
From: Permanent Secretary[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3109B3DC828545FFBF265AAB4 BEC9017-SECRETARY,]
Sent: Tue 19/03/2019 5:35:18 PM (UTC)
To: Chisholm, Alex (BEIS [REDACTED] GRO)
Cc: Permanent Secretary [REDACTED] GRO
Subject: FW: Official Sensitive: Post Office Litigation Update
Attachment: FW: Update on Horizon Issues Trial - Post Office Group Litigation - SUBJECT TO LEGAL PRIVILEGE - DO NOT FORWARD

Alex,

Please see below for the latest update on the litigation – POL are considering an appeal and appear likely to make an application for the judge to take no further part in the litigation. The Board is expected to make a decision on this tomorrow. Kelly is obviously concerned about this and has asked to speak to Tim Parker and Al Cameron.

Kelly is going to sign the letter - she wanted reassurance that a new CEO will be in within 6 months and that Al won't be automatically appointed at CEO after the interim period.

Best wishes,
Sophie



Sophie Lewis
Private Secretary to the Permanent Secretary
Tel: [REDACTED] GRO Mobile [REDACTED] GRO
[REDACTED] GRO
1 Victoria Street, London, SW1H 0ET
www.gov.uk/beis | <https://twitter.com/beisgovuk>

From: Clarke, Stephen - UKGI [REDACTED] GRO
Sent: 19 March 2019 15:49
To: Tolhurst, Mpst (BEIS) <[REDACTED] GRO>
Cc: 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>; Cooper, Tom - UKGI <[REDACTED] GRO>; Aldred, Tom - UKGI <[REDACTED] GRO>; Vandini, Cecilia (Advanced Manufacturing and Services) <[REDACTED] GRO>; Beckett, Richard (BEIS) <[REDACTED] GRO>; Lambert, Gavin (Advanced Manufacturing and Services) <[REDACTED] GRO>
Subject: Official Sensitive: Post Office Litigation Update

Official Sensitive and Subject to Legal Privilege – do not forward outside this distribution

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

UK Government Investments

Corporate finance and governance in government.

1 Victoria Street | London | SW1H 0ET

T: + GRO

E: **GRO**

This email and any files transmitted with it are intended solely for the use of the individual(s) to whom they are addressed. If you are not the intended recipient and have received this email in error, please notify the sender and delete the email. This footnote also confirms that our email communications may be monitored to ensure the secure and effective operation of our systems and for other lawful purposes, and that this email has been swept for malware and viruses.