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Sent: Fri 17/05/2019 7:22:30 AM (UTC)
To: Tolhurst, Mpst (BEIS) [REDACTED] **GRO**
Cc: Creswell, Carl (Better Regulation Executive) [REDACTED] **GRO**; Aldred, Tom - UKGI [REDACTED] **GRO**
Subject: Post Office - litigation and other follow-ups

Kelly

I know you've asked a few times about how the changes to the legal team took place and what happened at the Board in relation to that decision. I thought it would be helpful to explain in a bit more detail. There are also a couple of other points I would like your guidance on – mentioned at the bottom of this note.

Litigation

On the legal front, I think we have reached a much better position, with POL changing its legal advisors and seeking a more conciliatory approach. But this still has a long way to go and changing the legal advisers, in and of itself, doesn't achieve anything. So we will continue to keep in close touch with what's happening and contribute and challenge as appropriate.

The history from my perspective is this:

My concerns about how this was being handled go back to last summer. I wasn't happy with the meeting the company had with you and Alex last October – it was set up as a way to try to get the company to focus on the consequences of an adverse outcome and the legal team didn't really engage. This was followed up by a very critical ruling from the judge a few months later following which I spoke to Tim and Paula to say that I felt there needed to be a major change of approach. More generally, our interaction to the legal team at POL wasn't limited to the litigation - in general we found the chief counsel wasn't easy to deal with and I had passed our feedback to the management and Tim on various occasions.

Things came to a head after the common issues judgement. The chief counsel appointed Lord Neuberger and Lord Grabiner to strengthen the counsel team handling the case and recusal application. She also appointed Norton Rose to advise the Board. While some of these appointments were additive, Norton Rose were particularly disappointing, and in general the appointments seemed to be designed to reinforce the existing legal strategy rather than change it – despite there being a clear demand from the Board for change. At that point it became totally clear - I think to everyone on the Board - that the Board needed to act if changes were actually going happen in practice. This led to Jane MacLeod - Chief Counsel - leaving the Company and Herbert Smith being appointed to replace Norton Rose and take a much stronger lead in the case with a clear mandate to change the approach.

Because there was little time to make these changes they weren't discussed in a full Board meeting which basically take place monthly. The process was handled principally by Tim, Al and me with Tim speaking bilaterally to the rest of the Board to agree the decision. I don't believe the decision itself was in any way controversial with other Board members.

Overall I believe the changes are positive and I think we should be satisfied with them for now. We are seeing a change of approach as a result. I only wish they had happened several months ago - before the Common Issues trial.

Other issues

We'll ask the company to provide a note for you on the quantification of the potential cost of the litigation.

After the meeting, Al Cameron has been in touch to ask how the company can provide you with better support and information. Any guidance you can give us on the areas where you feel you're not receiving the information you need would be helpful. I took on Board your point about hearing the recusal decision from someone else – I didn't hear about it from the company until the Saturday either – and that's a very clear example of something that didn't work properly. Any other examples would be helpful.

If you have any other concerns about how the company is operating or managed, please let me know. It's obviously important for me to know if there are things that are bothering you.

Tom

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