
From: Cooper, Tom - UKGI[/O=HMT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8D968D43E33749AE9E59F9C9350E69D5-COOPER, THOMAS (TCOO)]
Sent: Mon 07/01/2019 7:01:58 PM (UTC)
To: Watson, Richard - [REDACTED] GRO
Cc: Fox, Joshua - [REDACTED] GRO
Subject: RE: Post Office - Litigation CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD.

OK. Thanks

So what do you recommend we do in relation to this hearing?

Tom

From: Watson, Richard - UKGI
Sent: 07 January 2019 10:14
To: Cooper, Tom - UKGI [REDACTED] GRO
Cc: Fox, Joshua - UKGI [REDACTED] GRO
Subject: RE: Post Office - Litigation CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD.

Tom

I'm not sure there is any real difference between the public and private sector. The holding company (whether PLC or not) will only be a party to litigation if there is a cause of action for or against it, or if there is some other reason why it needs to be joined in the litigation. Unless it is a party to the litigation the terms of the relevant practice direction mean that the court's permission will be required for any draft judgement to be shared with it. It will, of course, find out about the result the minute the judgement is formally handed down.

Some years ago the practice around draft judgements used to be that they could only be shared with the parties lawyers. The lawyers were allowed to share them with their clients 1 hour before them being formally handed down.

I have also found a case where the court found there had been a clear breach of the embargo when a client and its lawyers disclosed a draft judgement to a separate legal entity who were the funders of the litigation.

Kind regards

Richard

Richard Watson | General Counsel
UK Government Investments

1 Victoria Street | London | SW1H 0ET

GRO

From: Cooper, Tom - UKGI

Sent: 04 January 2019 17:28

To: Watson, Richard - UKGI [GRO]

Cc: Fox, Joshua - UKGI [GRO]

Subject: Re: Post Office - Litigation CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD.

Ok. In the public sector is the reason that PLCs don't usually ask for a ruling so they can see the judgement because the holding company will usually be a party to the litigation anyway?

Sent from my iPhone

On 4 Jan 2019, at 17:21, Watson, Richard - UKGI [GRO] wrote:

Tom

I have asked a couple of contacts in private practice who are litigators. I have also asked a government legal contact who is a litigator. The relevant practice direction is clear namely that the draft judgement may only be shared with the company that is party to the litigation. If that company is a subsidiary then it would be open to it to ask the judge for permission to share the draft with its parent. Sharing without permission could be regarded as contempt of court. A reason would need to be advanced as to why sharing the draft was necessary. Remember that we are generally talking about a short period of time (usually 48 hours but sometimes longer) where the parties to the litigation have a draft judgement in advance of it being published. The purpose of the court doing this is essentially twofold:

- a. For the parties to notify the judge of any errors in the judgement, typographical or otherwise; and
- b. For the parties to consider the terms of the final order that they might ask the judge to make as a result of the draft judgement and/or to consider possible grounds for appeal.

Provision of the draft is on the strict understanding that its confidentiality will be preserved and none of the parties will take any action (other than internally) based on the draft judgement until it is formally handed down, whereupon it becomes public.

My contacts were not aware of any common practice whereby permission is sought for PLC's to have sight of draft judgements in cases involving a subsidiary. Similarly, in the public sector a draft judgement against a government department cannot be shared with another government department unless the court gives permission.

Kind regards

Richard

Richard Watson | General Counsel
UK Government Investments

1 Victoria Street | London | SW1H 0ET



From: Cooper, Tom - UKGI
Sent: 03 January 2019 18:27
To: Watson, Richard - UKGI [REDACTED] GRO
Cc: Fox, Joshua - UKGI [REDACTED] GRO
Subject: Re: Post Office - Litigation CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD.

Ok. Thanks Richard

I'm back on Tuesday.

In the meantime could you find out what normal practice would be in the private sector would be? If a 100% subsidiary of a public company is being sued would it be common for the Board and management of the public company to have sight of the ruling at the same time as it's received by the subsidiary?

Tom

Sent from my iPhone

On 3 Jan 2019, at 18:40, Watson, Richard - UKGI [REDACTED] GRO wrote:

Tom

I have established that in order that DECC could see the draft Magnox judgement an application was made to the Judge by the NDA with the claimant's consent. The application was made on the basis that DECC had a vested interest as funds to meet any damages were ultimately Government funds. The judge was also aware that his decision could have substantial implications for the way public sector procurements were conducted in the future. In addition, throughout a lot of the proceedings, DECC had been sighted – in particular DECC Legal – and individuals from DECC were within the 'confidentiality ring', had consented to the Court conditions and were thus able to see all the confidential information relating to the procurement.

If we want to see the POL judgement in draft there would need to be an application to the Judge for his permission supported by reasons. I don't think our position as 100% shareholder of POL is quite analogous to DECC's position as sponsor of the NDA (a body set up by statute and funded by HMG to carry out exclusively public functions) but I can see a case based on the fact that there is significant public interest in the litigation, lots of questions have been asked of BEIS Ministers by MP's and others and HMG is bound to be asked more questions as soon as the judgement is made public.

