

**From:** Watts, Alan [GRO]  
**Sent:** Wed 15/05/2019 9:07:55 AM (UTC)  
**To:** Alisdair Cameron [GRO] Thomas  
 Cooper [GRO] Tim Parker [GRO] Ken  
 McCall1 [GRO] Ben Foat [GRO]  
**Cc:** Massey, Kirsten [GRO] Veronica  
 Branton [GRO]  
**Subject:** RE: Legally privileged and confidential - GLO  
**Attachment:** 2019-05-14 - Points of Appeal.docx

Al

Please find attached summary table as requested. It's really the first page that is most relevant the annex just sets out the implied terms for completeness.

Regards  
Alan

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**From:** Alisdair Cameron [mailto:[GRO]]  
**Sent:** 14 May 2019 15:04  
**To:** Watts, Alan; Thomas Cooper; Tim Parker; Ken McCall1; Ben Foat  
**Cc:** Massey, Kirsten; Veronica Branton  
**Subject:** RE: Legally privileged and confidential - GLO

Alan, thank you for the honesty and clarity of the challenge, once you have had the time to reflect on yesterday's conversation. As you no longer support the direction, we need to work through it. I have copied Veronica to get a call in for as many of us can make it – the best time might be tomorrow pm or evening: Tim and I are together for a Ministerial meeting. It probably can't be later than that.

To help us prepare for that meeting, a summary table would be appreciated, listing at a high level the grounds of appeal under three scenarios: the original appeal as set out by counsel; the stripped down version agreed yesterday; and your recommended option.

Give me a call if that needs varying.

Kind regards Al



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

20 Finsbury Street  
 London  
 EC2Y 9AQ

[GRO]

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**From:** Watts, Alan [GRO]

**Sent:** 14 May 2019 14:03

**To:** Thomas Cooper [GRO] Tim Parker [GRO] Ken McCall1  
[GRO] Alisdair Cameron [GRO] Ben Foat  
[GRO]

**Cc:** Massey, Kirsten [GRO]

**Subject:** RE: Legally privileged and confidential - GLO

All,

We have received a revised grounds of appeal and skeleton from DCQC which we are currently working through. However in the meantime I set out below his covering email:

- "1. Following yesterday's telephone meeting (at which the PO Board sub-committee dealing with the Group Litigation decided to excise from the Common Issues appeal all issues that were not "strictly necessary" as part of the appeal against the construction of the terms of the contracts) I attach marked up copies of the amended Grounds of Appeal and the "baby" skeleton in support of the application for permission.
2. As instructed, these have all the ingredients of procedural unfairness and findings of fact removed. We have also removed the recusal light direction – which I agree is best removed in the current circumstances. At the end of the day the client must have the final say and we will of course support that and do our level best to achieve the optimum result for any client – particularly one like PO who has been sorely let down by the legal system and is understandably shaken by it.
3. Nonetheless, it would be wrong for me to attach these documents, on that basis, without formally expressing my views (largely set out in our subsequent call with HSF) that whilst the client's instinctive view (following receipt of Coulson LJ's refusal on the recusal appeal) is perfectly understandable – this approach, of not challenging the procedural unfairness or perverse findings of fact, will be damaging to PO's case and is one which is high likely to result in them having to pay a significantly larger sum to settle this case. I say this for a number of reasons:
  - (1) The complaints we make are right – and nothing Coulson LJ says persuades me otherwise - and the Court of Appeal when they actually get to look at the detail will likely agree. This will in and of itself undermine the Judge in their eyes and make them treat his other findings on the law with less respect. It will also give us a good chance of removing him for the future. We should not give up now just because a single Judge of the Court of Appeal (and his friend) on a cursory review agrees with Fraser J. In this Lord Neuberger agrees. I think it would be useful if the client saw his analysis of the two types of case he identifies and his careful thinking on this. Such a view, from someone of his calibre, should not be lightly dismissed.
  - (2) If we do not have any grounds before the court on procedural unfairness then there is no way that we can even make submissions to the effect that the case should not be returned to Fraser J. This means that trials 3 and 4 will be before him and which, save where his ingenuity cannot construct it, he will likely make sure that PO will lose. If Mr.Abdulla is a honest and truthful witness then PO stands little chance of fighting in the trenches on any of the individual cases. This means, in effect, that PO will no longer have any realistic strategy which involves taking the results of the Common Issues trial and the Horizon trial to trials on breach. In effect, this means that PO will have no choice but to settle. The Claimants will know this and drive a hard bargain. This will result in PO paying much more than it ought to settle these claims – as it will not have a realistic alternative. This puts PO in a very weak position.
  - (3) Furthermore the criticisms of Post Office will go unchallenged – with the consequence that an order of indemnity costs (which relies on such grounds) becomes significantly more likely.
  - (4) Furthermore, the criticisms of Post Office witnesses will go unchallenged – with the consequence that if they give evidence in future trials their credibility will be set to naught.

