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**From:** Cooper, Tom - UKGI[/O=HMT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8D968D43E33749AE9E59F9C9350E69D5-COOPER, THOMAS (TCOO]  
**Sent:** Fri 15/03/2019 1:39:53 PM (UTC)  
**To:** Watson, Richard - UKGI[REDACTED] **GRO**  
**Subject:** Fwd: URGENT: Litigation Options - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE.  
**Attachment:** image003.png  
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**Attachment:** image003.png  
**Attachment:** ATT00002.htm  
**Attachment:** 4852\_001.pdf  
**Attachment:** ATT00003.htm

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Begin forwarded message:

**From:** Thomas Cooper [REDACTED] **GRO**  
**Date:** 15 March 2019 at 13:39:11 GMT  
**To:** "tom.cooper" [REDACTED] **GRO**  
**Subject:** Fwd: URGENT: Litigation Options - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE.

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**From:** Jane MacLeod [REDACTED] **GRO**  
**Sent:** Friday, March 15, 2019 8:19 am  
**To:** Tim Parker; Thomas Cooper  
**Cc:** Alisdair Cameron  
**Subject:** URGENT: Litigation Options - CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE.

Dear Tim and Tom

As flagged on the board call on Tuesday, we have sought further advice on appeals and as to whether we have grounds to request the judge to recuse himself on the grounds of bias.

Advice

We sought advice from Lord Neuberger who stepped down last year as the President of the Supreme Court (and as such was the highest judge in the U.K.). We sought his views as to whether the draft judgement demonstrated the following grounds for appeal:

- Whether the Judge has correctly interpreted and applied the law as to construction of a document or application of a principle of law;
- Whether there are grounds to argue that findings have been made as a result of serious procedural irregularity (which goes to the admission of, and reliance on, among other issues,

- inadmissible evidence), and
- (most urgently) Whether Mr Justice Fraser demonstrated grounds on which we could apply for him to recuse himself.

The test for recusal is 'whether the fair-minded and informed observer, having considered the facts, would conclude there is a real possibility that the [Judge] was biased'.

Attached is Lord Neuberger's preliminary advice (Please note, in paragraph 11 he refers to 'the Note' – this is a note put together by David Cavendar QC summarising the key extracts of the judgement and trial transcript) . As you will see, in paragraph 5 Lord Neuberger states that although he has only looked at the issues very cursorily, "at least some of them raise quite significant points on which the PO has a reasonable case, and at least on the face of it, some points on which the PO has a pretty strong case."

Further however, he suggests (para 19) that if we wish to rely on the ground of procedural unfairness at an appeal, then 'PO has little option but to seek to get the Judge to recuse himself at this stage' and in para 20 that if we fail to act promptly during the Horizon trial we "risk being held to have waived [our] rights, or at least weakened our position on the recusal issue."

#### Timing

I have set out below the proposed process and timetable. This suggests that we should make the decision urgently - preferably not later than Monday with a view to making the application early to mid next week.

#### Risks

The risks with seeking for the Judge to recuse himself are:

- The application is successful and the Horizon Trial is adjourned (and probably has to be re-heard by another judge); we proceed with an appeal on the Common Issues Trial (timing to be determined) and a new judge is put in place for remaining aspects of trials.
- The application is unsuccessful (at first request and in the Court of Appeal) then it is likely that the judge is further antagonised, however he will be aware that the Common Issues appeal is progressing which includes the "procedural unfairness" assertion. Possible impact in that scenario is the Judge is more cautious as to behaviours to (possibly) POL's benefit.
- The theoretical downside to a recusal application is that it fails and that Fraser remains the judge at Trial 3 which will require multiple findings of fact which are more tricky to appeal.

We should also not proceed with this course of action unless we are prepared to appeal a decision by him not to recuse himself.

In the meantime I propose today to brief a further senior silk today (probably Lord Grabiner) to act on the recusal application. Should the Board decide not to proceed, then we can withdraw the instructions; however as he will need reading in time, this parallel track will minimise delay.

#### Next steps

**Tim**, this is clearly a board decision and we would need to give the Board time to consider the options, however we would like to convene a call over the weekend or on Monday at the latest to discuss this proposal. Lord Neuberger is available for a conference call to discuss his views, although he is in Argentina, so there are some time considerations. Once he has read in, and assuming he agrees with Lord Neuberger, I expect Lord Grabiner would also be available for a call.

**Tom**, you have previously counselled us that any appeal should be discussed with the shareholder - please advise how we progress this as amateur of urgency?

Would we be able to talk today to consider the way forward?

Kind regards,

Jane