



UK Government
Investments



Department for
Business, Energy
& Industrial Strategy

HISTORICAL SHORTFALL SCHEME

BEIS/UKGI WORKING GROUP AND STEERING COMMITTEE TERMS OF REFERENCE

V6.0 – Approved by the BEIS HSS SteerCo on 27 January 2021

Purpose

1. The purpose of this document is to set out the Terms of Reference for the Department for Business, Energy & Industrial Strategy (**BEIS**) and UK Government Investments (**UKGI**) in relation to the BEIS Historical Shortfall Scheme (**HSS**, or the **Scheme**) Working Group (**WG**) and Steering Committee (**SteerCo**). The HSS is being delivered by Post Office Ltd. (**POL**).
2. It is an internal document to be considered alongside the POL / BEIS HSS Operations Agreement. That document covers the role of POL and its interactions with BEIS (and UKGI as an agent of BEIS).

Roles of BEIS and UKGI

3. BEIS has an objective to see the successful delivery of the HSS that resolves claims pursuant to the HSS fairly, in a timely manner and that also provides Value for Money (**VfM**) for the taxpayer.
4. Roles of key individuals and teams can be seen below:
 - **Responsible Minister for POL:** The Minister for Small Business, Consumers and Labour Markets (**Responsible Minister**) provides ministerial oversight and support for key policy priorities, on behalf of the BEIS Secretary of State. The Minister approves of the concept of the HSS and has high-level engagement with POL management.
 - **BEIS Permanent Secretary:** The BEIS Permanent Secretary is the Principal Accounting Officer (**PAO**) for POL. The PAO is accountable to Parliament in respect of POL and the spending of public finances through the HSS. The PAO will sign off on the business case.
 - **Senior Responsible Officer:** This is Mike Keoghan (BEIS Acting Director General, Business Services). He and other BEIS Senior Officials (Carl Creswell as Director responsible for POL, and Tom Taylor as BEIS CFO) are responsible for a strong business case and the overall delivery of the project. These officials sit on the SteerCo.
 - **BEIS POL Policy Team:** Responsible for navigating the HSS business case through the Department, coordinating engagement across government and providing policy input. Members of the team are part of the WG. Legal support to the BEIS policy team is provided by BEIS Legal.
 - **UKGI POL Shareholder Team:** Assume the day-to-day lead in engaging with POL on the control arrangements, oversight and monitoring of the HSS including ensuring appropriate scrutiny in the Scheme Set-up phase (see below). The UKGI POL Shareholder Team will also take the lead in preparing papers for SteerCo, working



UK Government
Investments



Department for
Business, Energy
& Industrial Strategy

collaboratively with the BEIS HSS Working Group. It will also be responsible for preparing the HSS business case with input from the BEIS Policy Team. The UKGI POL Shareholder Team is not responsible for providing legal or financial assurance on the HSS design, processes or operation to BEIS.

- **HM Treasury:** To provide the funding and budget cover to BEIS. HM Treasury will be updated from time to time on the progress of the HSS.