4. On the downside, I consider:

(1) that applying to 3 LJ's to consider the papers whilst unusual is justifiable in these circumstances- and the fact of making the application mitigates, to an extent, the risk of the Court of Appeal refusing permission on the Common Issues.

(2) That whilst it might annoy Coulson LJ that some of the points he has dismissed arise again under the procedural unfairness banner – he cannot be particularly surprised as we alerted this to him earlier when making submissions about hearing the two applications together. This point (and the overlap) would need to be dealt with in the skeleton argument in support carefully and sympathetically. Further, I really do not think that Coulson LJ would be so unprofessional as to refuse permission on the legal /construction/good faith grounds because we had also added in procedural unfairness. I say this generally – but more particularly given the degree of interest shown in the Judgment by others- including other Judges. Furthermore, to decide the points under the “procedural unfairness” banner will require him to consider the detail much more closely – he will not be able to hide behind impressionistic formula as to what an impartial 3rd party might or might not have thought.

5. On the question of whether the skeleton argument (absent grounds of appeal) is sufficient my experience is that when you have a complex matter and particularly where there is a delay such as this that the court might well expect draft grounds. In other cases where permission applications follow on the heels of the handing down the rules clearly do not anticipate grounds being provided – or time for them to be formulated properly. That said, I cannot find any rule or practice direction that requires draft grounds to be provided in any case. The email from the Judge today just referred to sequential skeleton arguments- no mention of draft grounds. The nearest the rule comes to grounds - is when dealing with an adjournment from the day the decision is handed down- it mentions that might be necessary, “...to enable the parties to formulate their grounds of appeal and their submissions in support” (Notes to 52.3.6 – White Book page 1778 sub-para.(e). (emphasis added)). Whilst I would be comfortable making the application on the basis of the skeleton alone – for the reasons mentioned on the phone yesterday morning this could be criticised by the Claimants and the Judge. I am more content with the position having expanded the skeleton slightly (and ironically with the procedural unfairness/factual findings removed) – but there remains an obvious risk of trenchant criticism of which the client now is understandably growing tired.

6. That said, the prize, namely of preventing Fraser J getting hold of the full grounds of appeal early –and writing a further judgment seeking to justify and slightly alter/supplement his conclusions, is considerable. And keep in mind our joint views that it is very likely that he is going to refuse permission anyway – with the outside chance of permission on good faith – but only on a narrow (and useless) basis."

We think that we may have persuaded him that we don't need to serve the draft grounds in advance of next week's hearing but rather just the skeleton. There is clearly a risk that Fraser may criticise us for not doing so (and the other side will no doubt encourage him to do so) but I think we should live with that as it is, in my view, more important to keep our powder dry and not give Fraser and/or the other side more notice of the detailed grounds of the appeal than we have to especially where we plan for Helen Davies QC to review them and probably conduct the appeal itself. She may well have her own views on how they should be presented. With that in mind (and notwithstanding the discussion yesterday) we are looking to see whether there is still some way to keep the procedural irregularities door open to at least give us the chance to get her views on it. If she thinks the right thing to do is drop it then we can obviously do so and if our position between the hearing before Fraser and filing the grounds of appeal changes then that will be understandable particularly if we have a new counsel team.

The aim is to work on the skeleton today and then circulate with a view to having a call tomorrow (if necessary) with AI and any others that want to and can join to make a final decision so we are ready in plenty of time before Friday's deadline (which is the date Fraser has ordered us to serve the skeleton by). If anyone wants to discuss in the meantime please feel free to get in touch.

