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Department for
Business, Energy
& Industrial Strategy

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Minister Scully	X	
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POST OFFICE LTD. GROUP LITIGATION BACKGROUND AND LATEST STATUS

Summary

1. This note provides the background and summary of live issues in relation to the Post Office Ltd. (POL) Group Litigation Order (GLO) claim, brought against POL by 555 (mostly former) subpostmasters, that was settled in December 2019. This is in preparation for the Secretary of State's discussion with Minister Scully and officials on these issues on 15 May. Specifically, this note covers:
 - i. The December 2019 settlement and the resulting Historical Shortfalls Scheme;
 - ii. The review undertaken by the Criminal Cases Review Commission (CCRC) and referral of cases to the Court of Appeal;
 - iii. Historical prosecutions undertaken by POL involving Horizon; and
 - iv. The Independent Review which the PM committed to on 26 February.

Timing

2. The meeting is taking place this Friday 15 May. You are meeting with Tom Cooper (Director, UKGI and POL Non-Executive Director serving as the shareholder representative on POL's Board) and Carl Creswell (Director, BEIS) to discuss.

Recommendation

3. That you **note** the contents of this submission.

Advice

4. The Secretary of State requested a meeting with Minister Scully to discuss Tim Parker's (POL Chair) letter of 29 April 2020 which informed BEIS of the risk of potentially substantial financial exposure for POL arising from the announcement of the CCRC to refer a number (39) of POL convictions to the Court of Appeal, and further work done by POL in reviewing historical prosecutions that involved its accounting system, Horizon. At this time, there are 959 cases that POL is investigating in the light of the litigation judgments. The letter also sets out the risk that should all of these cases ultimately lead to successful appeals, POL have assessed that they could be potentially exposed to **£0.75 - £0.85bn** for civil compensation claims as a "worst case" scenario although this figure needs further work to refine. Tim Parker's letter is attached at **Annex A** for reference.
5. Ahead of that meeting we thought it would be helpful to set out the latest state of play on the range of issues related to the Horizon litigation.

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6. **December 2019 Settlement of Commercial Claims:** In late November/early December 2019, POL and the claimants undertook a successful mediation and agreed a settlement of the GLO. This was a civil (contractual) claim brought by 555 postmasters. The settlement consisted of an apology from POL, a financial element of £57.75m (which included all legal and other fees and was fully funded from POL's commercial revenues), other elements aimed at POL recognising shortcomings on its part in the relationship with subpostmasters, and POL supporting programmes to assist subpostmasters affected by the litigation. BEIS and HMT were not party to the mediation but Ministers from both Departments approved the final amount, given the novel and contentious nature of the expenditure.
7. A key commitment from the settlement was for POL to set up the **Historical Shortfalls Scheme (HSS)** for subpostmasters who were not part of the GLO to have historical shortfalls investigated and addressed. The scheme launched on Friday 1 May (it was delayed from March due to Covid-19) and has already started receiving applicants. It is difficult for POL to have full visibility of the total cost of this scheme, given the wide spectrum of potential cases from existing and former subpostmasters, however they have budgeted £33m for the HSS including all associated costs in FY20/21. It is important to note that whilst this cost is an estimate, there is a risk that costs could be significantly higher, depending on the number and type of cases that are successful through the scheme. Individuals with convictions are not eligible for the HSS.
8. It is worth noting that since the GLO settlement there has been discontent in the claimant group regarding the amount received (believed to be circa. £11m out of the £57.75m) by the subpostmasters following payment to their litigation funders and legal fees. There will inevitably be comparisons drawn in public once the HSS scheme starts paying out to successful applicants between the amount received from the scheme, and the amount the claimants received from the GLO. POL will need to manage this carefully.
9. **Criminal Cases Review Commission:** Since 2015, the CCRC has been considering a number of cases from subpostmasters who applied to have their cases reviewed. Some of these subpostmasters were part of the GLO. At the time of the GLO settlement, the number of cases under consideration was 61. On 26 March, the CCRC announced its decision to refer 39 of these cases to the Court of Appeal, with the other 22 still under consideration. The referral was made "*on the basis of an abuse of process argument*". The CCRC is expected to provide the rationale for each referral (which is set out in the Statement of Reasons) by the end of May.
10. When POL receives the Statements of Reasons from the CCRC it must decide (within 28 days for Crown Court Cases) what position to take with respect to each individual case. In essence this is effectively:
 - i. Support the appeal;
 - ii. Not object the appeal; or
 - iii. Oppose the appeal.

