

SECURITY MARKING



Date: 29 July 2020

Director General clearance: Carl Creswell

Lead Official & telephone: Eleanor Brooks GRO / Beth White GRO

Recipient	To Note / Comment	To Approve / Decide
Secretary of State		X
Minister Scully	X	
Permanent Secretary	X	
Special Advisers	X	

HORIZON REVIEW: PROGRESS UPDATE**Summary**

1. To update you on the Chair appointment process and our approach to Minister Scully's proposed change to the Horizon Independent Review Terms of Reference.

Timing

2. Routine – we will shortly start to approach potential Chairs

Recommendations

3. That you note: (a) our progress on the Chair appointment; and (b) the implications of the proposed change to the terms of reference (Annex A), noting the risks on timing and cost outlined at paragraphs 5-6 below.

Chair for the Review

4. We have cleared a short list of 5 candidates for Chair with No 10 and with Cabinet Office (annex B). **No 10 has confirmed that the list does not need further clearance from the PM.** The list includes three former judges. We are aiming to approach the candidates shortly.

Terms of Reference for the Independent Review

5. All have called for an expansion to the terms of reference so that the review will:
 - a) establish the facts of what happened at Post Office and at Fujitsu and to examine the Government's oversight of Post Office;
 - b) hold those responsible to account; and
 - c) make recommendations on whether the out of court settlement reached last December was sufficient and whether Government should pay more.
 All sides are also pushing strongly for the review to be changed to a full statutory inquiry and to be headed by a judge.
6. As you know, Minister Scully and SpAds have agreed a change to the draft terms of reference (see Annex A) to take account of (a) above following criticism in the House of Commons, House of Lords and from the Justice for Sub-Postmasters Alliance.
7. At your request, officials have since engaged with No. 10 and the Cabinet Office team responsible for best practice on reviews to discuss the amendment. The Cabinet Office have advised that adding the backwards-looking element to the review will definitely increase the time needed and cost of the review and make the review more like a non-statutory inquiry. They also advised that the average length of this type of review is 2 years and many have taken significantly longer (eg. the Hillsborough Independent Panel

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took 31 months, the Magnox non-statutory inquiry has taken 39 months so far and the Daniel Morgan independent panel is still ongoing at 7 years. **Cabinet Office numbers suggest that reviews cost around £1m per annum** We will work with finance to finalise the costs; costs this year are unfunded and costs beyond that will need to be factored into the Spending Review process. Both time and cost will depend on a range of factors including: the precise terms of reference and the chair's interpretation of these; the speed at which evidence can be collected and analysed whether any legal challenges are triggered by the review and whether Maxwellisation is required to share and agree a draft report with anyone criticised in it before publication. In appointing the chair, Ministers can make clear that they want the review to last months not years. They can also underline it must not interfere with the ongoing associated legal processes by the Criminal Cases Review Commission, Court of Appeal or Director of Public Prosecutions.

8. Cabinet Office also advise that this change to the focus of the terms of reference increases the likelihood that the review may need to be changed to a statutory review at some point in the future if the parties do not cooperate fully. We consider Post Office Ltd cooperation the most critical within the review although engagement by ex-Post Office employees and Fujitsu is important. We have a commitment for total cooperation from the Post Office so this should not be an issue. We are also recommending Minister Scully ring Fujitsu to secure their cooperation with the review. We can also consider whether to specify procedures to be followed by the review eg. open oral hearings.
9. Despite these risks to timing and costs, our view remains that a short, wholly future-focussed review will not satisfy those in Parliament or the affected post masters. Although this change will not provide everything sought, it should give key answers they have been looking for. This, coupled, hopefully, with the appointment of an ex-judge to lead the review (see para 4) should help to bring them to support the review.
10. **We recommend that you note the specific change proposed and the risks outlined above, as we will need to share the draft Terms of Reference with the prospective chair.** Once we have secured the chair and they have agreed the Terms of Reference we will then need to do a formal write round. Cabinet Office have requested that we flag the risks mentioned above in the write round.

Annexes

- A. Draft Terms of Reference with proposed change shown in bold
- B. Short list of candidates

Contributors

This advice contains financial considerations, as agreed with Vanisha Patel.

Legal Jane Correra and Richard Watson have been consulted and agreed the content of this advice.

This communication considerations are being considered by Jessica McKay and we will amend if needed.

Parliamentary handling has been taken into account, and agreed with Carl Creswell.

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Annex A: Draft Terms of Reference– amendment shown in bold

The Independent Review shall:

- Understand and acknowledge what went wrong in relation to Horizon, leading to the Group Litigation Order, by drawing on evidence from the Horizon judgments and affected postmasters' experiences and identify what key lessons must be learned for the future;
- **Build upon the findings of Mr Justice Fraser, including by obtaining evidence from Post Office Ltd, Fujitsu and BEIS to establish a clear account of their actions and conduct in relation to Horizon during the time period in question.**
- 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 those identified by affected postmasters 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;
- 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. In addition, determine whether the quality of the service offer for postmasters and their relationship with Post Office Ltd has materially improved since the conclusions by Mr Justice Fraser; 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.

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Annex B: Shortlist of Chair Candidates

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3.
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5.

IRRELEVANT