

From: Tolhurst, Mpst (BEIS) [REDACTED] GRO
Sent: Thur 21/03/2019 9:44:41 AM (UTC)
To: Clarke, Stephen - UKGI [REDACTED] GRO; Cooper, Tom - UKGI [REDACTED] GRO
Cc: Aldred, Tom - UKGI [REDACTED] GRO; Clark Spad, Mpst (BEIS) [REDACTED] GRO; Permanent Secretary [REDACTED] GRO; Clark, Mpst (BEIS) [REDACTED] GRO; Evans, Gareth (BEIS) [REDACTED] GRO; Watson, Richard - UKGI [REDACTED] GRO; Lambert, Lucie - UKGI [REDACTED] GRO; Fox, Joshua - UKGI [REDACTED] GRO; Watson, Craig (Advanced Manufacturing and Services) [REDACTED] GRO; Vandini, Cecilia (Advanced Manufacturing and Services) [REDACTED] GRO; Beckett, Richard (Finance & Portfolio) [REDACTED] GRO; Lambert, Gavin (Advanced Manufacturing and Services) [REDACTED] GRO
Subject: Re: Official Sensitive: Post Office Litigation Update

Hi Stephen,

I spoke to Tom A about this, Kelly was after a summary of any discussions at the POL board has had since last weekend. I've seen Tom C's read outs but if you could just summarize them in a formal 1-2 page document it would be very much appreciated.

Thanks,
 Jess

Jessica Tysoe
 Private Secretary to Kelly Tolhurst MP
 1 Victoria Street, London, SW1H 0ET

[REDACTED] GRO
 [REDACTED] GRO

From: Clarke, Stephen - UKGI [REDACTED] GRO >
Sent: Thursday, March 21, 2019 9:39 AM
To: Tolhurst, Mpst (BEIS); Cooper, Tom - UKGI
Cc: Aldred, Tom - UKGI; Clark Spad, Mpst (BEIS); Permanent Secretary; Clark, Mpst (BEIS); Evans, Gareth (BEIS); Watson, Richard - UKGI; Lambert, Lucie - UKGI; Fox, Joshua - UKGI; Watson, Craig (Advanced Manufacturing and Services); Vandini, Cecilia (Advanced Manufacturing and Services); Beckett, Richard (Finance & Portfolio); Lambert, Gavin (Advanced Manufacturing and Services)
Subject: RE: Official Sensitive: Post Office Litigation Update

Hi Jess,

Please could you clarify the following commission from your email below:

*"Grateful if an update on the outcomes of discussions at the various board meetings can be prepared by **12 tomorrow**, ideally in a 1-2 pager document".*

There was only one board meeting yesterday – to decide on the recusal application – which Tom C already provided a readout of. We can supplement this with the Board Paper (or the summary) that formed the basis of the discussion. Will this be sufficient?

Thanks,

Stephen

Stephen Clarke | Post Office Shareholder Team

UK Government Investments

Corporate finance and governance in government.

1 Victoria Street | London | SW1H 0ET

T: [REDACTED]
E: [REDACTED]

From: Tolhurst, Mpst (BEIS) [mailto:[REDACTED]]

Sent: 20 March 2019 15:57

To: Cooper, Tom - UKGI [REDACTED]

Cc: Aldred, Tom - UKGI [REDACTED]; Clarke, Stephen - UKGI [REDACTED]; Clark Spad, Mpst (BEIS) [REDACTED]; Permanent Secretary [REDACTED]; Clark, Mpst (BEIS) [REDACTED]; Evans, Gareth (BEIS) [REDACTED]; Watson, Richard - UKGI [REDACTED]; Lambert, Lucie - UKGI [REDACTED]; Fox, Joshua - UKGI [REDACTED]; Watson, Craig (Advanced Manufacturing and Services) [REDACTED]; Vandini, Cecilia (Advanced Manufacturing and Services) [REDACTED]; Beckett, Richard (Finance & Portfolio) [REDACTED]; Lambert, Gavin (Advanced Manufacturing and Services) [REDACTED]

Subject: RE: Official Sensitive: Post Office Litigation Update

Hi All,

Kelly won't be going ahead with any calls this evening.

She would like to send the letter to appoint a new CEO this evening, she wants an additional paragraph at the end of the letter to set out on the lines of: *As POL is going through a critical change and time, I look forward to agreeing a more formulated channel of communication to ensure we work together to take on board the upcoming opportunities.*

Grateful if a final paragraph can be added so I can clear by Kelly **by 5pm**.

