

---

**From:** Watson, Richard - UKGI [/O=HMT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E8568E9D213F4097A7A65F3DA4F63CC1-WATSON, RICHARD (RWA)]  
**Sent:** Mon 18/03/2019 5:10:03 PM (UTC)  
**To:** Cooper, Tom - UKGI [REDACTED] **GRO**  
**Subject:** RE: POL judgement

Amended script as discussed:

*A decision on whether to make a recusal application or not is properly one for the POL board. As HMG should not be seen as questioning the independence and integrity of the judiciary I do not consider it would be appropriate for me, as the shareholder appointed director, to participate in the actual board decision. However, it is perfectly proper for me to highlight issues that I consider, in my role as a director, the board needs to have in its mind and to raise appropriate questions and challenges before any decision is taken by the board.*

If asked should POL be concerned about a decision to make a recusal application being regarded as HMG questioning the independence and integrity of the judiciary the answer is NO. Obviously in law POL is a separate legal entity and the shareholder is not involved in this decision.

Richard

Richard Watson | General Counsel  
**UK Government Investments**

1 Victoria Street | London | SW1H 0ET

T: [REDACTED] **GRO**  
E: [REDACTED] **GRO**  
W: <https://www.ukgi.org.uk/>

---

**From:** Watson, Richard - UKGI  
**Sent:** 18 March 2019 15:45  
**To:** Cooper, Tom - UKGI [REDACTED] **GRO**  
**Subject:** RE: POL judgement

Tom

How does this sound for a script:

*A decision on whether to make a recusal application or not is properly one for the POL board. As HMG should not be seen as questioning the independence and integrity of the judiciary I do not consider it would be appropriate for me, as the shareholder appointed director, to participate in the actual board decision. However, it is perfectly proper for me to highlight issues that I consider, in my role as a director, the board needs to have in its mind and to raise appropriate questions and challenges before any decision is taken by the board.*

*The Board will be aware of the seriousness of the proposed recusal application and it is obviously not something they should do lightly. As part of their considerations they should consider the impact on the shareholder (including the potential financial impacts) and the difficulties of distinguishing in Parliament and the media between the shareholders role in the organisations strategic direction and POL's responsibility for operational matters. Such considerations are only part of the relevant considerations that the board should have in its mind.*

I have discussed this with the BEIS Legal Director. I should be clear that the SoS does not have the power to direct you not to participate in the actual board decision and I do not consider you have a conflict of interest. So in fulfilling your role as a director you could properly reach the view that you should participate in the actual decision. However, the reason we are suggesting that you follow something along the lines of the above script is because of the presentational concerns that may arise if it transpired that the shareholder appointed director participated in the actual board decision.

Happy to discuss

Richard

Richard Watson | General Counsel  
**UK Government Investments**

1 Victoria Street | London | SW1H 0ET

T: [REDACTED] GRO

E: [REDACTED] GRO

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

---

**From:** Cooper, Tom - UKGI

**Sent:** 18 March 2019 12:48

**To:** Watson, Richard - UKGI <[REDACTED] GRO>

**Subject:** RE: POL judgement

Thanks

Questions are good. But I also need a script on what BEIS position is if you and BEIS want to do so. The email exchange on Friday with the legal team seemed clear that BEIS will want to make points before a decision is taken (even if I don't participate)

Tom

---

**From:** Watson, Richard - UKGI

**Sent:** 18 March 2019 12:41

**To:** Cooper, Tom - UKGI <[REDACTED] GRO>

**Subject:** POL judgement

Tom

Some initial thoughts from me on issues the board may want to get clarification about:

1. The link between the procedural unfairness issues and a recusal application. Is it the case that if successful on the unfairness issue POL will ask the Court of Appeal to return the case to a different judge? This seems to underpin Lord Neuberger's conclusion that "POL has little option but to seek to get the judge to recuse himself at this stage".
2. The extent to which, because this a Group Litigation, the judge might be given greater leeway in considerations around procedural fairness. Might any criticism of the judge be met by the court deciding that given the nature of a group litigation action the judge's approach was ultimately fair in order to help further the

overriding objective of doing justice in a proportionate way in this group litigation. Might the normal rules be applied differently in the context of a group litigation action.

3. At the heart of POL's concern is that the judge made findings on issues where there had not been full disclosure and where POL (at least) had not adduced all the evidence they would have had they known the judge would make the findings he did. POL were expecting these issue to be the subject of detailed evidence at a further trial – how confident can the board be that this additional evidence would have made a difference to the judge's findings given the views he has expressed based on evidence which even POL say was properly admissible.

4. How confident are POL's legal team that the judge should not have made what they say are irrelevant findings. Clearly if the judge has allowed inadmissible evidence (in this case post contractual) to influence his findings on the terms of the contract then that is a ground of appeal in POL's favour but does not necessarily mean there needs to be a recusal application.

5. How detailed has Lord Neuberger's consideration been – what more legal advice might be appropriate for the board to have, recognising the time constraints. Does Lord Grabiner concur with Lord Neuberger?

Will call you at 1pm

Richard

Richard Watson | General Counsel  
**UK Government Investments**

1 Victoria Street | London | SW1H 0ET

T:

E:

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