
From: Watson, Richard - UKGI[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FB2FB49863874083BAB9FCBF8B44FDEEWATSON, RIC]
Sent: Thur 14/11/2019 5:24:11 PM (UTC)
To: Nigel Boardman [REDACTED] GRO
Cc: Cooper, Tom - UKGI [REDACTED] GRO
Subject: RE: Post Office GLO - amended merits advice and update on permission to appeal - strictly privileged and confidential

Nigel

Thanks. The BEIS/UKGI/HMT working group met today and was able to raise questions and comments on the HSF advice directly to Alan Watts who was present for the first part of the meeting.

After Alan had left I conveyed the view in your below email and the comments in your previous email to the group.

There was a good discussion and a consensus from HMT and BEIS colleagues that, although they recognised it was unlikely, if a final settlement could be achieved with the whole claimant group for [REDACTED] that would be a very good result. The group were therefore persuaded that if that was the top figure POL were seeking approval for based on the advice of their lawyers then in principle that should be agreed. Alan confirmed to the group that he was presently minded to make a starting offer around [REDACTED] subject to anything different he might glean from the mediator. He was very clear that he had no intention of going very much higher unless there was a realistic prospect of achieving a settlement. He obviously recognised the concern that whatever level he went up to would set the floor for future settlement discussions.

The POL board approval to a settlement figure up to [REDACTED] was subject to the condition that any offer above [REDACTED] could be made only if it ensures a settlement takes place and would require POL [CEO and Chairman] approval. The working group agreed that a similar condition should be imposed by HMG, so whatever figure the POL CEO and Chairman approved over £50m would also need approval from senior BEIS and HMT officials.

So the recommendation to BEIS and HMT ministers is to approve a settlement up to [REDACTED] on condition that any offer above [REDACTED] could be made only if it ensures a settlement takes place and would require POL [CEO and Chairman] approval, as well as the approval of officials from BEIS and HMT before being made.

The working group recognised the difficulties regarding the convicted claimants. While they did not consider it was for them to determine POL's litigation strategy we will have further discussions with POL about that issue and Part 36 offers following a debrief from the mediation and the outcome of the Horizon trial.

I have **not** named you in the submission that it is intended will go to Ministers tomorrow.

I will keep you apprised of further developments and obviously happy to discuss anything.

I am not in the office tomorrow but will be picking up emails.

Kind regards

Richard

From: Nigel Boardman [REDACTED] **GRO**
Sent: 13 November 2019 22:42
To: Watson, Richard - UKGI [REDACTED] **GRO**
Subject: Re: Post Office GLO - amended merits advice and update on permission to appeal - strictly privileged and confidential

The position I would take is that I am pessimistic about our attempt to settle being successful at these levels - a view shared by the legal advisers. I therefore think that offering them the upper end of the proposed figures provides comfort to the opposition that we recognise that we are in a weak position, without achieving anything useful.

I would much rather we took the position that we don't think we are liable but we are willing to pay an amount which reflects our likely costs of fighting, since we would prefer to settle with them than fight and pay the lawyers.

If we have completely miss-read the situation, and the other side would settle at the upper end of the range, then I do not see any harm in the post office saying that they would like to get to that sort of figure, but they need to go back to the department for approval, and then we could approve it if you felt it was appropriate.

In other words, I do not see the benefit in giving the negotiators the power to go to that number.

Nigel

Sent from my iPhone

On 13 Nov 2019, at 18:38, Watson, Richard - UKGI [REDACTED] **GRO** [REDACTED] wrote:

Nigel

Quick update - the POL Board sub-committee approved the HSF advice of a settlement figure between [REDACTED] **IRRELEVANT** [REDACTED] They want HMG to approve offering up to [REDACTED] (obviously not starting at that level and only going there if a settlement is really achievable). They would also like a simplified mechanism whereby they can get quick HMG approval to go above [REDACTED] if that will dispose of the case.

Tom and I don't think tomorrow's group will be comfortable with that. We do, however, think the group might get to [REDACTED] on the basis that it represents 2 years loss of earnings, plus costs and interest on a ground up recoverability basis. We don't think there is a realistic prospect of settlement at that level but agree that if the whole claim (all 555 claimants) agreed that figure it would be a good result for POL.

Let me come back to you after tomorrow's meeting with a read out and then see where we all are. Ideally I will want to reflect any observations you have on the figures in the advice to Ministers.

Kind regards

Richard

From: Watson, Richard - UKGI
Sent: 13 November 2019 15:32
To: Nigel Boardman [REDACTED] **GRO**
Subject: RE: Post Office GLO - amended merits advice and update on permission to appeal - strictly privileged and confidential

Thanks Nigel

Kind regards

Richard

From: Nigel Boardman [REDACTED] **GRO**
Sent: 13 November 2019 15:31
To: Watson, Richard - UKGI [REDACTED] **GRO**
Subject: Re: Post Office GLO - amended merits advice and update on permission to appeal - strictly privileged and confidential

Phone - [REDACTED] **GRO**

Yes I am content with an offer up to or not materially exceeding the figure you mention.

Nigel

Sent from my iPhone

On 13 Nov 2019, at 14:38, Watson, Richard - UKGI [REDACTED] **GRO** [REDACTED] wrote:

Nigel

Thank you for turning to this so quickly.

I will keep in touch by email but my current intention, obviously subject to your approval, is to include a line in our advice to Ministers which will be sent on Friday that says you have seen the HSF advice and are content with the proposed settlement range agreed by POL. I will email later when I have that range following the POL sub-committee meeting later today but I am anticipating it to be in the order of [REDACTED] IRRELEVANT

I don't think I have your phone number so would be grateful for that in case it is necessary to call.

