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Department for
Business, Energy
& Industrial Strategy

Date: **X April 2021**

Director General: Charles Donald (UKGI), Mike Keoghan (BEIS)

Lead Official: Joshua Scott / Tom Cooper, Eleanor Brooks/Beth White

Lead Official Telephone: GRO

Recipient	To Note / Comment	To Approve / Decide
Minister Scully		X
Special Advisors	X	
Permanent Secretary	X	

POST OFFICE LIMITED (POL) – RESPONSE TO POL CEO REGARDING ADMINISTRATION OF COMPENSATION ARISING FROM CRIMINAL APPEALS

Summary

1. On 5 March the POL CEO, Nick Read, wrote to you proposing that Government directly administers the process of settlements arising from the appeal of criminal convictions (**Annex A**). Nick ~~also~~ raised the proposal in his regular catch up with you on 15 March.

4.2. You will also be aware that Nick wrote to the Secretary of State on 14 April, following a speech he made to internal POL staff which subsequently attracted media attention, in which he states that POL “does not have the resources to meet the calls for compensation [from postmasters whose convictions are overturned]” and requests the Government’s support for funding.

2.3. Having considered the proposal, officials believe it presents a number of practical challenges, as well as issues around whether it would be ‘appropriate’ for Government to take ownership of resolving historical POL issues, which would set an unhelpful precedent for other Government-sponsored bodies that need to resolve historical matters. Officials therefore recommend that BEIS respectfully rejects Nick’s proposal and have drafted a response for your approval (**Annex B**).

Timing

3.4. Routine.

Recommendation

4.5. That you **approve** the draft response at **Annex B**.

Background

5.6. As per advice submitted on 12 March, there are a number of postmasters who we expect to have their convictions quashed ~~from on 23 April~~ following hearings in March at the Court of Appeal ~~w/c 22 March, and~~. POL has been considering the best process for providing compensation.

6.7. We have previously advised that a compensation scheme for postmasters with quashed convictions could be an option. However, POL and its legal advisers no longer believe a scheme is a viable option after engaging with a number of potential claimants represented by law firms who have informed POL and its advisers that their clients will not participate in a compensation scheme but are prepared to consider alternative settlement methods. It is likely that more postmasters will take the same approach. Postmasters whose convictions are quashed could also bring individual claims or a group litigation case in order to obtain compensation.

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7-8. In his letter, Nick outlines his views that Government should administer such compensation directly, and that he believes this would make the process more efficient and enable Post Office to focus its attention on current postmasters and its retail offering.

9. The backdrop to this request is that litigation related matters continue to take up a significant portion of Nick's bandwidth, even after the creation of the Historical Matters Business Unit last year. Furthermore, you will be aware that in recent months BEIS/UKGI officials have undertaken a significant amount of work with POL to put in place sufficient governance processes around the Historical Shortfall Scheme. This has slowed down progress on the scheme but is vital to see-ensure that taxpayers' money is being spent appropriately.

8.

Response to Letter

9-10. Officials have considered Nick's proposal carefully. Broadly, there are three potential options for responding to Nick's request:

- a. **Accept Request:** BEIS accepts Nick's proposal and officials work to "stand-up" a BEIS team, with support from UKGI, to design and deliver the process for compensation/settlement, and the governance around it. An agreement would need to be reached between BEIS, POL and its advisers to access the relevant information.
- b. **Reject Request:** BEIS respectfully rejects Nick's proposal. POL designs and delivers the process for compensation/settlement, in consultation with BEIS/UKGI officials who would put in place appropriate governance arrangements as POL have already indicated it cannot sufficiently cover the compensation costs. (Preferred option)
- c. **Hybrid Approach:** BEIS agrees to explore Nick's proposal, noting the practical issues that need to be resolved, in an attempt to reach a "middle-ground" whereby the burden of administering the settlement(s) is reduced on POL, but that it is still clear the ownership of the issue sits with POL. It is unclear how long this could take.

