

UK Government
InvestmentsDepartment for
Business, Energy
& Industrial Strategy

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Director General: Mark Russell

Lead Official: Tom Aldred

Lead Official Telephone: **GRO**

Recipient	To Note / Comment	To Approve / Decide
Kelly Tolhurst	X	
Permanent Secretary	X	
Special Advisors	X	

**OFFICIAL SENSITIVE AND SUBJECT TO LEGAL PRIVILEGE
POST OFFICE LITIGATION: BRIEFING ON POL'S APPEAL STRATEGY**

Summary

1. With a direct mandate from the POL Board to oversee the litigation, Herbert Smith Freehills (HSF) have reviewed POL's legal strategy. This note provides a summary of POL's approach to the Common Issues Appeal, which was signed off by the Board's Group Litigation Sub-Committee (GLO) on 9 May. You are offered additional verbal briefing from HSF and POL. This note also provides an update on the Recusal Appeal, the constitution of the Counsel team and the Horizon Issues trial, all of which form part of HSF's wider review.

Timing

2. POL will seek permission to appeal the Common Issues Judgment before Justice Fraser on 16 May. Therefore, should you wish to have an additional oral briefing from HSF and POL, we suggest this happens before 16 May.

Recommendation

3. To note the contents and to indicate whether you wish to have an additional oral briefing from HSF and POL before the Common Issues hearing on 16 May.

Appeal of the Common Issues Judgment

4. POL is applying for permission to appeal before Justice Fraser on 16 May. Simultaneous exchange of skeleton arguments for that hearing has been ordered to take place on 14 May, for which POL will provide only a high-level summary of the points that it intends to appeal and not its actual Court of Appeal Grounds of Appeal (which need to be filed with the Court of Appeal in early June).
5. Following the appointment of HSF to oversee the litigation with a direct mandate from the Board, HSF has reviewed POL's legal strategy. HSF presented their advice on the proposed approach to the Common Issues appeal - see *Annex A*. This approach was endorsed by the Board's Group Litigation Sub-Committee on 9 May. In broad summary POL will be appealing:

(a) The Judge's interpretation of certain express terms of the contracts between POL and its sub-postmasters;



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- (b) The Judge's findings on terms that are to be implied into those contracts;
- (c) Certain factual findings the judge made, on the basis that it was procedurally unfair of him to do so in the absence of full disclosure and evidence from the parties; and
- (d) A limited number of factual findings that the judge made, on the basis that he was wrong about these.

Recusal Appeal

- 6. On 9 April, Justice Fraser handed down his judgment on the recusal application, rejecting POL's application for him to recuse himself on the grounds of 'apparent bias' and refusing POL's application for permission to appeal. In response, POL applied on 11 April directly to the Court of Appeal for permission to appeal the judge's decision and for the second "Horizon Issues" Trial to be stayed in the meantime. POL await a decision from the Court of Appeal as to whether permission to appeal will be granted.

Constitution of counsel team for the appeals

- 7. HSF is also reconsidering the constitution of the Counsel team for the Recusal Appeal and the Common Issues Appeal. In the meantime, the QC from the Common Issues Trial, David Cavender QC of Womble Bond Dickinson, will handle the 16 May hearing.

The second ('Horizon Issues') trial

- 8. On 21 March, the Horizon Issues trial was adjourned on receipt of POL's recusal application. It resumed briefly on 11 April to hear the remainder of evidence from POL's final witness, as ordered by Justice Fraser at the Recusal Hearing. The judge also set out the calendar for the remainder of the Horizon Trial, commencing on 4 June. However, this is subject to change because when POL filed its application to the Court of Appeal on 11 April it also requested to stay the Horizon Issues Trial pending this decision.

Future litigation strategy

- 9. HSF will be providing the Board with advice about the strategy for the litigation as a whole, including on options for settlement and Alternative Dispute Resolution. We will provide further updates on this in due course.

Contributors

- 10. UKGI Legal (Richard Watson) have been consulted and agreed the content of this advice.
- 11. We consider there are no additional communications, financial and parliamentary handling considerations to those covered in previous updates.

Annexes

- A. *HSF Briefing on Common Issues Appeal*