

From: Cooper, Tom - UKGI
Sent: Thu, 9 May 2019 09:49:54 +0000
To: Clarke, Stephen - UKGI; Watson, Richard - UKGI; Aldred, Tom - UKGI
Subject: RE: Privileged & Confidential - Covering Sub Attached

Just finished the sub-committee call which lasted 90 minutes.

The sub-committee signed-off on the approach being recommended by the legal team.

There was quite a long discussion about the contractual terms being appealed. Essentially the advice has been reconfirmed that the Post Office's position that the contract isn't relational and the two implied terms that had already been offered (Necessary Cooperation and Stirling v Maitland) are sufficient to provide the right commercial balance between POL and postmasters. Also in relation to the terms that the judge had struck out as being unfair, Post Office had already stated that they should be interpreted in a way that is reasonable (eg the liability clause in the NTC contract).

On the factual issues, the appeal is mainly on the basis of procedural unfairness (ie the judge didn't hear evidence from both sides) rather than the substance of the findings themselves.

There are two follow-up actions:

- The legal team have been asked to set out more clearly what Necessary Cooperation means particularly in relation to the implied terms in the Common Issues judgement
- The legal team are also going to provide a fuller explanation of the facts in the lead cases and where POL believes the judge in the common issues trial made errors in his findings of fact

Tom

From: Clarke, Stephen - UKGI
Sent: 08 May 2019 16:40
To: Watson, Richard - UKGI <[REDACTED]>; Cooper, Tom - UKGI <[REDACTED]>; Aldred, Tom - UKGI <[REDACTED]>
Subject: Privileged & Confidential - Covering Sub Attached

All,

I've drafted a covering sub (attached), drawing on recent emails from HSF. Please let me know if you have any suggestions and, if known, respond to the question highlighted in bold and yellow in para 6.

I've left placeholders to insert Tom C's readout of tomorrow's meeting and to attach HSF's 1-2 pager briefing.

I haven't included settlement as there doesn't seem to be any progress but perhaps I'm missing something?

Steve

From: Watson, Richard - UKGI
Sent: 08 May 2019 16:20
To: Cooper, Tom - UKGI <[REDACTED]>; Aldred, Tom - UKGI
<[REDACTED]>; Clarke, Stephen - UKGI <[REDACTED]>
Subject: RE: Privileged & Confidential

Tom

I had not replied to this but think it has now been overtaken by other emails.

I am alerting Alan, Ben and Al to the possibility of a ministerial briefing

Kind regards

Richard

Richard Watson|General Counsel
UK Government Investments

1 Victoria Street | London | SW1H 0ET

T: [REDACTED]
E: richard.watson@[REDACTED]
W: <https://www.ukgi.org.uk/>

From: Cooper, Tom - UKGI
Sent: 08 May 2019 10:46
To: Watson, Richard - UKGI <[REDACTED]>; Aldred, Tom - UKGI
<[REDACTED]>; Clarke, Stephen - UKGI <[REDACTED]>
Subject: Re: Privileged & Confidential

Richard

Did you reply to this?

Tom

Sent from my iPhone

On 4 May 2019, at 11:43, Cooper, Tom - UKGI <[REDACTED]> wrote:

Latest from HSF.

Richard – just checking you're in touch with HSF to get the written briefing that the Minister has asked for. Also are you lining up the verbal briefing she says she wants – presumably the company (Al or Ben Foat?) and Alan Watts(?) might be included?

Tom

From: Thomas Cooper [GRO]
Sent: 03 May 2019 15:13
To: Cooper, Tom - UKGI [GRO]
Subject: Fwd: Privileged & Confidential

Get [Outlook for iOS](#)

From: Watts, Alan [GRO]
Sent: Friday, May 3, 2019 1:53:49 PM
To: Alisdair Cameron; Thomas Cooper; Tim Parker
Cc: Massey, Kirsten; Henderson, Tom
Subject: Privileged & Confidential

Al, Tom and Tim

Please find attached a checklist of work undertaken this week and known actions for next week. There are a few points to note:

1. Common Issues appeal hearing 16 May

As agreed we're applying for permission to appeal before Fraser J on 16 May. Simultaneous exchange of skeletons for that hearing has been ordered to take place on 14 May. This skeleton will not contain our Court of Appeal Grounds of Appeal, or the more detailed submissions we intend to file with the Court of Appeal. Instead the Fraser J skeleton will be relatively high level, setting out in more summary terms the points we intend to appeal. We do not envisage that the GLO Sub-Committee will need to review the skeleton itself, as we will be agreeing the broad approach to the appeal (which will be reflected in the skeleton) at our meeting next week.