Perhaps we can discuss when we meet POL on Tuesday.

Kind regards

Richard

Richard Watson | General Counsel
UK Government Investments

1 Victoria Street | London | SW1H 0ET

GRO

From: Watson, Richard - UKGI
Sent: 03 January 2019 11:20
To: Cooper, Tom - UKGI [REDACTED] GRO
Cc: Fox, Joshua - UKGI [REDACTED] GRO
Subject: RE: Post Office - Litigation CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD.

Tom

Just following up on my below email. I have established that with the Magnox litigation the judge gave specific permission for the draft judgement to be shared with the DECC permanent secretary and head of legal before it was handed down. Specific permission from the Judge was necessary because, as indicated below, the practice direction only permits sharing the draft with people within the organisation (in that case the NDA), and even then only on a need to know basis. I am still trying to clarify what the basis for DECC's application was to see if there is any analogy with HMG's position vis a vis POL.

Kind regards

Richard

Richard Watson | General Counsel
UK Government Investments

1 Victoria Street | London | SW1H 0ET

GRO

From: Watson, Richard - UKGI
Sent: 21 December 2018 12:44
To: Cooper, Tom - UKGI [REDACTED] GRO
Subject: RE: Post Office - Litigation CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD.

Tom

The relevant practice direction that covers this is clear that disclosure of the draft judgement is limited to people within the organisation i.e. POL, the Defendant in the case. Under the terms of the practice direction it would not be possible to disclose to the shareholder unless the judge specifically granted permission for this. I have been trying to find out from colleagues what might have happened with the Magnox litigation - whether BEIS had sight of the draft judgement before it was handed down and if so how. The

relevant BEIS contact is away until the new year so I will follow that up then, and consider further the grounds upon which we might want to make an application for permission to see the draft judgement.

If you want you can confirm to Jane that you are prepared to proceed on the basis she has indicated. If we can find another way that BEIS/UKGI can get sight of the draft judgement, if necessary with the Judges permission, then we can go back to Jane to agree the process around that. That will be separate to your role on the informal committee Jane proposes.

Kind regards

Richard

Richard Watson | General Counsel
UK Government Investments

1 Victoria Street | London | SW1H 0ET

GRO

From: Cooper, Tom - UKGI

Sent: 18 December 2018 16:55

To: Jane MacLeod [REDACTED] **GRO**

Cc: Watson, Richard - UKGI [REDACTED] **GRO**; Rodric Williams

[REDACTED] **GRO**

Subject: RE: Post Office - Litigation CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD.

Jane

Richard mentioned this to me earlier.

He's giving the matter some further thought and will revert to you.

Tom

Tom Cooper

Director

UK Government Investments

1 Victoria Street | London | SW1H 0ET

GRO

From: Jane MacLeod [REDACTED] **GRO**

Sent: 18 December 2018 15:25

To: Cooper, Tom - UKGI [REDACTED] GRO

Cc: Watson, Richard - UKGI [REDACTED] GRO Rodric Williams

[REDACTED] GRO

Subject: Post Office - Litigation CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD.

Hi Tom,

We are in the process of finalising an update to the Board on the litigation, and propose to include a section outlining the governance process for any required decision about an appeal, given the likelihood that this issue will arise before the January board. Additionally, we are developing a matrix that will help to flag those outcomes about which we will be most concerned based on impact to POL's business; this will be similar to the approach we developed for the contingency planning earlier this year, and we will circulate that matrix early in January.

We believe it is likely that the draft judgment will be released to us a few days before it is formally handed down. In that period we have the opportunity to comment on factual errors, however the judgment will be subject to an embargo and the Trial Judge has made it clear that the embargo will be strictly enforced.

The Civil Procedure Rules (Practice Direction 40E) restrict circulation of a draft judgment to "within the organisation", provided it is also:

- kept confidential;
- not disclosed to any other person or used in the public domain; and
- not acted upon (other than internally) before the judgment is handed down.

Any enquiries about who can receive a draft judgment are to be sent to the Judge.

The judgement will be made available to POL's legal team and we will provide analysis and a recommendation as soon as possible following receipt (recognising that the judgment is likely to be long and necessarily complex given the range of issues). Ideally (if we wish to appeal) we would seek leave to appeal at the point at which the judgment is handed down, although we will have up to 14 days following that date to do so.

We propose that an informal 'committee' be formed comprising of the Chairman, CEO, CFOO, and yourself to receive a briefing on the judgment and make any required decision as to appeal. However your involvement will be as a POL director – not as a representative of UKGI, and therefore you would not be able to share the decision with anyone from UKGI or BEIS ahead of the judgment being formally handed down.

Would you please advise whether you are prepared to proceed on this basis? I have spoken to Richard already to alert him to this issue, and he will discuss this with you. As ever, Rod and I also remain available should you wish to discuss it further.

Kind regards,

Jane

<image001.png> Jane MacLeod

Group Director of Legal, Risk & Governance
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GRO

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