

Message

**From:** Cooper, Tom - UKGI [/O=HMT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8D968D43E33749AE9E59F9C9350E69D5-COOPER, THOMAS (TCOO)]  
**Sent:** 18/03/2019 08:27:43  
**To:** Watson, Richard - UKGI [/o=HMT/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e8568e9d213f4097a7a65f3da4f63cc1-Watson, Richard (RWa)]  
**Subject:** Fwd: Recusal CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Have sent this to Jane and the board

Sent from my iPhone

Begin forwarded message:

**From:** Thomas Cooper [GRO]  
**Date:** 18 March 2019 at 08:18:56 GMT  
**To:** "tom.cooper" [GRO]  
**Subject:** Re: Recusal CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

Jane

I should mention that in relation to recusal (only) it is possible that I will be asked by BEIS to participate in the discussion but not participate in the decision because of the wider implications for BEIS/HMG of a challenge to the behaviour of a particular judge. I will confirm the position at the start of the Board call.

I sent you a note last week (also on 13th) which listed a number of questions arising from the judgement. I'd be grateful if we could add that to the agenda for the call this afternoon as well.

Please could you forward the note referred to in the first paragraph of Lord Neuberger's note. It has been requested by Richard Watson in the legal team at UKGI.

Tom

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**From:** Thomas Cooper [GRO]  
**Sent:** Sunday, March 17, 2019 10:42 pm  
**To:** tom.cooper [GRO]  
**Subject:** Fwd: Recusal CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE

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**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



### Jane MacLeod

Group Director of Legal, Risk & Governance  
Ground Floor  
20 Finsbury Street  
LONDON  
EC2Y 9AQ

Mobile number: **GRO**

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