

OFFICIAL SENSITIVE & SUBJECT TO LEGAL PRIVILEGE



Department for  
Business, Energy  
& Industrial Strategy

## Meeting with Gill Furness MP on POL Litigation

1330 to 1400 on 26 March  
House of Commons [tbc]

### External attendees:

Gill Furness MP

### Internal attendees:

Tbc

### Purpose of meeting and Handling:

Gill Furness MP asked for a meeting to discuss the Post Office litigation following the handing down of judgement on the first “Common Issues” trial on Friday 15 March. As the litigation is ongoing (the second trial is underway, and POL is considering an appeal on the first judgement) it is important not to share any information that might prejudice POL’s legal case. Therefore, we recommend that you stick within the parameters of the “Dear Colleague Letter” that you sent to Members on Monday 18 March, as this was cleared by legal teams from UKGI, BEIS and POL, while reassuring Gill Furness that both POL and the Government are taking the judge’s criticism of POL’s handling of the case very seriously, with POL committed to taking action where appropriate.

As Shadow Postal Services Minister, Gill Furness may choose to raise wider issues on the Post Office, particularly the franchising of Directly Managed Branches (DMBs or “Crowns”) and postmaster pay. She has been a vocal critic on both these matters.

### Points to make:

#### Post Office Litigation

- While Post Office Limited is publicly owned it operates as an independent, commercial business – the relationship with its postmasters and the management of its IT systems are operational matters for the Post Office.
- The judgment is complex and Post Office needs time to consider it, including whether it has a case for appeal.
- After the judgment, I spoke to Post Office Chair Tim Parker who assured me that Post Office acknowledge the judge’s criticism of Post Office’s handling of the case and its dealings with the claimant postmasters. They are taking this very seriously and will take appropriate action where necessary.
- This judgement in the first trial is part of a wider, ongoing trial process. The second trial is currently underway and two more trials are scheduled until 2020; the litigation outcome will only be clear at the end of this process.

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- The courts are the right place to hear these issues and I hope the legal case will assist in the resolution of what are long-standing issues between some postmasters and the Post Office – so that postmasters with claims can obtain a remedy if the court finds there is validity to those claims.
- While this dispute remains a matter for the courts, it is not appropriate for Government to comment further. However, I will remain in close contact with the Post Office as they deliver on their commitments to improve.
- I updated Members by letter on 18 March and I will update the House further as this process progresses.

Defensive (if asked) *[Note: Following POL's submittal of a recusal application on 21 March we suggest the following point. Depending on how the application proceeds, supplementary lines may follow.]*

- In response to the first judgment, POL has submitted an application for the judge to recuse himself from hearing the rest of the litigation. This is a legal decision for POL, taken by the POL Board following additional, independent legal advice. It is inappropriate for me to comment further.

#### Franchising

- Franchising is not a privatization, closure or redundancy programme, but a way to ensure the stability of the branch network in the face of unprecedented change on high streets and in consumer trends. This has removed £46m in losses since 2012.
- There are over 11,300 branches (98% of total) operating successfully on a franchise or agency basis. Combining a Post Office with a successful retailer to share costs and increased footfall is a proven model for sustaining the network.

#### Postmaster Remuneration

- Government investment enabled Post Office to invest in its branch network so that branches could operate more effectively in the retail environment. The move from fixed and variable remuneration to fully variable remuneration has proven successful when post office services are combined with a good retail offer.
- Post Office recognises that there are some locations where this approach is not viable and fixed remuneration remains for those "community status" branches.
- Post Office reviews the return on services for postmasters to reflect the time and effort involved. Last year Post Office raised remuneration on banking deposits twice.

#### **Relevant context:**

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POL is the subject of a Group Litigation in the High Court from a number of mainly former postmasters, relating to the Post Office's "Horizon" Point of Sale system. The litigation has been broken down into four separate trials scheduled to continue until at least 2020. On March 15<sup>th</sup>, the judge handed down judgment in the first of these trials, looking at the proper interpretation of the contract between Post Office and postmasters.

The principal legal finding is that the contract is relational and, as a consequence, it contains a number of significant obligations on Post Office which, until this judgment, were not apparent. A number of terms must therefore be implied into the letter of the contract, including the majority of terms POL contested in the trial, giving rise to various significant operational concerns for POL. Post Office is currently considering its options to appeal the judgment.

In response to the first judgment, POL has submitted an application for the judge to recuse himself from hearing the rest of the litigation. This is a legal decision for POL, taken by the POL Board following independent legal advice. It is inappropriate for me to comment further.

In the meantime, the second "Horizon Issues" trial started on 11 March to look at 15 issues in relation to the integrity of Post Office's Horizon system, most significantly the reliability of Horizon and the extent to which it was the root cause of shortfalls in postmaster branches. This trial is ongoing and it is not appropriate to comment on proceedings.