

Message

**From:** Alisdair Cameron [GRO]  
**on behalf of** Alisdair Cameron [GRO]  
**Sent:** 24/05/2019 08:12:29  
**To:** Watts, Alan [GRO]  
**CC:** Ben Foat [GRO]; Massey, Kirsten [GRO]; Henderson, Tom [GRO]; Thomas Cooper [GRO]; Tim Parker [GRO]  
**Subject:** RE: Privileged & Confidential

Thanks Alan. We are very much in synch on this. The appeal to the court of appeal must be on narrow, legal grounds and we must be represented by a new QC. Your conversation with Helen was entirely consistent.

The next steps are:

- Meeting up with our Horizon QC to see if anything can be mitigated or improved
- Agreeing our preparation, strategy and approach to settlement

Thanks Al



**Al Cameron**  
**Interim Chief Executive**

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[GRO]

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**From:** Watts, Alan [GRO]  
**Sent:** 23 May 2019 20:24  
**To:** Alisdair Cameron [GRO]  
**Cc:** Ben Foat [GRO]; Massey, Kirsten [GRO]; Henderson, Tom [GRO]  
**Subject:** Privileged & Confidential

Al,

Ben has sent you a summary of today's hearing which means we now have 21 days to seek leave to appeal from the Court of Appeal.

I therefore wanted to report back on our first meeting with Helen Davies QC, which Ben joined us for.

All in all it was a very helpful meeting. In summary, Helen's views are as follows:

- Key is to get the Court of Appeal interested in the appeal. We are at the more complex end of the range of appeals given the sheer number of points in issue – for that reason we really need to whittle down the appeal to those points that have real prospects of success.

- In essence we need to focus our firepower on errors of law, and ideally only those that go to commercially important issues.
- She agrees that Common Issues 1 and 2 (relational contract, good faith, implied terms) are important and interesting legally. She thinks they will engage the Court of Appeal. This is a ripe area for examination.
- She thinks that the Grounds of Appeal should be built around the errors of law flowing from the findings on good faith and gave some suggestions for reordering the Common Issues – i.e. to focus on the strongest points up front.
- She saw the sense in putting everything to Fraser J today but wouldn't suggest running before the Court of Appeal (subject to us confirming none of the following points are commercially important):
  - Argument around procedural irregularity – as already discussed this has been rehearsed before and is in any event a very high hurdle to overcome
  - Any error of fact – in particular criticisms of individuals as the Judge was entitled to form his view of witnesses. She sees the relevance and force of the appeal on Bates' contract but advises against pursuing it.
  - In general she does not think that the Judge relied on post-contractual material to interpret the contracts, or at least it is unclear whether he did. For that reason, at present, she does not think we should be appealing on this basis.
  - Common Issue 23 (SPM's responsibility to train assistants) – she thinks we have the weaker argument on this point given it is difficult to envisage how an SPM could be expected to train assistants to a higher standard than he/she had been trained by Post Office.
- She also questioned how far we should go in appealing terms that the judge implied on the basis of necessity. This is because the judge utilised the correct legal test, but may have misapplied it on the facts. This is a more challenging appeal than appealing the terms implied on the basis that the contracts were relational. This will depend on the commercial implications of the affected terms – i.e. if we can't live with them we should appeal them, if they are things we do anyway as they are covered by the necessary cooperation implied term we may leave them.
- She is questioning our appeal of Common Issues 12 and 13 (obligations as agents and the BTS) and 8 (construction of section 12 clause 12), but at present, subject to reordering the skeleton, seems content to keep them in.
- Otherwise, she thinks the Grounds of Appeal needs to be considerably re-purposed and shortened. Grounds of Appeal should be succinct and list where the judge has erred in high level terms. The detail can go into the skeleton. Her primary concern is that a lengthy and unfocussed Grounds, particularly if it contains less meritorious argument, will annoy the Court of Appeal and hurt our chances.

In addition, she is not in favour of us asking 3 Lord Justices to consider the application for permission to appeal (even if that is possible which is far from clear). She thinks this suggests a lack of confidence in our Grounds, and instead we should focus on going in strong. Her view is that Coulson is actually a fair minded judge and will give it a fair hearing if he is going to consider it. She doesn't think we should read across any inherent bias towards Post Office based on his harsh judgment in the recusal permission appeal – she was unsurprised by that judgment given the Court of Appeal intensely dislikes recusal appeals.

In terms of immediate next steps, and assuming you're content for us to proceed with Helen:

- I will speak to Andy Parsons about the appointment of Helen for the appeal. He will then need to speak with David Cavender.
- We need to identify which, if not both, of David's juniors will assist Helen. We agree it is crucial that there is continuity of juniors with knowledge of the case.
- We are going to give Helen access to the WBD document platform, in particular the authorities bundle.
- We are going to update the Grounds in the next few days based on Helen's feedback. Helen will then work on the Grounds and skeleton. She is away from chambers next week but will still have some time to work on matters but will really focus on the heavy lifting the following week. The deadline for the appeal papers is 13 June.

If helpful to discuss any of this please let me know.

Regards

Alan

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