The claimants have asked us to provide them with our Court of Appeal Grounds of Appeal so that they know what to expect at the Fraser J hearing – their concern being that if they don't know what we're appealing until 14 May they won't really have time to prepare for the hearing on the 16th. We're not minded to share the Court of Appeal Grounds of Appeal as (a) we're not required to do this; (b) it is a working document that will be further refined after the Fraser J hearing. Instead we will offer to share our Fraser J skeleton with them on 13 May, one day earlier than required – a sequential exchange of skeletons (which is quite common) to alleviate their concerns that they won't have preparation time.

I assume this approach is fine with you but please let me know if you disagree.

2. The Common Issues appeal

The main item for next week is the GLO Sub-Committee meeting on 9 May 2019. At that meeting we will need the Sub-Committee to agree to the approach we plan to take with the Common Issues appeal. There will be no need to approve the Court of Appeal Grounds of Appeal document in this meeting, as we have some time before that needs to be finalised and filed with the Court of Appeal in early June. Instead, we need to agree our approach to the Common Issues appeal in general.

We have now reviewed the Grounds of Appeal and attended a lengthy meeting with the legal team to discuss. We believe that we are all broadly agreed as to the approach to be taken in the appeal – and our focus is likely to be more on how the Post Office's position is presented to the Court of Appeal, rather than the scope of the appeal itself. In particular, we think that it will be important to highlight the implied terms that the Post Office agreed before Fraser J, to show that the Post Office is acting reasonably and not seeking to avoid obvious obligations, but is equally not able (and does not think that it is necessary) to accept the extensive terms and obligation of good faith implied by Fraser J. We can discuss this further when we meet next week.

In addition, as promised attached is WBD's crib sheet summarising the issues under appeal. We're not sure how useful this document is going to be to the Sub-Committee so we will supplement this with a 1-2 pager for next week's meeting, outlining the points for discussion and decision.

3. Counsel team

We haven't included this in the action list but we are considering the constitution of the Counsel team for the recusal appeal and the Common Issues appeal. Who does what may depend on whether those two appeals are conjoined. We have some names in mind and are making confidential enquiries of availability. For present purposes it makes sense for David to do the 16 May hearing. We anticipate making recommendations shortly after that hearing.

Please let me know if it would be helpful to discuss.

Regards

Alan

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

This message is confidential and may be covered by legal professional privilege. If you are not the intended recipient you must not disclose or use the information contained in it. If you have received this email in error please notify us immediately by return email or by calling our main switchboard on **GRO** and delete the email.

Further information is available from www.herbertsmithfreehills.com, including our Privacy Policy which describes how we handle personal information.

Herbert Smith Freehills LLP is a Limited Liability Partnership registered in England and Wales with registered number OC310989. It is authorised and regulated by the Solicitors' Regulation Authority of England and Wales whose rules can be

accessed via www.sra.org.uk/code-of-conduct.page. A list of the members and their professional qualifications is open to inspection at the registered office, Exchange House, Primrose Street, London EC2A 2EG. We use the word partner of Herbert Smith Freehills LLP to refer to a member of Herbert Smith Freehills LLP, or an employee or consultant with equivalent standing and qualifications. Herbert Smith Freehills LLP's registration number for Value Added Tax in the United Kingdom is GB 927 1996 83.

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"

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

<_DOC_155567745(1)_CI Appeal - Meeting on 1 May 2019.docx>
<2019-04-26 - PO GLO - Action List.docx>