10-11. Officials are sympathetic to Nick's proposal recognise the pressures that these issues cause for POL's leadership, but however we believe it presents a number of practical challenges, as well as wider issues around whether it would be 'appropriate' for Government to take ownership of resolving historical POL issues. See our assessment below:

- Officials believe it is more appropriate for POL to continue to have ownership over resolving past POL issues rather than Government. Notwithstanding the fact that the liability remains with POL, wWe believe the public may also think it is right that POL owns the process for addressing its past failings.
- Neither BEIS nor UKGI currently have the capacity nor the capability to take on such a role in administering the process of settlements. Both teams have already undergone a notable expansion to cope with the additional workload on POL.
- A third party administering such a process risks complicating the process due to access to information currently held by the Post Office. There would also be issues around the handling and assessment of confidential and legally privileged information.
- Government taking a direct role in this situation risks setting a precedent to other partner organisations.

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- Agreeing to administer this compensation/settlement raises the risk that the mechanism and/or decisions relating to it could be amenable to Judicial Review (JR) which could bring extra liabilities for Government. For this, we note the decision of 11 March to reject a JR application regarding the Historical Shortfall Scheme, in large part due to the fact that it is a voluntary scheme set up and administered by POL under private law and therefore is not subject to public law.

11.12. Furthermore, officials have raised some concerns regarding POL's internal governance arrangements for the Historical Shortfall Scheme and the appropriate escalation of decisions to the POL Board. Officials have had constructive discussions with the POL Board regarding the appointment of a NED with legal expertise to oversee a sub-committee on legal settlements which will oversee the HSS and expected claims from convicted postmasters who have their convictions overturned. You have recently approved this approach and we recommend this is noted that you highlight this in the response to Nick, since it is a more practical way of ensuring the burden of overseeing the work is shared (on behalf of the POL's Board and CEO).

12.13. Officials therefore propose option (b) and have drafted a letter for your approval. **Minister Scully – are you content for the letter at Annex B to be issued to the POL CEO?**

Contributors

13.14. BEIS POL policy colleagues have been consulted on this advice and have cleared its contents.



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Annex A – Letter from Nick Read to Minister Scully (5 March 2021)



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TEXT OF LETTER SENT TO MINISTER SCULLY FROM NICK READ

Paul Scully MP
Minister for London and Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

5 March 2021

Dear Paul,

Compensation for Postmasters with quashed convictions and Post Office vision for 2025

As I look ahead to the Court of Appeal's deliberations commencing Monday 22 March, and the convictions already quashed at Southwark Crown Court, I would like to share my thinking about how best to meet the needs of those rightly pursuing further justice, and those of current and future Postmasters and their customers.

Since taking up my post in September 2019, I have spent a significant proportion of my time instituting wide-ranging reforms designed to prevent any possibility of recurrence of the issues that affected too many Postmasters. This is clearly the right thing to do.

At every stage, I have worked closely with your officials, in both UKGI and BEIS, to navigate the volume and complexity of the requirements for us as a business as we seek to put matters right. While I understand completely the need for appropriate controls in the management and spending of shareholder money, in the context of the criminal cases I believe that there is a more efficient alternative to a model in which Post Office devises and administers a scheme for redress but which the shareholder funds.

A scheme similar to Historical Shortfalls Scheme (HSS) for those successful in their appeals of criminal convictions is unlikely to work, not least because the lawyers representing a significant number of the appellants have already indicated that they will not participate in such a scheme. The merits of each claim will be also be harder to assess than those in the HSS.

Given that the funding of the compensation will inevitably have to be met by the shareholder and that, quite rightly, the shareholder accordingly expects to exercise a tight control of that expenditure, I consider it to be more appropriate for the shareholder to administer the process of settlements directly.

This will, in my view, make the process more efficient for those seeking compensation and would allow Post Office to place more of its focus on enabling current Postmasters to thrive and serve their customers well in a retail environment that is changing dramatically in response to the pandemic.



