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UK Government Investments

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Department for Business, Energy & Industrial Strategy

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UPDATE ON MEDIATION IN POST OFFICE LTD. (POL) LITIGATION

Summary

1. Following approval from you and the CST to a proposal from the POL Board to authorise settlement of this Group litigation at a figure up to £65m, POL began a mediation with the Claimants on 27 November. Although initially scheduled for 2 days the parties have been making significant progress and the mediation is continuing. We had advised that the first mediation was unlikely to be successful (given the size of the claim was estimated at more than £200m), but – thanks to good progress – it is now possible that a positive settlement will be achieved within the authorisation provided. This submission updates you on the broad terms of that settlement.

Timing

2. It is expected that a settlement would be announced as soon as an agreement is reached. This could be as soon as tomorrow but in any event is likely to be before 16 December when the judgment in the Horizon trial will be handed down. Any announcement should be by a statement agreed between the parties to the Group litigation, but it is possible that news of any settlement will go public as soon as the mediation has completed.

Recommendation

3. That on the back of the approval you and the CST gave to the POL Board's proposals for settlement you **Note** this update, in particular:

   (a) that reaching a settlement would be a very positive outcome by bringing to an end this very high profile, protracted and difficult Group litigation case where the claimants' claims totalled in excess of £200m not including interest and legal costs; and

   (b) that POL may have continuing exposure to certain claims even if the mediation is successful, though we believe that the proposed settlement is as comprehensive as it can be for this mediation.

Background

4. Our submissions of 8 November and 15 November provide the background to this litigation, POL's mediation strategy and the authority the POL board were seeking to settle the litigation for up to £65m.

5. Following approval from you and the CST to a settlement up to £65m, POL began the mediation with the Claimants on 27 November. Although scheduled to take place over two

days, the mediation is still going on and – into its sixth day – the parties have made significant progress.

6. A figure for a financial settlement has not yet been agreed, but POL believes it will be possible to reach a settlement within the £65 million figure that you and the CST have already approved. There are a number of other elements to any settlement that are close to agreement as follows:

- **Agreed joint statement** by the parties which recognises the past experience of the claimants and POL's desire to learn the lessons and improve their relationship with postmasters.
- POL's approach in respect of the **convicted claimants** and its undertaking to comply with its ongoing duties. This points out that although the proceedings are comprehensively settled Post Office has not made any payment to or of the benefit of the convicted claimants. Post Office undertakes to take advice from a leading criminal barrister and as a minimum to act upon and follow the legal advice it receives in respect of what position it should take if a convicted claimant obtains permission to appeal. If the convicted claimant's conviction was overturned as a result of the breaches by Post Office of which complaint is made in the Group litigation, Post Office will issue an apology. POL will make it clear that there is no admission of liability or wrongdoing by virtue of this agreement.
- POL's support in respect of claimants who wish to **exit the business** post settlement.
- POL to withdraw proof of debt or claim in respect of **insolvent claimants** as part of the settlement.
- A support programme for claimant Postmasters and Postmasters in similar position of the claimants including **mental health support** for claimants.
- POL to consult claimant group on POL's change process. This gives rise to the creation of a "Idea Sharing Group" of which Post Office would listen and consider on a quarterly basis for no less than 12 months post settlement.
- POL would also set up a **historic shortfall group** to deal with any shortfalls which arose between 2000 and the effective date of the settlement of the Group litigation with an internal escalation and ultimately arbitration as a resolution forum (rather than the court process).
- Claimants' solicitors and funders not to solicit new claims.

POL's potential continuing exposure

7. If settlement of the Group litigation is achieved on the above terms then POL will have two broad areas of continuing exposure as follows:

    - <u>The 61 convicted claimants who are part of the Group litigation</u> – POL's lawyers Herbert Smith Freehills (HSF) previously advised that if all 61 convicted claimants had their convictions overturned there could be a further exposure of circa £10m - 45m, largely due to claims for stigma damages.

    - <u>Other postmasters (current or former) who are not claimants in this Group litigation</u> – POL have no visibility of whether there are any potential claimants in this category. They cover a spectrum that could range from existing postmasters who bring complaints about shortfalls they have had to repay to former postmasters whose appointments were terminated and might bring significant claims for loss of earnings. On best estimates if there were 100 claims arising from former

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postmasters and another 100 arising from current postmasters, this might require a POL budget of £9m.

8. It is likely that POL will face claims from people in both these categories. While there is a potential further exposure for POL up to a worse-case scenario of £60m we think it likely the figure will be significantly less. There are arguments that due to the passage of time some of these potential claims may no longer be allowed to be brought, either on the grounds that they are time-barred or because the claimants have had ample opportunity to join the Group litigation. It is possible nevertheless that POL may remain exposed to potential claims until at least April 2022 (i.e. 6 years after the Group litigation was commenced), but we are confident that this proposed settlement is as final and comprehensive as it can be within the bounds of this mediation.

Next steps

9. It is possible a settlement will be achieved by the end of this week or early next. The Court's judgment on the Horizon trial is due to be made public on 16th December.

Comms Handling

10. The parties are considering the terms of a joint settlement statement that can be made, consistent with the position to date in which this is a matter for POL, not BEIS. If approached for comment, we would issue a BEIS spokesperson comment to welcome the resolution and the steps that POL have taken, which will allow all parties to move forward. We will prepare additional reactive Q&A on the settlement figure and if asked, we would confirm that BEIS approved the settlement, given the nature and scale of the payment, but that the settlement is being funded by commercial revenue and not by taxpayers.

Contributors

11. BEIS POL policy and finance colleagues have been consulted on this advice and are content with its contents. BEIS and UKGI Legal have also been consulted on the content of this submission. Note, BEIS Legal have not advised on or given a view on the litigation strategy proposed by HSF.