BEIS0000971

OFFICIAL SENSITIVE - COMMERCIAL

Department for Business, Energy & Industrial Strategy

Date: 27 September 2021
From: Meet Desai – GRO
SCS clearing: Tom Cooper – GRO

Recipient	To Note / Comment	To Approve / Decide
Minister Paul Scully	X	
Permanent Secretary		X
Special Advisers (SpAds)	X	

Post Office Limited (POL)–
Network Investment and Subsidy Payments due to POL by BEIS

Summary

1. As part of the Funding Agreement agreed to fund POL for 2021/22, Network Investment and Network Subsidy payments are due to be paid periodically in-year from BEIS to POL.

2. However, in the view of UKGI officials, there have not been adequate controls over POL's litigation costs and as a result, we have not recommended BEIS approve POL's annual 2021/22 budget. Consequently, BEIS withheld payment of the Network Subsidy (£12.5m) which was due to be paid on 1 July with Minister Scully informing POL (see Annex A).

3. Officials and POL have been working together to improve POL's litigation cost controls and forecasting for POL to present an improved 2021/22 budget that could be approved by POL's Board and BEIS. However, POL's progress in this matter is still ongoing and, on 1 October, a Network Investment payment of £64m and a further Network Subsidy payment of £12.5m are due.

4. It is recommended that you (Permanent Secretary) write to Nick Read (POL's CEO) to ask for a meeting to discuss POL's legal costs and what progress POL is making in managing and controlling them. A draft letter is in Annex B.

Recommendation

5. As POL have not presented a budget for review and approval, officials recommend that the payments due on 1 October are delayed indefinitely until BEIS are content with POL's litigation cost controls.

6. There are no immediate consequences to POL's service provision by withholding payment because POL currently have c.£200m of security headroom under the BEIS working capital facility. This means POL should be able to continue operating while this issue is resolved

7. POL are looking to provide an improved budget as soon as possible and have been working hard with officials to improve litigation cost forecasting. Though POL are aiming to present an updated budget for Board and shareholder review in the coming weeks, as outlined in paragraph 4, officials recommend asking to meet Nick Read and issuing the letter.

Timing

8. By close Wednesday 29 September requested

Background

9. BEIS do not have a contractual right to withhold funding under the Funding Agreement on the basis of the budget not having been approved by the shareholder but have done so in Q3 2019 and Q2 2021 given the need to hold POL to account for a lack of spending control. Officials are proposing to withhold funding again on the same premise. The legal risk of withholding the

funding, in terms of the risk of legal challenge from POL on the basis of BEIS not having the relevant right under the Funding Agreement, is considered low (particularly given the proposed course of action follows precedent and POL has not previously mounted a challenge). However, we are seeking to ensure the next iteration of the Funding Agreement between BEIS and POL (to be negotiated by December 2021) contains an explicit right to withhold payment if an annual budget cannot be agreed with POL.

10. Evaluation of the options to BEIS:

    a. **Extend payments regardless of a shareholder-approved budget.** This would set an inappropriate precedent where POL in future could delay providing an annual budget for shareholder review. This would mean BEIS do not have sight or are belatedly sighted on how POL are spending taxpayer money. This is NOT recommended.
    b. **Extend a partial payment regardless of a shareholder-approved budget.** While POL will require funding as agreed in the Funding Agreement, currently, POL's need for funding is not immediate A delay in funding may mean POL delay investments for a short period of time and a partial payment may encourage some investment while making a point that a budget still needs to be approved for full funding. This is NOT recommended. This is because officials believe a shareholder-approved budget should be a required milestone before spending funds and partial funding before approval would set an inappropriate precedent.
    c. **Do not make payment until POL present a shareholder-approved budget.** While POL have security headroom of c.£200m for the BEIS working capital facility, this would allow POL to borrow funds as required in order to continue service provision. Therefore, for the foreseeable future, there will be no disruption to POL's service provision. As POL are aiming to present an updated budget for approval in the coming weeks, a delay to the payments would ensure POL adhere to having the budget approved by BEIS before receipt of funding. This option is recommended.