Whatever position POL takes before the Court of Appeal in respect of any individual or group of defendants is likely to bind it in other proceedings. POL is working through

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these options with their external lawyers. If convictions are overturned POL could be exposed to further civil liability (see *Potential Financial Implications* section).

11. To be clear, at the time of the GLO the CCRC were reviewing 61 cases whereby applicants (current/former subpostmasters) had applied directly for their cases to be reviewed. We understand that further postmasters have now applied to the CCRC to have their cases considered. The exact number is unknown; however, since the Horizon Issues Judgment in December 2019 POL has been reviewing its past prosecutions and believes there are 959 prosecutions against subpostmasters that involved Horizon (see below).
12. **Historical Prosecutions:** POL are reviewing all past prosecutions that involved Horizon to form a view as to whether they believe the convictions could be considered unsafe. Initially this was believed to be around 500, however on 29 April Tim Parker wrote to Minister Scully stating that POL had identified more cases, bringing the total to **959 cases** which POL believe is the most accurate figure at this time and significantly increases the potential financial exposure of POL if successful appeals result in civil claims being brought. POL's external lawyers have provided a "worst-case" estimate of the potential financial exposure (see para 18 – 20) and we have requested that POL undertake further work to clarify the quantum, different scenarios and likely timescale.
13. It is important that the position POL takes with regard to any of these cases is consistent with the approach it takes to those that have already been referred to the Court of Appeal. POL cannot refer cases directly to the Court of Appeal; however, they are proactively engaging with the CCRC on these additional cases. POL should be on the front foot in ensuring as many defendants as possible have the opportunity to challenge their convictions without binding itself to a specific outcome.
14. POL have received a Freedom of Information (FOI) request to release the number of historical prosecutions undertaken by POL/Royal Mail since 1990. Following due diligence with external lawyers the total number POL are releasing in response to the FOI is **888**; this is different to the number provided by the POL Chair and is as a result of:
 - i. The 959 represents what POL believe to be the 'worst case scenario' in that it includes cases for which, as yet, they have been unable to determine whether the prosecution resulted in a conviction. The 888 only includes cases for which POL have been able to determine there was an actual conviction.
 - ii. The 959 potential conviction cases includes prosecutions that may have been brought by the Crown Prosecution Service, but the data is unclear. The 888 confirmed convictions only includes prosecutions brought by Post Office / Royal Mail.
15. POL expect this number to attract media attention and have prepared a press statement, noting that their review of past cases has identified "around 900" cases prosecuted since the introduction of Horizon. POL must respond to the FOI by 22 May.
16. **Independent Review:** On 26 February, the PM was asked by Kate Osborne MP during PMQs to launch an independent inquiry into the issues that subpostmasters had faced in relation to the Horizon accounting system. The PM agreed to "get to the bottom" of the issue; BEIS subsequently agreed with No 10 that we should launch an independent

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review to assess whether POL has learned the lessons from the litigation and taken the necessary actions. Since the judgments handed down by Mr Justice Fraser following two lengthy trials made clear what went wrong at POL, you have agreed with advice that a forward-looking review is most appropriate. After Minister Scully met with postmasters on 18 March, officials redrafted the Terms of Reference, and these are currently with Ministers for final clearance (**Annex B**), together with a long-list of potential candidates to chair the review. Once Ministers have provided a steer on the long list of candidates, officials will identify a short list, conduct the required due diligence on those candidates, seek salary approvals and submit the shortlist for the Chair to Minister Scully. The submission will also give further advice on resources, cost and timings.