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Having considered the matter carefully, I am of the view that it is only by acting decisively to resolve these legal and compensation issues that we will be able to break from the past and start realising a positive future for the Post Office.

On that subject, as the new financial year approaches, I will shortly set out [to Postmasters and colleagues] a vision for the Post Office in 2025. This vision will focus on the traits of a successful franchise which operates for the mutual benefit of Post Office Limited as franchisor and Postmasters as franchisees. Most importantly, the vision will emphasise how local Post Offices can be the retail anchor on high streets and help sustain communities through the essential services they provide. I hope that this is a vision you will support in Parliament, providing the appropriate counterweight to the scrutiny entailed in achieving justice for Postmasters affected where things went wrong in the past.

Our next meeting is scheduled for Monday 15 March, with an agenda already focused on the closure of Directly Managed Branches and the future size and shape of the Network. I would be pleased to speak to you sooner to discuss compensation for appellants with quashed convictions and the vision for the Post Office to 2025.

Yours sincerely,

Nick Read Group Chief Executive Officer



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Annex B – Draft Response



Department for
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Dear Nick,

RE: Compensation for Postmasters with quashed convictions and Post Office vision for 2025

Thank you for letter of 5 March and your time on 19 April at our catch up to discuss the matter of compensating postmasters whose convictions are quashed and your Post Office vision for 2025.

With the Court of Appeal [set to hand down its judgment on 23 April] I am grateful to you for raising such an important issue and the work of you and your team on what is a very complex issuematter. As you know, my Department and I are keen to continue to work with Post Office to help it address its past failings, ensure that lessons have been learned from the Group Litigation, and that true change has happened or is underway at Post Office. Part of this will be to ensure that all postmasters whose convictions are quashed are appropriately compensated for the impact the conviction has had on their lives and livelihoods.

With that in mind, I have considered your proposal carefully and I am sympathetic to your reasons, but however I believe this process should be delivered by Post Office, in consultation with BEIS and UKGI officials. I believe it is more appropriate for Post Office to continue to have ownership over its past historical issues rather than Government. I note that you have separately written to the Secretary of State about funding for historical liabilities, and this will be responded to separately; however, I can confirm that BEIS will consider a business case for the funding at the appropriate time.

Your proposal also presents a number of practical issues. Neither BEIS nor UKGI currently have the capacity nor the capability to take on such a role in administering the process of settlements. Both teams have also expanded considerably in recent months to manage the additional work on Post Office, this includes including the Historical Shortfalls Scheme (HSS) but also on other areas, and further expansion is unlikely. There is the issue regarding the Successful delivery of compensation will require access to information currently held by Post Office; and including a third party such as BEIS administering the compensation, and handling and assessing Post Office's confidential and legally privileged information risks complicating the process further. I would also draw your attention to the decision on 11 March made by the High Court to reject a Judicial Review application regarding the HSS and its rationale for doing so.

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However, I am pleased that, following receipt of your letter, my officials have been having constructive discussions with you and the Board about ways in which POL's oversight and management of the litigation can be strengthened. I have approved the recommendation to appoint a NED with legal expertise to the POL Board in order to oversee a sub-committee on legal settlements which will oversee the HSS and expected claims from convicted postmasters who have their convictions overturned. I understand that you have also decided to strengthen the legal capability in the management team of the Historic Matters Business Unit that manages the HSS scheme and postmaster litigation. We are hopeful this will also lead to improved management and control of POL's legal costs which remain a significant concern for me and my officials, as well as easing the direct pressure on you for oversight of POL's required actions to address the historical matters.



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Finally, I ~~support~~ welcomed your sharing your the vision for the Post Office in 2025 ~~you that~~ shared with me in our catch up. As the pandemic has shown, the Post Office and postmasters provide essential services to communities across the UK, and as we come out of lockdown I share your belief that post offices will be vital to the return of the high street. I invite you to continue to develop this vision with my officials, ~~and at the earliest opportunity I will lend my support to it in Parliament and will want to continue to discuss it with you in the months ahead.~~

Yours sincerely,