

Message

From: Jane MacLeod [REDACTED] **GRO** [REDACTED]
on behalf of Jane MacLeod [REDACTED] **GRO** [REDACTED]
Sent: 10/04/2019 17:01:52
To: Cooper, Tom - UKGI [REDACTED] **GRO** [REDACTED]; Alasdair Cameron [REDACTED] **GRO** [REDACTED]
CC: Tim Parker [REDACTED] **GRO** [REDACTED]; Ken McCall1 [REDACTED] **GRO** [REDACTED]
Subject: RE: Post Office - Recusal Application CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

All

Further to my email below, Counsel's view on the prospects of success on appeal has not materially changed following the recusal judgment. They continue to believe the appeal has a strong prospect of success. If anything, there are additional matters in yesterday's judgment that may also help to demonstrate apparent bias.

In particular, Lord Grabiner has confirmed in an email to WBD:

"I believe we have a strong case because the Judge decided more than he should have done or was necessary for him to decide at the Common Issues trial. He was asked on many occasions both before and during the trial to take great care not to trespass into the territory of the future cases and I believe that he wrongly failed to heed that request. Many of his observations are expressed as firm conclusions rather than cautious preliminary expressions of current thinking and that point was not seriously challenged by the other side in the recusal hearing. If he had case managed the litigation in a more disciplined way all this could have been avoided.

The latest recusal judgment is an aggressively strong defence by the Judge of his personal position. This is not surprising. He dug himself into it in the first place and he's now in the business of digging himself out. The collective view of the team - having observed him during the trial - was that this is what he would do and his refusal to recuse himself coupled with his refusal to give leave to appeal against that judgment was predicted by the team. As previously explained I also believe that in all the circumstances Post Office has no real alternative choice but to pursue appeals to the Court of Appeal against both the recusal and the Common Issues judgments.

All that said, and as previously advised, I cannot give a guarantee of success in the Court of Appeal. There are always risks associated with litigation."

I hope this addresses the concern.

Kind regards,

Jane

Jane MacLeod
[REDACTED]
GRO [REDACTED]

From: Jane MacLeod
Sent: 10 April 2019 08:40
To: Cooper, Tom - UKGI [REDACTED] **GRO** [REDACTED]; Alasdair Cameron [REDACTED] **GRO** [REDACTED]
Cc: Tim Parker [REDACTED] **GRO** [REDACTED]; Ken McCall1 [REDACTED] **GRO** [REDACTED]
Subject: RE: Post Office - Recusal Application CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

All

Thanks for your comments. To respond:

- As flagged at the Board meeting at the end of March, Lord Neuberger has not been instructed in relation to the recusal hearing. As part of the preparation for the appeal on the Common Issues trial, he will be provided with a copy of yesterday's judgment, however in the time available he will not be able to comment on the Recusal judgment. Based on the verbal discussions with Counsel last night (including Lord Grabiner), I don't believe that the team has changed their view on prospects or approach, however I have asked for written confirmation of this.
- The exchange in relation to the 'dates' related to the Judge's query as to whether Post Office had delayed in making the application. The Recusal Judgment (attached) at para 279 contains the following extract from the transcript:

"I expressly asked Lord Grabiner about this delay in making the application. The exchange was as follows:

LORD GRABINER: My understanding is that we received the draft judgment on the Friday immediately prior to commencement of the Horizon trial on the Monday. I am afraid, standing here now, I don't know what the dates are.

MR JUSTICE FRASER: It is the 8th. It was sent out on Friday, the 8th [March]. Monday, the 11th, was oral openings.

LORD GRABINER: There was a passage of time between then and the decision that was communicated to make this application. I need hardly point out that this has been -- this is regarded as an extremely serious application to be making. It was made at board level within the client and it also involved the need for me to be got up to speed from a standing start."

The Judge believes that we did delay and should have given him earlier notice of our proposals, and therefore that delay is fatal to our application for recusal. He says at paragraph 285 of the judgment:

"I have found that there is no apparent bias in any event. However, even were I to have concluded that point to the contrary, and found that there was sufficient to justify the Post Office's application for recusal, I consider the delay, and the continued conducting of the Horizon Issues trial, including both the cross-examination of all of the claimants' witnesses of fact, and the calling of almost all of the Post Office's own witnesses of fact, to constitute an unequivocal waiver of any right the Post Office might have had to ask me to abandon the Horizon Issues trial and recuse myself from further involvement as the Managing Judge."

Kind regards,

Jane

Jane MacLeod

GRO

From: Cooper, Tom - UKGI <GRO>

Sent: 10 April 2019 07:32

To: Alisdair Cameron <GRO>

Cc: Jane MacLeod <GRO>; Tim Parker <GRO>; Ken McCall1

<GRO>

Subject: Re: Post Office - Recusal Application CONFIDENTIAL AND SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

I'd like to understand, particularly from Lord Neuberger, whether there's anything in the 77 pages issued by the judge yesterday that changes the view on success in the recusal case or means there should be any change of approach.

I'm also told that Lord G didn't know when Post Office had received the ruling in the Common Issues Trial. Is that true?

Tom

Sent from my iPhone

On 9 Apr 2019, at 21:43, Alisdair Cameron <GRO> wrote:

Thanks Jane. Obviously this assumes that we are happy to appeal the recusal without further debate - copied the GLO Sub-Committee just to make sure.

The grounds for appeal on the common issues judgement and the joining together of the appeals need real debate, so let's have a full session with me this week and we will need, as discussed, a sub -committee as early as we can and well before a final decision.

AI

 **Alisdair Cameron**
Interim Chief Executive

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 **GRO**