17. Separate to this, the BEIS Select Committee has also launched an inquiry into POL and Horizon (which is on hold due to Covid-19).

Potential Financial Implications

18. If all 959 convictions (assuming all of POL's past prosecutions resulted in a conviction) are overturned, POL could be exposed to significant further civil liability. An initial assessment by POL and its external lawyers puts the potential worst-case financial exposure at between **£0.75bn - £0.85bn**. This range assumes that POL is found culpable of malicious prosecution, which is a high bar to prove.
19. There is also a risk that other subpostmasters who were not part of the GLO settlement last year and who decide not to apply to the HSS (or were unsuccessful) will bring new claims for compensation, possibly by way of another Group Litigation case. This group would likely include postmasters who have had convictions overturned but cannot prove malicious prosecution – it would be an alternative mechanism for them to seek compensation. The amount involved in this scenario would be substantially lower than the range quoted in paragraph 18 above.
20. Although POL has managed the financial costs of the GLO to date, POL assert that it will not be able to fund further significant civil liability at this sort of level. There is however a significant amount of uncertainty in these figures and further work is needed to refine.

Contributors

BEIS POL policy colleagues have been consulted on this advice and are content with its contents. UKGI Legal have also been consulted on the content of this submission

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Department for
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DRAFT Terms of Reference
As at: 8 April 2020

The dispute and subsequent trial relating to the Post Office Horizon IT system has had an incalculable impact on affected postmasters and their families. It has affected postmasters' livelihoods, their financial situation, their reputations and for some, also their physical and mental health. In his judgments, Mr Justice Fraser identified significant failings within Post Office Ltd particularly in relation to the treatment of postmasters and in its management culture.

Under its new CEO, Nick Read, Post Office Ltd has admitted it got things wrong in relation to the Horizon case and has apologised. It has also started to take steps to reset the relationship with postmasters. These are important moves in the right direction. However, given the impacts this case has had on many individual postmasters, Government wants to be fully assured that lessons have genuinely been learned, and that concrete changes have taken place at Post Office Ltd to ensure that this situation will never be repeated. For these reasons Government has decided to establish an Independent Review.

The Independent Review shall:

- assess whether the Post Office Ltd has learned the lessons from the criticisms made by Mr Justice Fraser in the "Common Issues" and "Horizon Issues" trials and has delivered or made good progress on the organisational and cultural changes necessary to ensure a similar case does not happen in the future;
- record postmaster views on the lessons Post Office Ltd need to learn and assess whether the quality of the service offer for them and their relationship with Post Office Limited has improved;
- in particular assess whether the commitments made by Post Office Ltd within the mediation settlement – including the historical shortfall scheme - have been properly delivered;
- assess whether the processes and information provided by Post Office Ltd to postmasters are sufficient to i) enable both parties to meet their contractual obligations; and ii) to enable postmasters to run their businesses. This includes assessing whether Post Office Ltd's related processes such as recording and resolving postmaster queries, dispute handling, suspension and termination are fit for purpose; and
- examine the governance and whistleblowing controls now in place at Post Office Ltd and whether they are sufficient to ensure that the failings that led to the Horizon case issues do not happen again.

Independent Review Chair

The Review will be led by an independent chair who will be announced in due course alongside final timings and terms of reference for the review.



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Final Report

The Review shall set out Post Office Ltd's actions in response to the findings of Mr Justice Fraser. It must avoid re-examining the findings made by Mr Justice Fraser through the lengthy court proceedings. The Review should make any recommendations it sees fit, including actions that may, in its view, be appropriate as a result of its findings. The final report will be laid in the Libraries of the House upon completion of the review.