Regards

Alan

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**From:** Thomas Cooper [mailto: ] GRO  
**Sent:** 13 May 2019 13:20  
**To:** Tim Parker; Ken McCall1; Alisdair Cameron; Watts, Alan; Ben Foat  
**Subject:** Re: Legally privileged and confidential - GLO

Tim

I'm in agreement as well.

Tom

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**From:** Tim Parker [ ] GRO  
**Sent:** Monday, May 13, 2019 11:40 am  
**To:** Ken McCall1; Alisdair Cameron; Thomas Cooper; Watts, Alan; Ben Foat  
**Subject:** Re: Legally privileged and confidential - GLO

Al, I am in agreement that we need a different QC to lead the appeal, and also your conclusions about where to go now, so I don't think we need a call at this stage, unless Tom feels differently.

Best

Tim

Tim Parker

Chairman  
National Trust  
20 Grosvenor Gardens, London, SW1W 0DH

GRO

Chairman  
Post Office Limited  
Finsbury Dials, 20 Finsbury Street, London, EC2Y 9AQ

GRO

Chairman  
Samsonite International SA  
Westerring 17, B-9700 Oudenaarde, Belgium

GRO

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**From:** Ken McCall1 [ ] GRO  
**Sent:** Monday, May 13, 2019 10:35 am  
**To:** Alisdair Cameron; Tim Parker; Thomas Cooper; Watts, Alan; Ben Foat  
**Subject:** Re: Legally privileged and confidential - GLO

Al

Many thanks for your update email



I am in agreement with your line of thinking and indeed looking at another QC to front

From Wednesday onwards I will be in the US but still fully contactable by email

Best regards

Ken

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**From:** Alisdair Cameron [GRO]  
**Sent:** Monday, May 13, 2019 9:51 am  
**To:** Tim Parker; Thomas Cooper; Ken McCall1; Watts, Alan; Ben Foat  
**Subject:** Legally privileged and confidential - GLO

Following the news at the weekend we met this morning. I have set out below the outcomes of that conversation. If the sub-committee wants to have a call arranged, please let me know. Kind regards Al

1. Mr Coulson has supported the logic of Mr Fraser's position and denied our appeal on the recusal.
2. The recusal argument is finished.
3. Our appeal on the common issues will go ahead.
4. We will see Mr Fraser this morning to support the claimants' request to delay the appeal hearing to 23<sup>rd</sup> so they have more time to prepare. We do need to adjust our position post the Coulson findings and will be seeking to share grounds for appeal this Thursday, giving the Claimants a week to prepare. Mr Fraser could demand more urgency – we originally said today - which would make life difficult but it would be odd if we didn't want to consider Mr Coulson's judgement....
5. Assuming Mr Fraser turns the appeal down, it may well be Mr Coulson who would adjudicate whether we can appeal on the common issues trial. He might also be the presiding judge if an appeal went ahead. We can and are likely to ask for three judges to decide on whether we can appeal: this is unusual but within our rights and not considered controversial. However, it is unclear how that decision would be made and it may still be Mr Coulson....While the legal teams are all convinced that the legal interpretations are so new and important that we will be able to appeal, I am anxious.
6. We are therefore re-writing the common issues appeal now to strip out any "recusal lite" argument and to minimise the findings of fact only to those things that directly support one of the contractual interpretation arguments, to give ourselves the best opportunity to be heard and to demonstrate to Mr Coulson that we have listened.
7. This is against the advice of David Cavender who is advising us to stick to our guns. He does not feel like the right person to be fronting the appeal, which HS are reviewing – depending on the timetable, another QC may front it with his support or there could be a complete handover over time.
8. We are briefly communicating with our senior leadership team but in the absence of any media coverage do not plan to communicate further.
9. Our immediate focus, which we will discuss at May Board, will be how we best prepare for a very bad Horizon verdict, which is inevitable, both because the recusal failed and because our witnesses did badly in court before the pause. Our job is to reassure Postmasters to carry on, business as usual, by demonstrating that Horizon works today, communicating a more transparent process for managing new differences and separately for managing historical claims. We are currently planning to announce this before the judgement.
10. We are also working on how we put together a settlement team and process for after the Horizon trial.



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

20 Finsbury Street  
London  
EC2Y 9AQ

**GRO**

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