:** Thomas Cooper  
**Sent:** Wednesday, March 20, 2019 6:43:43 AM  
**To:** Jane MacLeod; Tim Parker; Ken McCall1; Carla Stent1; Shirine Khoury-Haq; Tim.Franklin1

**Cc:** Alisdair Cameron; Paula Vennells; Veronica Branton

**Subject:** Alternatives to recusal? CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. DO NOT FORWARD

Jane

I've been asked to check with you and the legal advisers whether there might be an alternative to recusal along the following lines:

1. inform the judge that the company is appealing on the law and unfair procedure
2. ask the judge to stop the Horizon trial until the outcome of the appeal is determined on the grounds that if the unfairness claim is upheld it would also put the fairness of the Horizon trial at risk
3. If the judge refuses 2, seek and order from a higher court to the same effect and ask the judge at least to stop the Horizon trial until such an order can be obtained (or not)

If the remedy in 3 is sought but isn't obtained we will at least have tested the relevance and implications of unfairness issues on the second trial. And effectively a higher court will have told us that any unfairness in the first trial would not impact the Horizon trial (obviously contrary to POL's view).

If the remedy in 3 doesn't exist in law then recusal would be an alternative at that point. It seems to me the judge's refusal to agree to 2 would support a recusal application as he would be unwilling to accept that if unfairness took place in the first trial the nature of it would necessarily affect the conduct and fairness of the Horizon trial - a view which logically suggests bias as it is absurd.

Tom

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**From:** Jane MacLeod { [GRO](#) }

**Sent:** Monday, March 18, 2019 11:05 am

**To:** Thomas Cooper; Tim Parker; Ken McCall1; Carla Stent1; Shirine Khoury-Haq; Tim.Franklin1

**Cc:** Alisdair Cameron; Paula Vennells; Veronica Branton

**Subject:** Re: GLO Board Call at 10.30 am Tuesday 12 March CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. DO NOT FORWARD

All

Following Tom's query this morning as to when we would address the questions flagged in his email from 13 March (below), I wanted to update on how we see these questions being addressed.

Tom has asked that we hear the new QC's perspectives on the judgment including 4 specific issues. As I flagged in my paper last night, we need to agree who will be advising Post Office on

the appeal. I have recommended David Cavendar with additional input from Lord Neuberger. To date Lord Neuberger has only had a high level briefing which was mainly focussed on the recusal issues. To that end, I have requested that we confirm our views on representation on the call tonight, and that we would then have an initial view presented at the Board meeting next week. As you will have seen from Lord Neuberger's opinion which I circulated last night, he does make some very high level observations about grounds for an appeal, but as yet he has not had instructions to go further than that.

At this stage there has not been any order as to costs, and this will depend on whether we appeal, however we estimate that if an order for costs were to be made against us, it is likely to be of the order of c£7.5 million which would need to be paid within 14 days. However there is a risk that the Judge could order us to pay 100% of the Claimants' costs relating to the Common Issues trial, in which case the costs order could be as high as c £10m.

On the contract issues, we are still working through these implications.

Operations - we will get the requested information (a description of the processes and an example of a Branch Trading Statement) to you. We have been working on simplifying processes across a number of areas, and this work is being accelerated. As flagged in my covering email, we anticipate providing the Board with an update on this at the Board meeting next week.

I trust this is helpful

Kind regards,

Jane

Jane MacLeod  
Group Director Legal, Risk & Governance  
Post Office

GRO

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**From:** Thomas Cooper {GRO}  
**Sent:** Wednesday, March 13, 2019 10:51 pm  
**To:** Jane MacLeod; Tim Parker; Ken McCall1; Carla Stent1; Shirine Khoury-Haq; Tim.Franklin1  
**Cc:** Alisdair Cameron; Paula Vennells; Veronica Branton  
**Subject:** Re: GLO Board Call at 10.30 am Tuesday 12 March CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. DO NOT FORWARD

Jane

I wanted to follow up with some questions after yesterday's call hopefully for discussion once the team are ready. These are the immediate reactions to the judgement and the call yesterday so I'd welcome comments. I know you and the rest of the team are already working on many of these as flagged up in the Board note prepared for yesterday's call:

Judgement

Hearing the new QC's perspectives on:

- understanding the judgement, its legal basis and why it is so far away from expectations
- the legal implications of the positive comments from the judge of the Claimants statements about the facts and witnesses and his criticism of Horizon, its associated processes and Post Office

witnesses

- what the judgement suggests about the potential cost of the claim
- what options exist to challenge the judgement and what the realistic outcomes might be

Subject to the views of others, I'd suggest it would be appropriate to have a separate session to discuss these questions as a Board with the new QC without the existing legal advisers present.

#### Contract

- how do the liability and termination provisions in the Post Office contracts for sub postmasters compare to those for multiples?
- are there provisions in similar sectors (eg franchising and retail) that provide comfort that the Post Office contract terms are not out of line with the rest of the business world?
- you've mentioned that some contract changes are now required eg because some clauses (such as the liability clause in the NTC contract) have been struck out in the ruling:
  - what are the risks that such changes face further legal and reputational challenge?
  - how would the contract changes you identify play into a longer term business model options (and associated contracts) for Post Office which presumably might involve some fundamental changes to the current contract? (This is a big question and I don't think it's possible to answer in any detail at this stage but it would at least help to understand potential directions of travel.)

#### Operations

- what are the current processes for notifying, recording and resolving discrepancies and disputed items between postmasters and Post Office (to the extent it's different from that described by the judge)? It would be helpful to see an example Branch Trading Statement and how discrepancies are currently recorded and communicated between Post Office and postmasters
- what changes to procedures are proposed following the judgement and what additional resources are needed?

#### Communications

- Mark has already shared a draft release this evening. Patrick and I are in touch about a written briefing to share with BEIS when public. We are close to final on preparing for an urgent question in Parliament - we're aiming to align messages as far as we can in the context of the litigation being an operational matter for the Post office
- We're seeking time in diaries for a verbal briefing for Ministers and the Permanent Secretary if required (this was already in train last week). I'll update you tomorrow. I'm happy to brief other members of the Board as well of course

Tom

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**From:** Jane MacLeod GRO  
**Sent:** Monday, March 11, 2019 7:56 pm  
**To:** Tim Parker; Ken McCall1; Carla Stent1; Thomas Cooper; Shirine Khoury-Haq; Tim.Franklin1  
**Cc:** Alisdair Cameron; Paula Vennells; Veronica Branton  
**Subject:** GLO Board Call at 10.30 am Tuesday 12 March CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE. DO NOT FORWARD

All

Please find attached a paper summarising the current position. On the call tomorrow we will address the following, as well as providing opportunity for questions:

:

- View of the judgement and thoughts on appeal – David Cavender QC
- Operational impact and contingency planning – Alisdair Cameron/Jane MacLeod
- Next steps

You should have received a meeting invitation containing the dial in details, however these are also set out in the attached paper.

Kind regards,

Jane



**Jane MacLeod**

Group Director of Legal, Risk & Governance  
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Mobile number: **GRO**

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