

---

**From:** Cooper, Tom - UKGI[/O=HMT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8D968D43E33749AE9E59F9C9350E69D5-COOPER, THOMAS (TCOO]  
**Sent:** Wed 20/03/2019 12:41:04 PM (UTC)  
**To:** Alex Chisholm [REDACTED] GRO  
**Cc:** Watson, Richard - UKGI [REDACTED] GRO  
**Subject:** Re: Postmaster Litigation - Recusal ; Confidential and subject to legal privilege

Copying Alex

Very strong advice from Lord Grabiner just now including “if there were any other options I would have told you about them”

Also a strong recommendation to seek recusal.

Tom

Sent from my iPhone

On 20 Mar 2019, at 11:43, Jane MacLeod [REDACTED] GRO > wrote:

Richard

In accordance with the Agreed Protocol, please find below an exchange of emails responding to Tom’s question this morning as to whether there was an alternative route to recusal.

Kind regards,

Jane

**<image002.png> Jane MacLeod**

Group Director of Legal, Risk & Governance  
Ground Floor

20 Finsbury Street  
LONDON  
EC2Y 9AQ  
Mobile number: [REDACTED] GRO

Jane

As requested, Counsel team response below:

*Dear Tom,*

*This proposal does not work. Indeed, if made, this application would make matters (even worse). Even if PO decide not to seek to recuse Fraser J I would advise strongly against the proposed course. I say this for the following reasons:*

*(1) The immediate (and likely irreversible) prejudice PO are suffering is the effects*

*of the apparent bias Fraser J showed in the CIT upon his current handling of the Horizon issues trial. There is also the future prejudice of him handling the breach trial in November 2019.*

- (2) The only way of seeking to deal with the prejudice is to seek his recusal on an urgent basis.*
- (3) Seeking to appear before him indicating that PO is going to appeal against his CIT judgment on grounds of procedural unfairness – will assuredly not result in him adjourning the Horizon trial. He will not do so because the unfairness in the CIT trial itself does not infect the Horizon trial. It is the apparent bias of Fraser J that infects the Horizon trial. The only remedy for that is recusal.*
- (4) If, on this proposal, Fraser J's refusal to adjourn the Horizon trial is then appealed to the Court of Appeal – they would assuredly not adjourn that trial and would not recuse him- because there would not application before them to do so.*
- (5) Furthermore, an appeal against a refusal to recuse is much more likely to come on as an urgent appeal – than an appeal against the refusal of a judge to adjourn a trial on the basis that he showed procedural unfairness in an earlier trial between the same parties. Indeed the latter appeal is very likely to come on after the Horizon trial is completed and the Judgment handed down. This fact would make it more unlikely the Court of Appeal would intervene.*
- (6) And, if all this comes to pass (as it most assuredly would) is the proposal that then PO applies to the judge to recuse himself ? And then appeal him if he does not ? This make no sense- and would all come too late to be effective to deal with the prejudice in (1). Indeed, this course of action would look very much as if PO were seeking to delay matters and behave badly- in the manner presently charged by the Judge.*
- (7) If there are good grounds for a recusal (and clearly there are) and good prospects of success (as advised) then the Court of Appeal would expect PO to apply to the Judge to recuse himself and then appeal him if he did not. There is no middle ground here.*

*Best,*

*D.*

**David Cavender Q.C.** <image001.jpg>

*One Essex Court  
Temple  
London EC4Y 9AR*

**Tom Beezer**  
Partner  
Womble Bond Dickinson (UK) LLP

d: **GRO**  
m: **GRO**  
t: **GRO**  
e: tom.beezer@wbd.co.uk

*Stay informed: sign up to our e-alerts*

***Join us for Disrupting Disputes 2.0  
20 March 2019 at the British Library***

***Book your place here***

womblebonddickinson.com

<imaged8237b.PNG>

<image4b9db4.PNG> <image8a6793.PNG>

---

**From:** Jane MacLeod [<mailto:jane.macleod@womblebonddickinson.com>] **GRO**  
**Sent:** 20 March 2019 07:14  
**To:** Tom Beezer  
**Cc:** Andrew Parsons; Rodric Williams  
**Subject:** recusal

Tom

I have been asked to see whether an approach along the following lines (as an alternative to recusal) would be possible procedurally:

- “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.”

Could we please test this with the Counsel team?

Thanks,

Jane

Jane MacLeod  
Group Director Legal, Risk & Governance  
Post Office  
**GRO**

\*\*\*\*\*

This email and any attachments are confidential and intended for the addressee only. If you are not the named recipient, you must not use, disclose, reproduce, copy or distribute the contents of this communication. If you have received this in error, please contact the sender by reply email and then delete this email from your system. Any views or opinions expressed within this email are solely those of the sender, unless otherwise specifically stated.

POST OFFICE LIMITED is registered in England and Wales no 2154540. Registered Office: Finsbury Dials, 20 Finsbury Street, London EC2Y 9AQ.

\*\*\*\*\*

“Post Office Limited is committed to protecting your privacy. Information about how we do this can be found on our website at [www.postoffice.co.uk/privacy](http://www.postoffice.co.uk/privacy)”

**Please consider the environment! Do you need to print this email?**

---

The information in this e-mail and any attachments is confidential and may be legally privileged and protected by law. **jane.macleod** **GRO** only is authorised to access this e-mail and any attachments. If you are not **jane.macleod** **GRO**, please notify **tom.beezer** **GRO** as soon as possible and delete any copies. Unauthorised use, dissemination, distribution, publication or copying of this communication or attachments is prohibited and may be unlawful. Information about how we use personal data is in our [Privacy Policy](#) on our website.

Any files attached to this e-mail will have been checked by us with virus detection software before transmission. Womble Bond Dickinson (UK) LLP accepts no liability for any loss or damage which may be caused by software viruses and you should carry out your own virus checks before opening any attachment.

Content of this email which does not relate to the official business of Womble Bond Dickinson (UK) LLP, is neither given nor endorsed by it.

This email is sent by Womble Bond Dickinson (UK) LLP which is a limited liability partnership registered in England and Wales under number OC317661. Our registered office is 4 More London Riverside, London, SE1 2AU, where a list of members' names is open to inspection. We use the term partner to refer to a member of the LLP, or an employee or consultant who is of equivalent standing. Our VAT registration number is GB123393627.

Womble Bond Dickinson (UK) LLP is a member of Womble Bond Dickinson (International) Limited, which consists of independent and autonomous law firms providing services in the US, the UK, and elsewhere around the world. Each Womble Bond Dickinson entity is a separate legal entity and is not responsible for the acts or omissions of, nor can bind or obligate, another Womble Bond Dickinson entity. Womble Bond Dickinson (International) Limited does not practice law. Please see [www.womblebonddickinson.com/legal](http://www.womblebonddickinson.com/legal) notices for further details.

Womble Bond Dickinson (UK) LLP is authorised and regulated by the Solicitors Regulation Authority.

---

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

---