She is currently reviewing the Permanent CEO and interim CFO documents and will update me if she is content.

Grateful if an update on the outcomes of discussions at the various board meetings can be prepared by **12 tomorrow**, ideally in a 1-2 pager document.

Many thanks,
Jess

Jessica Tysoe

Private Secretary to Kelly Tolhurst MP
1 Victoria Street, London, SW1H 0ET

[REDACTED] [REDACTED]

From: Cooper, Tom - UKGI [REDACTED]

Sent: 20 March 2019 14:44

To: Tolhurst, Mpst (BEIS) [REDACTED]

Cc: Aldred, Tom - UKGI [REDACTED]; Clarke, Stephen - UKGI [REDACTED]; Clark Spad, Mpst (BEIS) [REDACTED]; Permanent Secretary [REDACTED]; Clark,

Mpst (BEIS) <[REDACTED]>; Evans, Gareth (BEIS) <[REDACTED]>; Watson, Richard - UKGI
<[REDACTED]>; Lambert, Lucie - UKGI <[REDACTED]>; Fox, Joshua - UKGI
<[REDACTED]>; Watson, Craig (Advanced Manufacturing and Services) <[REDACTED]>;
Vandini, Cecilia (Advanced Manufacturing and Services) <[REDACTED]>; Beckett, Richard (Finance &
Portfolio) <[REDACTED]>; Lambert, Gavin (Advanced Manufacturing and Services)
<[REDACTED]>

Subject: Re: Official Sensitive: Post Office Litigation Update

Apologies my note is missing the punchline. POL's Board approved seeking the recusal which will be lodged in Court tomorrow

Sent from my iPhone

On 20 Mar 2019, at 14:20, Cooper, Tom - UKGI <[REDACTED]> wrote:

Recusal

I just attended the Board meeting of POL.

There was a full discussion of the issues.

Lord Grabiner gave strong advice in favour of seeking recusal which he described as the only option available to the Company to seek redress for the unfairness in the first trial and prevent further unfairness in the second trial. He was clear in his opinion that Post Office isn't receiving a fair trial even if they might (or might not) eventually be found to be at fault.

The Board had a full discussion of the reputational consequences and concluded that the risks could be managed. One of the key concerns with the Horizon trial is that the judge might go beyond the joint evidence of the expert witnesses and conclude that the system doesn't work today, something that would be highly damaging for customer and postmaster confidence. In that context a number of the directors felt that the recusal application is necessary in order to try to protect the business today.

There are many operational consequences from last week's judgement that the management team are focused on and will come back to the Board on Monday. So far management have been relieved that the response, particularly from postmasters, has been relatively light. Having said that it is still early days and they expect to get a better picture in the next week or so when there is a monthly settlement date.

The Board now has independent legal support which is very welcome and something we have been pushing for. I hope this will be a catalyst for mapping out a path to resolving this case.

Tom

Sent from my iPhone

On 19 Mar 2019, at 17:15, Tolhurst, Mpst (BEIS) <[REDACTED]> wrote:

Hi Tom, and thanks to Stephen for his email earlier,

I briefly discussed this with Kelly over the phone and as expected she has concerns. Immediately she said she would raise with SoS, I have flagged this to his office, and I believe she has already contacted him.

She agreed that they shouldn't do anything until after the decision has been made at the

board meeting/call tomorrow and it is likely that she will want another call with Tim Parker and Al Cameron after this to ask them to explain their reasoning behind their change of mind.

I will keep you updated on any outcomes of her discussion with SoS.

Kind regards,
Jess

<image003.png>

Jessica Tysoe
Private Secretary to Kelly Tolhurst MP
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy
1 Victoria Street, London, SW1H 0ET
GRO GRO
www.gov.uk/beis | <https://twitter.com/beisgovuk>