Working Group and Steering Committee

5. The HSS POL / BEIS Operations Agreement sets out approval points and parties' responsibilities in relation to the set-up and operation of the HSS and the key decision points where POL will come to BEIS for approval. This interaction will be led by UKGI, with input from the WG and all key decisions will be put to the SteerCo unless delegated by SteerCo to the WG.
6. **BEIS HSS Working Group:** The WG is a BEIS team that will work with the UKGI POL Shareholder Team on HSS matters requiring discussion at SteerCo or BEIS approval. It will provide the secretariat function for SteerCo, including scrutiny and challenge of proposals being put forward for approval by the SteerCo. The WG will consist of:
 - BEIS POL Policy Deputy Director
 - Grade 6 BEIS Legal representative
 - Grade 6 BEIS Finance Business Partner.
7. Should UKGI and / or the WG identify any issues / risks that require escalation, the WG will work with UKGI to notify the SteerCo in writing as soon as practicable.
8. **BEIS HSS Steering Committee:** The SteerCo is the decision-making body for HSS matters and approvals. It will consist of:
 - Mike Keoghan (BEIS HSS SRO and Acting Director General)
 - Tom Taylor (BEIS CFO)
 - Carl Creswell (BEIS Director responsible for the Post Office)
 - Patrick Kilgariff (BEIS Legal Director)
 - Tom Cooper (UKGI, POL Non-Executive Director) - Observer
9. The SteerCo is responsible for overall strategic direction and for providing certain approvals that will be submitted by UKGI, consistent with the process set out in the POL / BEIS Operations Agreement. The SteerCo is entitled to receive all such information it deems necessary in order to fulfil its function and may reserve the right to withhold a decision until such information is provided by UKGI.
10. Quorum for SteerCo meetings will be set at three attendees (excluding Tom Cooper as observer). Should a member of the SteerCo be unable to attend a meeting the individual may choose to delegate attendance to a member of their team.
11. The SteerCo will meet as often as deemed necessary. The first meeting will be held on 11 January 2021 and up to the end of March 2021. SteerCo meetings will be held fortnightly, at which point the frequency of meetings will be reviewed as part of the wider HSS review scheduled for that time.



UK Government
Investments



Department for
Business, Energy
& Industrial Strategy

12. The SteerCo will provide updates to the BEIS Permanent Secretary and the Responsible Minister as appropriate. From time to time there will be certain decisions that may have an impact on overall cost or on the delivery of the Scheme which the SteerCo may also wish to consult the BEIS Permanent Secretary and / or the Responsible Minister on.

Roles in Scheme Set-Up

13. POL and BEIS have agreed that there will be an initial set-up period where appropriate controls and rules for intervention are established and implemented. These are set out below. At the same time, the HSS has been designed to preserve the independence, and the perception of independence, of the Independent Advisory Panel (the **Panel**), and all parties have agreed to respect this.
14. **HSS POL / BEIS Operations Agreement:** This is the document that sets out the ways of working and responsibilities between POL and BEIS (and UKGI as an agent of BEIS). Once POL agree to a final draft, the WG will submit this document to the SteerCo for approval.
15. **Case Assessment Guidance:** This is a detailed guidance document prepared by Herbert Smith Freehills (HSF), on behalf of POL, that will be used by Case Assessors in their assessment of applicants' claims to the HSS and in the recommendations they put forward for consideration by the Panel. BEIS has the right to: i) approve the Case Assessment Guidance prior to it being issued to the Case Assessors and any variations after any such approval has been given; and ii) provide input to POL's response to the Panel should it raise any comments on the legal analysis in the document. This will be submitted by the WG to the SteerCo for approval once ready. UKGI will challenge the guidance with POL / HSF ahead of submission to SteerCo.
16. **Panel Guidelines:** HSF will engage with the Panel in relation to developing guidelines which will inform their approach to cases. The guidelines are to be developed by setting the Panel questions and scenarios (based on actual cases or 'cohorts' of cases as outlined in the Operations Agreement) that are intended to ensure the consistent treatment of cases by the Panel. It could cover for example how the Panel would approach cases which are not quantified/partially quantified and/or partially evidenced/not evidenced across different heads of loss. UKGI and the WG will engage with HSF on the set of questions and scenarios and the SteerCo will approve BEIS's input into this process. BEIS also has the right to review any subsequent Guidelines derived by the Panel in recognition that these may develop over time. The guidelines are intended to represent the criteria by which the Panel will seek to quantify offers and make recommendations to POL.
17. **Treatment of Precedent Setting Cases:** The first cases of any type to be assessed by the Panel pose the highest level of risk because they set a precedent for how similar claims will be treated by HSF and the Panel in making their recommendations. The definition of what makes a case precedent setting is in the POL / BEIS HSS Operations Agreement and there are 4 designated HMG approval points set out at different stages throughout the process.
 - For each precedent-setting claim, the HSF Case Assessor will provide a report outlining the amount being claimed under each head of loss, the evidence provided and its recommendation, which will be shared with the POL Board and BEIS / UKGI. UKGI will lead on scrutinising any such report, in consultation with the WG, ahead of



UK Government
Investments



Department for
Business, Energy
& Industrial Strategy

submitting a recommendation to the SteerCo for a decision to approve. If not approved, UKGI will provide SteerCo's feedback to POL and HSF and HSF will be invited to review their recommendation.

