

Private & Confidential – Subject to Legal Privilege

Meeting with Baroness (Lucy) Neville Rolfe, Parliamentary Under Secretary of State - Tuesday 19 July 2016

Background

1. You most recently met the Minister ~~of on~~ 27 April 2016. During this meeting you provided an update on the progress made in respect of your Review. You also noted that given legal proceedings had been issued against POL, it was only right that POL considered what implications these may have on the shape of any output from the Review ~~may take~~.
2. POL has since received a Letter of Claim and expects the claim to be formally 'served' before the ~~(X) 10~~ August deadline. Further, you have received very strong advice from Leading Counsel that the work being undertaken under the ~~aegis of your Review should come to an immediate end. It is also likely that similar points will be addressed through the litigation process. and instead the issues should be addressed through equivalent work taken forward in litigation.~~
3. The Minister's office have confirmed that they understand (and indeed anticipated) the need for prioritising the litigation and therefore, that work would cease on your Review.
4. The Minister has been briefed by her officials. Our understanding is that she does not wish to challenge this decision, but would like to better understand the reasons underpinning the legal advice received (see 13 below).
5. Subsequent to the meeting on Tuesday we intend to send the Minister the drafted letter previously shared with you, which will formalise your decision. Further, it has been proposed that the POL legal team should provide a briefing to BIS lawyers, and we are happy to facilitate this.

Commented [AP61]: Tony's advice was not to substitute one course of action for another. As it happens we will likely cover the same points through the litigation. But even if we were not covering these points through the litigation, Tony still would have advised to shut down the TP review on privilege grounds.

Commented [AP62]: This makes me nervous. Briefing BIS will likely not be privileged. This should be limited to non-privileged information (eg. providing them with the Letter of Claim) but not disclose any privileged information eg. Views on the merits of the claims / litigation strategy / etc.

Speaking Notes

6. My original undertaking was to review whether POL's handling of the complaints made by Applicants to the Complaint Review & Mediation Scheme, had reasonably considered postmaster's claims and appropriately defended Post Office's own position. ~~was reasonable and appropriate.~~
7. ~~Post Office~~ I appointed Jonathan Swift QC to conduct an independent assessment of the work that had been done and provide advice to me as to whether anything more could now reasonably be done to address these complaints.
8. My letter of 4 March 2016, set out further information about the approach to the Review, the scope of the work undertaken and Jonathan Swift QC's initial findings. It also set out my plans for bringing this piece of work to a conclusion. Good progress had been made in all areas, despite it being complex, inherently costly, and time consuming – particularly the technical testing of the Horizon system itself.
9. However, in April POL was notified that proceedings had been commenced against it, in the High Court, on behalf of 91 named claimants. Further, there are suggestions that there are at least as many further claimants keen to join a 'class action' who have not done so to date.

Commented [AP63]: Where possible we should try to tie back TP's review to the idea that it was addressing the risk of claims from postmasters. This helps maximize privilege protection.

Commented [AP64]: POL instructed JSQC not TP. This is important if we want to maintain privilege.

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10. Though at this stage there is still ~~eng~~ information available as to the quantum of the claims or the basis on which the quantum could be estimated, the background to the claim covers a very wide scope of issues – including those which were being addressed through my Review.
11. The business is, naturally, having to take these Court proceedings extremely seriously. We have engaged one of the most eminent Leading Counsel (Anthony de Garr Robinson QC) in the preparation of our defence, supported by a firm of solicitors with detailed knowledge of the matters since they have acted for us since the first complaints began to be received.
12. I have received very strong advice that the work previously being undertaken under my Review should come to an immediate end and, instead, be carried forward under the scope of the litigation.
13. Once litigation is contemplated, confidential investigations and work done for the dominant purpose of furthering the litigation will be covered by litigation privilege. Any work going forward should therefore be driven by the needs of the litigation and not for other reasons, such as ~~the~~ my Review, so to maximise the protection of privilege. If work is not covered by privilege, this may force Post Office to disclose sensitive material to the Claimants, undermining Post Office's position in the litigation.
14. Given my duties to ~~Post Office Limited~~ as a director and its Chairman, I believe I must act in accordance with this advice. I have therefore instructed that the work being undertaken pursuant to my Review should now be stopped.
15. However, the extent to which this work will cease is essentially one of form rather than substance. Further, I do think it is important to note that:
 - The work undertaken to date remains valuable and valid and will likely be continued, albeit in a different context;
 - The claim against the Post Office is explicit, and records the actual detail (rather than ~~our~~ our educated appreciation) of the complaints against ~~Post Office~~ the Post Office, enabling us to address the precise grievances being made;
 - The claim covers the same ground, and much other, as that envisaged by my Review, providing reassurance that the process will surface a much wider range of the issues to a much fuller extent;
 - A Court process, by definition, offers the parties to it the ultimate assurance of independence in the examination of evidence and the determination of liability in a way that no other forum or process can; and
 - The proceedings will lead to a final determination of these matters, which is the interest of all parties, and has so far eluded us, despite our best efforts.

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- The parties to the litigations include the high profile cases of which parliamentarians and other stakeholders (such as Lord Arbuthnot) are aware. It is therefore incumbent on those Stakeholders to accept that those postmasters have elected to pursue their claims through the courts and the Board of PO believes that this is now the appropriate forum through which the Postmasters' concerns should properly be determined.

The Minister may ask whether POL would consider re-opening the Review, should the Claim not be 'served' or fall away. If it is raised, our view is that such a commitment should not be made and below are some speaking notes to that effect.

16. My Review was begun on the basis that it might provide complainants, the Post Office with an assurance that it had reasonably considered postmaster's claims and appropriately defended its own position, and, indeed, Government the basis for drawing a final line under this long running set of disputes – providing closure for complainants and enabling the Post Office to direct its whole effort towards delivering value across its commercial and public purpose foundations.

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17. If the litigation were discontinued by the Claimants, this would be a clear indication that they (and their legal team) do not believe their claims have merit. It should be noted that the Claimants have a third party source of funding so they have had the benefit of full legal advice and the litigation will not be blocked on cost grounds.

17.18. However, it is also clear from the litigation, and echoed in the interviews I undertook and reports in the media, that my Review, albeit conducted at relative arms' length from the business, would still be viewed as an essentially 'internal' exercise. There seems therefore little value benefit in re-engaging in an incredibly expensive and time consuming exercise which would be of materially less value to postmasters than the independent investigations and advice they will have received from their own legal team through the litigation steps taken to date, which would not, perhaps could not, ever satisfy complainants.

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19. Post Office has taken extensive steps and invested significant efforts in investigating and resolving the complaints of a very small number of people and pre-established routes, remain available to those dissatisfied. For example, in any event, the 26 cases are now under consideration by the CCRC (18 of which are named claimants in the Group Litigation) would continue. The CCRC's, whose specific role is to consider whether any of these cases could have been subject to a miscarriage of justice and so this avenue of investigation will take place come what may.

19.20. Further, it is worth noting that as a result of the issues raised through the investigation of cases as part of the Scheme, many changes have been made to improve POL's operating practices, including in relation to training and the type of support offered to Postmasters. We also monitor branch performance more closely with a view to identifying earlier problems that Postmasters are having, so that where possible, issues do not escalate. We would expect any equivalent learning arising from the litigation to be similarly addressed.

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