From: Aldred, Tom - UKGI <GRO>
Sent: 19 March 2019 16:24
To: Clarke, Stephen - UKGI <GRO> Tolhurst, Mpst (BEIS) <GRO>
Cc: Clark Spad, Mpst (BEIS) <GRO>; Permanent Secretary <GRO>; Clark, Mpst (BEIS) <GRO>; Evans, Gareth (BEIS) <GRO>; Watson, Richard - UKGI <GRO>; Fox, Joshua - UKGI <GRO>; Lambert, Lucie - UKGI <GRO>; Watson, Craig (Advanced Manufacturing and Services) <GRO>; Cooper, Tom - UKGI <GRO>; Vandini, Cecilia (Advanced Manufacturing and Services) <GRO>; Beckett, Richard (BEIS) <GRO>; Lambert, Gavin (Advanced Manufacturing and Services) <GRO>
Subject: RE: Official Sensitive: Post Office Litigation Update

Jess

We spoke. To confirm, POL have a Board call tomorrow at which they will take the decision. The strong legal advice is that the minister should not be involved in this decision. We advise the best time for a call with POL would be after a decision has been taken, so that POL could explain their reasoning for the change of mind (if that is the case), since the weekend's call with the minister

Tom

Tom Aldred, Post Office Shareholder Team, UKGI
T: <GRO> | M: <GRO>

From: Clarke, Stephen - UKGI
Sent: 19 March 2019 15:49
To: Tolhurst, Mpst (BEIS) <GRO>
Cc: Clark Spad, Mpst (BEIS) <GRO>; Permanent Secretary <GRO>; Clark, Mpst (BEIS) <GRO>; Evans, Gareth (BEIS) <GRO>; Watson, Richard - UKGI <GRO>; Fox, Joshua - UKGI <GRO>; Lambert, Lucie - UKGI <GRO>

Joshua - UKGI [REDACTED] GRO [REDACTED] >; Watson, Craig (Advanced Manufacturing and Services) < [REDACTED] GRO [REDACTED] >; Cooper, Tom - UKGI [REDACTED] GRO [REDACTED] >; Aldred, Tom - UKGI [REDACTED] GRO [REDACTED] >; Vandini, Cecilia (Advanced Manufacturing and Services) [REDACTED] GRO [REDACTED] >; Beckett, Richard (BEIS) [REDACTED] GRO [REDACTED] >; Lambert, Gavin (Advanced Manufacturing and Services) [REDACTED] GRO [REDACTED] >

Subject: Official Sensitive: Post Office Litigation Update

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Jess,

As discussed with Tom and Craig, see below an update for the Minister on POL's response to Friday's judgement. I also attach POL's first report on the second (Horizon Issues) trial that started on 11 March.

"As you know POL have been considering possible grounds of appeal. One of those grounds is that the judge has acted in a procedurally unfair way by making findings of fact which are not relevant to the determination of the common issues trial and upon which there had not been full disclosure between the parties, both of documents and witness evidence. Part of POL's argument on appeal is that the judge has improperly allowed his findings on post contractual events to influence his ruling on what the terms of the contracts were between POL and Postmasters. That is legally impermissible. Linked to this unfairness issue is a real concern that the Judge made findings of fact in such a way as to betray a prejudice to POL which means it would no longer be fair for the Judge to continue to hear the proceedings in the current and any future trials. As you are aware, the judge is currently hearing the second trial, which started on 11 March, and POL feel that the findings in the first trial may adversely impact the fairness of the litigation. Given all the above, POL appear likely to make an application for the judge to take no further part in the litigation (i.e. to recuse himself from proceedings).

Applications for recusals such as this are rare, especially in circumstances that do not involve a conflict of interest on the part of the judge, but rather are based on procedural unfairness. If such an application is made, it is likely to generate significant media attention. However, POL have taken additional legal advice from very senior barristers who have not had any prior involvement in the case and so have an independent viewpoint. While the legal advice could change, the current legal advice is a clear recommendation in favour of seeking a recusal. Tom Cooper's feedback from the recent POL board call on this topic is that the board are not enthusiastic about making this application but feel there is no option given the additional legal advice received. This is particularly the case given that the second trial is currently being heard by the same judge and includes testimony from witnesses who have been discredited in the first judgment.

The advice from BEIS Legal and UKGI Legal is that BEIS officials/Ministers and the shareholder NED should not be involved in POL's formal decision-making on the recusal application, although they may participate in discussions and hear the advice from POL's legal team. A final decision on whether to make this application is likely to be made on Wednesday 20 March. If POL decide to proceed we will let you know and provide defensive lines. If you require further detail on the legal arguments underpinning the application for recusal we can arrange a call to include Post Office."

Stephen Clarke | Post Office Shareholder Team

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