

UKGI responses to POL Draft
21 February 2019

Shareholder Relationship Framework Document
High Level Issues List

Item	Topic	Clause	Post Office Comments (6 February 2019)	UKGI Responses (6 March 2019)
1.	Nature of Framework Document		The Framework Document is a public document that will be available via the gov.uk website. UKGI have advised that it will not be a legally binding document, and that its purpose is to summarise the governance framework through which BEIS and UKGI on its behalf, have oversight over Post Office. Therefore our approach has been to ensure that its contents go no further than replicating information that is already publicly available.	UKGI/BEIS do envisage that the Framework Document is to be a public document and will not be legally binding although we would expect POL to observe the relationship set out in the Framework Document. The purpose of the document is to outline the ways in which BEIS/UKGI/POL will work together and will outline in greater detail how the relationship between the parties operates and how the oversight mechanics work. It will therefore need to contain information that is not currently in publicly available documents e.g. the provisions on information sharing.
2.	Post Office contracting entity		The initial draft of the Framework Document shows Post Office Limited as the contracting entity. Subject to timing, Post Office would prefer that the Document recorded the post LEO structure, however UKGI has flagged that if there is to be a material delay, then on an interim basis a Framework Document will be required for POL. Should the Framework Document switch to Holdco, then a number of these provisions will need to be amended to reflect the difference between POL and Holdco.	UKGI agrees with this approach. The Framework Document is currently drafted with Post Office Limited as the contracting entity, however, with a view to making a future global change to apply to Holdco, should that fit in with the timing of LEO. ACTION: It would be very helpful if POL let us know whether there are any provisions that would need to be revised significantly if Holdco is the contracting entity so that UKGI can consider/ensure revisions can be approved with BEIS/HMT officials within a reasonable timeframe.
3.	Signing parties		As a non-binding document it is immaterial whether the document is 'signed', however UKGI would prefer that the document is signed by POL/Holdco. The final version will need to be approved by the POL/Holdco Board.	UKGI would like the document to be signed by POL/Holdco (as appropriate) and understand that it will need to be approved by the POL/Holdco Board.

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4.	Secretary of State approval		The Articles and other public documents anticipate a number of issues which require SoS approval. It would be helpful to clarify across all documents what actually requires his/her personal approval, as opposed to what can be approved by BEIS/UKGI officials.	<p>UKGI is not currently proposing to provide POL with a list of matters that require personal approval by the SoS, either in respect of the special shareholder consent matters in the AoA or the couple of instances in the Funding Agreement where SoS approval is required e.g. remedy numbers of branches falling below 11,000. Are there any other instances of SoS consent that POL are referring to?</p> <p>Generally speaking how SoS approval provided is an internal matter and UKGI/BEIS officials will have to liaise on each consent matter to determine whether SoS approval is required or whether consent can be provided at a working level.</p>
5. to	Replication of terms	1.1, 3, 5.7, 6, 7.2, 10 and Appendix 2)	A number of provisions from the Articles of Association, the Postal Services Act, the Companies Act, the Entrustment letter and the Funding Agreement have been outlined or replicated in the Framework Document. We have sought to ensure that these are quoted accurately such that the Framework Document does not inadvertently create new/different obligations.	<p>We agree that where an obligations flows directly from the AoA, the Postal Services Act, the Companies Act, the Entrustment letter and Funding Agreement these should be quoted accurately and we will review your changes with this in mind. UKGI notes that as the Holdco and POL Articles of Association are currently being drafted, the Framework Document will require amendments to reflect these changes and will work these in as we progress agreement on the AoAs.</p> <p>As explained above in our response to item 1, the Framework Agreement will need to contain more information on certain arrangements than currently outlined in the suite of publicly available documents.</p>
6.	Social Purpose	2.1	Language describing POL's social purpose was agreed with BEIS, unions and others in 2013/14- the	UKGI agrees with the use of this language.