Kind regards

Richard

From: Nigel Boardman [REDACTED] **GRO**
Sent: 13 November 2019 14:32
To: Watson, Richard - UKGI [REDACTED] **GRO** [REDACTED]
Subject: Re: Post Office GLO - amended merits advice and update on permission to appeal - strictly privileged and confidential

Richard,

These are my thoughts.

We have to accept that a proposal, even at the upper level suggested by the legal advisers,

is unlikely to resolve the litigation given the funders' expectations and the uncertainty of how damages will be calculated.

Since the judge has asked for the PO to go through the mediation process, and given how close the timing is to the mediation date, it still makes sense to proceed with the mediation notwithstanding the improbability of a successful outcome.

Against this background, and recognising I am very late to this question and have not spent anything like the time on it that the legal advisers have spent, my thought would be that we would not concede on liability, even informally, and we would make an offer which we said was to save us the expense of continued fighting rather than anything else. This would therefore be the offer at the lower figure and not allow scope for an increased figure during the mediation.

If during the mediation it became clear that an offer at the higher figure proposed by the legal advisers might elicit a settlement (which is regarded as highly unlikely), we can always continue the mediation at a later date to arrive at this outcome.

This has the advantage that we do not have to get into a distinction between the criminal and the civil cases. However, I think it would be worth explaining to the claimants what advice we have received about the difficulty of arriving at a settlement on the criminal cases and ask them how they would expect them to be resolved. In other words, settling the cases without going through the criminal appeal process is as much their problem as our problem and it would be interesting to hear if they have any thoughts on a solution. This discussion would be on the basis that such settlement would only occur were an appropriate number to be agreed.

I would not at this stage take a decision on the part 36 offers. I think we should wait until after the mediation until we think of making such offers. It is premature to decide on that at this stage.

I hope this is helpful but do give me a call if you want me to clarify any of this.

Nigel

Sent from my iPhone

On 13 Nov 2019, at 10:27, Watson, Richard - UKGI

GRO

wrote:

Nigel

Following discussion with Tom we think a short note from you setting out points you would want to make will assist the UKGI/HMT/BEIS discussion tomorrow. The note would be for sharing with that internal group not POL or their advisers.

To our mind the focus of tomorrow's meeting is getting comfortable with the level of authority POL want for settlement purposes though we will also be

flagging our concerns around how to deal with the convicted claimants and part 36 offers.

I will update later with a readout from the POL board litigation sub-committee meeting which takes place at 4pm today.

Happy to discuss

Kind regards

Richard

Richard Watson | General Counsel
UK Government Investments

1 Victoria Street | London | SW1H 0ET

T: **GRO**
E:

W: <https://www.ukgi.org.uk/>

From: Watson, Richard - UKGI
Sent: 13 November 2019 08:24
To: Nigel Boardman **GRO**
Subject: FW: Post Office GLO - amended merits advice and update on permission to appeal - strictly privileged and confidential

From: Emanuel, Catherine **GRO**
Sent: 12 November 2019 21:35
To: Thomas Cooper **GRO**
 ; Cooper, Tom - UKGI
 ; Aldred, Tom - UKGI **GRO**
Watson, Richard - UKGI **GRO** ; Alisdair Cameron
 GRO
Culshaw, Robin - UKGI **GRO**
Cc: ben.foat **GRO** Watts, Alan **GRO** Lord, William **GRO** ; Ainslie Cranwell
 GRO
Subject: Post Office GLO - amended merits advice and update on permission to appeal - strictly privileged and confidential

All,

Please see attached:

1. An updated merits advice following today's application for permission to appeal;
2. An updated draft CFO confirmation letter which includes details of how Post Office would propose funding any settlement up to the values

set out in the note; and

3. (For those who are interested) the transcript of the hearing before Coulson LJ. A summary note will follow.
4. I have also re-attached the note on the convicted claimants so that all the material is in one place.

Coulson LJ is aiming to hand down his order by midday next Friday. Based on how the hearing today progressed, however, we are not optimistic of obtaining permission except perhaps on a few grounds. In particular:

- Coulson LJ seemed comfortable in principle with Fraser J's implication of good faith;
- He was also comfortable with the majority of the specific terms that Fraser J implied, either as a consequence of good faith or business efficacy (commenting that some he would "*imply in a heartbeat*").
- There were however two areas he was uncomfortable with and in respect of which we may get permission, namely:
 - the implied term to effect that notice cannot be given irrationaly/absent good cause/where PO is itself in material breach (i.e. the terms which give rise to retirement-age post-termination losses); and
 - Fraser J's construction of the notice provisions as "minimum" provisions (i.e. *not less than* 3/6 months)
- On the latter, permission will only assist Post Office if it is also able to overcome the alternative *Autoclenz*, "onerous and unusual" and UCTA arguments (if the notice periods themselves do not stand, how they are applied becomes irrelevant). On these points, Coulson J was difficult to read but ultimately Helen Davies QC was not optimistic that he would be with us on all three.
- We may get permission on the question of whether a material breach is equivalent to a repudiatory breach

The net effect of the above is that Post Office's position on liability has not improved (it has probably worsened). However, on the ability to give notice (relevant to quantum) we hope to have made some progress.

We can discuss the position further at the SubCommittee meeting tomorrow but do let me know if you have any immediate questions.

Kind regards
Kate

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