11. **Do you agree with the recommended option and, consequently, the letter of notice in Annex B to be issued to POL before 1 October?**

Annexes
Annex A: Minister Scully's letter to POL on 8 June 2021
Annex B: Proposed letter of notice to POL

Clearance checklist

Team	Outcome of conversation
Finance	Cleared by Nigel Richards (BEIS)
Communications	Not applicable. Funding specifics between POL and shareholder are not public.
Legal	Cleared by Eleri Wones (BEIS)/ Kyla Fidgeon (UKGI)
Delivery	Not applicable.
Other	-

Please email your submission to submissions GRO

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Annex A: Letter from Minister Scully toPOL on 8 June 2021

Dear Nick,

POST OFFICE: BUDGET 2021/22

I am writing to you regarding Post Office's proposed budget for 2021/22 that requires shareholder approval from BEIS.

In our discussions, I have been pleased to hear about improved trading conditions and I look forward to seeing the Post Office operating at full capacity of its branch network during 2021/22.

In reviewing Post Office's 2021/22 budget, I am encouraged to see debate and challenge on Post Office's budget targets and urge continued ambition to grow Post Office's profitability to ensure its future relies on a more self-sustained footing.

However, based on advice from UKGI officials, I understand that there is not adequate control regarding the Post Office's litigation costs. Clearly, the Post Office's litigation proceedings are a very important matter given its history, scale and doing the right thing for postmasters.

The operation of strong controls in this area is critical to the Post Office's financial future and until I am content that there is a robust forecast in place, I am not able to approve the budget. Consequently, under the 2021/22 Funding Agreement, I am not able torelease payment of the Network Subsidy until there is a shareholder approved budget

I trust you understand my concerns andI look forward to considering Post Office's budget which has an improved grounding for forecasted litigation costs I thank you for your continued cooperation and collaborative efforts with officials.

Yours sincerely,

PAUL SCULLY MP
Minister for Small Business, Consumers & Labour Market, Minister for London

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Annex B: Proposed letter of notice to POL

Nick Read
Chief Executive Officer
Post Office Ltd
20 Finsbury Dials
Finsbury Street
London
EC2Y 9AQ
Dear Nick,

POST OFFICE: BUDGET 2021/22

I am writing to you regarding Post Office's 2021/22 budget which has yet to receive shareholder approval from BEIS.

I am aware that Network Investment and Network Subsidy payments of £64m and £12.5m are due to be paid to POL on 1 October. However, on account of the management and controls of POL's litigation costs not being adequate, I am unable to release the payments due until POL can demonstrate satisfactory control. Payments would be made by BEIS following a shareholder approved budget.

As you know, BEIS is fully supportive of the need to settle POL's historic liabilities as quickly and efficiently as possible. BEIS has already provided funding of up to £285m for settlements under the Historic Shortfall Scheme. In addition, my officials are also seeking funding of up to a further c.£780m for settling claims resulting from overturned criminal convictions. These amounts are in addition to BEIS' substantial funding of POL's business as usual activities.

In our discussion on 2 July, we discussed my department's continuing concerns about the management and control of Post Office's litigation costs. I understand that litigation costs (excluding settlements) which are accounted under the Historical Matters Business Unit is forecast to cost c.£62m for 2021/22 and c.£63m in total between 2022/23 to 2024/25. This follows expenditure of £52m in 2020/21. Whilst I understand progress is being made in getting these costs under control, I remain very concerned and would be grateful if we could meet so I may understand the current status of litigation cost control and the wider plan for budget approval. I would like to understand how you, as Accounting Officer for POL, are taking steps to establish that the legal costs being incurred will represent Value for Money for POL and the taxpayer.

I trust you understand my concerns and look forward to meeting. In the meantime, thank you for your continued cooperation with BEIS and UKGI officials.

Yours sincerely,

Sarah Munby
Permanent Secretary for the
Department for Business, Energy and Industrial Strategy (BEIS)