- Once the Panel has reached a provisional decision on a given precedent-setting case and made a recommendation, UKGI will prepare advice for the SteerCo to inform a decision to approve. If not approved UKGI will provide SteerCo's feedback to POL and HSF and HSF will be invited to review their recommendation. If SteerCo approves the Panel's recommendation, subject to POL Board approval, an offer will be made to the relevant applicant.
- Should any offers made by the POL Board be rejected by applicants, UKGI will work with POL / HSF on a proposed approach to any negotiations and / or mediations (if the claims passes all the way through the dispute resolution process) and, in consultation with the WG, submit an approach to the SteerCo for approval.
- For any offers that are not precedent-setting in their fact pattern but result in a proposed offer outside the guidance set out in the Principles, UKGI will lead on engaging with POL / HSF on a proposed approach and, in consultation with the WG will provide advice to the SteerCo.

Roles in Monitoring the Scheme

18. **Sample Testing:** On a quarterly basis a random sample chosen by POL / HSF of 10 offers made in the preceding quarter will be subject to a review by UKGI as to their consistency with the precedent setting cases. Should any of the sample not be consistent with the precedent setting cases POL / HSF will be required to report to UKGI on why this is the case. This report will be provided to the SteerCo assuming the variance exceeds **£2,500**.
19. **Monthly Monitoring Meetings:** POL / HSF will provide UKGI with a monthly dashboard setting out where each claim is in the HSS process (e.g. how many are being reviewed by Case Assessors, how many are with the Panel, how many have been sent offers, etc.), alongside a commentary on month-on-month movements and an updated Scheme risk register. It will also contain an update on Scheme payments to date and a forecast total cost for the remainder of the claims to be considered (based on the HSF Clive 2 financial model).
20. There will also be a monthly meeting between UKGI and POL / HSF to discuss the dashboard and raise any queries or concerns. UKGI will provide a high level update on these monitoring materials to the SteerCo on an ongoing basis.
21. **Quarterly Review Meetings:** There will be a quarterly review meeting with POL / HSF and SteerCo to review progress made in the HSS. The first of these will be at the end of March 2021.
22. **Quarterly Shareholder Meetings (QSMs):** QSMs are required by the Framework Document BEIS has with POL, and this is attended by UKGI / BEIS and senior officials. Materials used at the preceding Quarterly Review Meeting will be shared at this meeting, subject to material updates.



UK Government
Investments



Department for
Business, Energy
& Industrial Strategy

23. **UKGI Shareholder Representative on POL Board:** The UKGI Director will continue to sit on the POL Board.
24. **BEIS Right to Pause or Withdraw Support for the HSS:** The SteerCo will have the right, at any point, to advise the PAO or the Responsible Minister to pause or withdraw BEIS's support for the continued operation of the HSS.
25. **Public Sector Equality Duty (PSED) Responsibilities:** Throughout the management of the Scheme both POL and BEIS are required to consider its activities in light of the responsibilities under the PSED. BEIS cannot pass on its PSED requirements to POL. An initial assessment was undertaken as part of the business case, and BEIS will be discussing further with POL what monitoring information it is realistic and feasible to collect on claims paid to ensure that there is no indirect discrimination.
26. **Online Reporting in BEIS (ORB):** Further to the approval provided by the BEIS Projects & Investment Committee (PIC), the WG will agree with the BEIS Project Controls team GRO which elements of the dashboard provided to SteerCo should also be included in the monthly performance report through ORB.

Other:

27. **Funding Drawdowns:** Before the end of each month POL will provide UKGI with an estimate of the expected amount of settlements to be paid in the upcoming month. Subject to UKGI consideration and approval a submission to the BEIS Finance Director recommending payment to be made, by the end of that month.