

Message

From: Alisdair Cameron [GRO]
on behalf of Alisdair Cameron [GRO]
Sent: 27/06/2019 13:43:22
To: Watts, Alan [GRO]; Ben Foat [GRO]
CC: Rodric Williams [GRO]; Massey, Kirsten [GRO]; Henderson, Tom [GRO]; Tim Parker [GRO]; Ken McCall [GRO]; Thomas Cooper [GRO]
Subject: RE: Privileged & Confidential

So it is hard to gauge without seeing the letter but the sensitivity is anything that looks like we aren't changing our approach and are doubling down again. I appreciate you have already ruled out a more incendiary thought from the new QC....I am copying Tim, Tom and Ken as the other members of the sub-committee with apologies for urgency, for other views. If a call is needed, tonight or first thing is clearly required. Kind regards
 Al



Al Cameron
Interim Chief Executive

20 Finsbury Street
 London
 EC2Y 9AQ

[GRO]

From: Watts, Alan [GRO]
Sent: 27 June 2019 14:26
To: Alisdair Cameron [GRO]; Ben Foat [GRO]
Cc: Rodric Williams [GRO]; Massey, Kirsten [GRO]; Henderson, Tom [GRO]
Subject: Privileged & Confidential

Al and Ben,

By way of update on the Common Issues appeal, in light of the terms of Coulson LJ's Order of last week (refusing expedition and restricting the skeleton), Helen Davies has been revisiting in her mind the question of whether there is anything we can or should be doing to seek to ensure that the permission application is not finally determined by Coulson LJ sitting alone. Helen was surprised by both the content and also the tone of his Order.

There is extremely limited opportunity in the Court rules to ask for someone other than Coulson LJ alone to determine the application for permission to appeal. There is, however, a limited rule which can enable a direction for an oral hearing in an appropriate case and moreover which can be directed to be heard by a panel comprising judges other than the just the original single Lord Justice. We're working with Helen to produce a letter this afternoon which would accompany the revised Skeleton (due tomorrow, 28 June) which seeks to request an oral hearing before a panel of judges in a way which doesn't undermine the strength of the application. We will share the letter with you as soon as completed.

The obvious risk is that Coulson LJ is further driven by the letter to seek to find ways to refuse the application. However, we will not be including anything in the letter that suggests any potential bias on the part of Coulson. Our position will be that an oral hearing is suitable given this is a complex appeal concerning important and novel legal issues. It is also fair to

say that the Coulson risk already exists and therefore sending the proposed letter may potentially best protect Post Office's interests.

We also explored with Helen the possibility of her sending the letter. She isn't keen on the basis that (1) a letter from Counsel will look much more like a Skeleton and potentially infuriate Coulson LJ as a perceived attempt to bypass the 50 page limit and (2) with Coulson LJ I suspect in any event it might backfire as he could (wrongly) perceive it as an attempt by a commercial silk to throw weight around.

As an alternative we thought that we could come on the record for Post Office in the appeal only (at this stage) and send the letter. This shows a break with WBD and the team behind the recusal application which may be colouring Coulson's attitude.

Given that the letter is going to be written in extremely neutral terms, and the Coulson risk appears to be very real, we would be inclined to send it. However, appreciate its finely balanced.

We'll need to send this out during the course of tomorrow so ideally we should settle our instructions today if possible. Please let me know if helpful to discuss. I will be over for the Steering Group Meeting at 4.

Regards

Alan

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