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			text is below, in 2013 (see Appendix). We would prefer to use that language in a public document	
7.	Post Office accounting officer	5.2	The CEO of POL is the Accounting Officer and therefore has responsibilities under Chapter 3 of 'Managing Public Money' ¹ . Broadly, these responsibilities are similar to those one would normally expect of a CEO. Following the implementation of LEO, we anticipate these responsibilities would attach to the Group CEO.	HMT have informed BEIS that technically it is incorrect for the Perm Sec to designate the CEO of POL as an "Accounting Officer" (AO) because as a public corporation (PC) money flows to POL through a BEIS grant rather than directly from parliament. However, the Perm Sec should still delegate (in writing) similar accounting functions to the CEO so that the principles of HMT's Managing Public Money (MPM) flow to POL in its use of grant funds and public money generally. HMT calls this position an "Accountable Officer" to distinguish it from AOs. However, in practice accounting duties are almost identical since they are based on MPM. The language in POL's Framework Doc will reflect this, as will the formal letter from the Perm Sec to the CEO delegating those accounting duties. ²
8.	Reporting and reviews	5.4, 6.6 and 11	Post Office is already required to prepare and provide various reports pursuant to the Funding Agreement, the Postal Services Act, etc. These include: <ul style="list-style-type: none"> Annual report (clause 7.1) 	The strong preference of BEIS and UKGI is for these provisions on reporting, reviews and information sharing to remain. We understand POL's concern with the potential for FOIA requests, however, there are exemptions to disclosure of commercially sensitive

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742189/Managing_Public_Money__MPM__with_annexes_2018.pdf

² In case it is helpful for POL to understand the distinction between Accounting Officer and Accountable Officer we have set out some further detail. An Accounting Office is only required for central government departments and their ALBs which receive money directly from parliament through the Central Government Main Supply Estimate ("the Estimate" – see it here <https://www.gov.uk/government/publications/main-supply-estimates-2018-to-2019>). Since POL is a PC receiving over 50% of its income from payment for services and market participation, it sits outside the Central Government Estimate system so its CEO's duties to account for public funds, including BEIS grant money, must be formally delegated by the Principal Accounting Officer (the Perm Sec) to the CEO by letter. HMT and BEIS also require this to be reflected in the Framework Document.

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			<ul style="list-style-type: none"> Annual report on the network of Post Offices (clause 7.2) Quarterly³ reporting on (i) performance in the previous quarter; (ii) expected drawdown of the SGEI payments; and (iii) update on progress under approved business cases. <p>We have sought to replicate these provisions exactly in the Framework Document and then to include a generic statement that UKGI/BEIS can make reasonable requests for other information (clause [11]). We are keen to avoid a non-binding public document stipulating the reporting that POL must provide.</p> <p>For clarity, the specific 'requirements' that we have struck out and replaced with a general obligation are:</p> <ul style="list-style-type: none"> (a) At least two review sessions each year between the Policy Sponsor, Policy Champion and Post Office (clause 5.3). (b) A general obligation to provide the Shareholder's Representative "relevant information on request including on but not limited to strategic plans, financial forecasts and budgets, financial performance, achievements against targets, capital expenditure and investment decisions, board appointments and remuneration, branch network information and reports on key corporate risk". (clause 5.5) (c) At least one annual review of the Board, committees and directors by the Chair⁴, and one annual appraisal of the Chair and a Board 	<p>information that can be drawn upon in response to these requests, and UKGI is very capable of assisting POL in responding to such requests.</p> <p>ACTION: Perhaps the parties can discuss what practical steps can be taken to mitigate some of the concerns about POL's view that this will increased their FOIA risk?</p>

³ The original draft Framework Agreement specified monthly reporting on these.

⁴ These requirements should be driven by a general obligation to comply with relevant corporate governance requirements (see clause [], although those requirements have still not been specified.

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			<p>effectiveness review by the Senior Independent Director.(clause 6.6)</p> <p>(d) Monthly reporting on Post Office's performance against annual budgets and targets as set out in the strategic plan.</p> <p>(e) Quarterly reporting on Post Office's: (a) draw down on government funding; and (b) progress on delivery against its planned investments as provided for in the funding agreement.</p> <p>(f) Reports on a two-monthly basis on the performance of the branch network to enable UKGI to assess compliance against the objectives set out in the funding agreement and entrustment letter relating to the branch network and the provision of SGEI across that network.</p> <p>(g) Quarterly report on any active litigation and any threatened or reasonably anticipated litigation.</p>	
9.	Board Responsibilities	5.6, 5.7	<p>The Board is expected to act in accordance with:</p> <ul style="list-style-type: none">• Companies Act• the Articles of Association• the Board Terms of Reference (as set out in the Appendix)⁵• Code of Conduct for Board Members of Public Bodies, and• MPM (Chapter 4)	<p>Framework Agreements do normally contain a description about an asset's Board responsibilities. However, if POL's preference is not to annex the Terms of Reference we can accept and will remove this reference accordingly.</p>

⁵ The current Terms of Reference date back to 2013 and have not been materially reviewed since then. We are currently reviewing these to ensure they are up to date. Any changes will require Board approval.

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			Board Terms of Reference are largely an internal document and reflect the scope of the delegated authority which the Board has given to the Chief Executive – as opposed to the matters which it reserves for itself. This is an internal matter which does not change the accountability of the Board under the Articles or the Companies Act. To this end we query whether it is an appropriate matter to include in the Framework Agreement.	
10.	Corporate Governance	8	Post Office is expected to 'have regard to' certain corporate governance standards which are to be set out in the Appendix. UKGI is requested to provide details of these as soon as possible.	UKGI has provided a list of the corporate governance standards it is proposing to set out in Appendix 3 for POL's review. The list has been drawn up in collaboration with HMT (as owners of the guidance and ultimate arbitrators on what applies to public corporations).
11.	Restriction on external borrowing	9.1	Currently the Articles impose limits on POL's ability to borrow above £50m subject to a number of constraints. The Framework Document goes further and states that POL is not expected to borrow 'externally' and/or requires Post Office to obtain BEIS' consent prior to borrowing externally. These provisions should be consistent with the Articles and a wider discussion is required as to borrowing powers and/or the ability to raise external capital by Holdco/POL and/or other members of the group.	This point has been addressed in the newly drafted Articles of Association and will be reflected in the Framework Document.
12.	Commercial sustainability	9.2	The Framework Document sets out a combined aspiration on the part of BEIS and Post Office for Post Office to become commercially sustainable in the future. We have modified the original language here which had originally specified that aspiration to take effect from 2021.	Whether this wording is included ties into the discussion and decision on whether to have a dividend policy and whether it should be referenced in the Framework Document.

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13.	Return on Capital and Dividends	9.3, 9.4	The Framework Document sets out BEIS' expectation that Post Office will pay BEIS a dividend after 31 March 2021 when the funding agreement comes to an end. We have modified this language and have removed reference to a time frame.	. We understand that the questions of whether there should be a dividend policy is currently being discussed between POL and UKGI (via Tom Cooper). If a new dividend policy is agreed then the questions become whether this policy should be published. UKGI's current preference is for this to be included in the Framework Document, in accordance with Managing Public Money and the expectations of BEIS/HMT.
14.	Access to Information	10.1	There is a general obligation on POL to comply with reasonable requests for information.	Noted. Alongside this general obligation the BEIS/UKGI view is that it is helpful to the parties to agree in the Framework Document what categories of information will be shared hence the inclusions of specific reporting provisions i.e. those categories of information outlined above (a)-(g) at item 8 above.
15.	Confidentiality	12	<p>We have enhanced the obligations on BEIS and UKGI to keep Post Office information confidential, however as the Framework Agreement is not binding, then this provision has no legal authority unless this provision is expressed to be binding, however this ties to earlier discussions on the duties of the Shareholder Representative as a director of POL/Holdco.</p> <p>There are specific provisions to protocols to be put in place regarding privileged information and FOIA.</p>	<p>UKGI to consider further whether POL's specific amendments in Clause 12 – e.g. cannot accept POL's inserted 12.1(iii) that any information we receive is not used without POL's prior written consent.</p> <p>[Josh – can you dig out the last version of Tom's proposed new POL appointment letter (should be in the Legal Folder) so we can consider this point further. You are quite right 12.1(iii) is problematic and we will need to think about how the onward sharing provisions are meant to work in practice]</p>

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Appendix – Agreed ‘Social Purpose’ language.

The Post Office is unique: a commercial business set apart by its public purpose. We believe in the importance of connecting communities and enhancing the powerful role they play in all our lives. We will stay true to this commitment by meeting customer needs through our unrivalled local presence across the UK.

This statement is underpinned by a set of principles and pledges.

To deliver our purpose we will run our organisation by following four principles:

- Keep customers at the heart of everything we do
- Build relationships based on trust
- Treat everybody with fairness and honesty
- Make a positive social and economic contribution to all the communities in which we work

As an organisation we pledge to:

- Maintain ethical attitudes in our behaviours
- Invest in the organisation to secure the business for the future
- Listen with care to the views of customers, colleagues and others with an interest in the Post Office, and support their development