

THE POST OFFICE HORIZON IT INQUIRY

RESPONSE TO THE INQUIRY'S INFORMATION BATCH REQUEST 004 TO UK GOVERNMENT INVESTMENTS LIMITED

This document is prepared in response to the Inquiry's fourth request for information, dated 30 March 2021. That request was addressed to UK Government Investments Limited ("UKGI"). In preparing this response, UKGI has conducted searches for relevant information on its current IT systems. However the Inquiry should note that UKGI does not have access to a full suite of relevant historic information which is held on a former migrated IT system that belongs to the Department for Business, Energy and Industrial Strategy ("BEIS"). UKGI is liaising with BEIS to be able to conduct a full and targeted search of historic ShEx information and will update the Inquiry if this search provided any further documentation that is relevant to the questions and answered posed below.

The efficacy of the governance framework

1 The Framework document which sets out the working relationships between UKGI, POL and BEIS was finalised and signed off in March 2020. What, if any, observations does UKGI have regarding the absence of the framework document prior to 2020?

- 1.1. As set out in the BEIS and UKGI response to the Inquiry's Call for Evidence, a Framework Document was put in place between the Department, UKGI and POL in 2020 in line with current best practice for the governance of public bodies.¹
- 1.2. We would note that traditionally, government shareholdings in public corporations would not have had in place a Framework Document and instead, would rely on other company corporate governance documents and processes e.g. company Articles of Association ("Articles"), to provide structure to government oversight.^{2 3} This was, and remains, the case for example for CDC Group, Channel 4 Corporation, and historically, Royal Mail Group and Eurostar (when they were in public ownership). The prevailing view within both BEIS and ShEx/UKGI, prior to 2017-18 was that a Framework Document was unnecessary given (i) POL's status as a public corporation; and (ii) the suite of governance levers provided to the shareholder in POL's Articles, Funding Agreement and Entrustment Letter.⁴
- 1.3. As a result of evolving best practice within UKGI, including the view that there should be a clear separation between the shareholder and policy function, the Shareholder Team determined in late 2017 that a Framework Document would be beneficial to the POL-BEIS-UKGI relationship.
- 1.4. Although the Framework Document between UKGI, BEIS and POL was agreed in April 2020, UKGI and BEIS first commenced the process of negotiating this document in December 2017,

¹ As set out in Managing Public Money parts 3.8 and 7 and Annex 7.2 (as published 14 May 2012 and updated 01 October 2019):https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835558/Managing_Public_Money_MPM_with_annexes_2019.pdf

² Moreover, UKGI recalls that the prevailing view in Whitehall in terms of public body oversight at that time was that Framework Documents were typically a priority for those bodies falling within the remit of HM Cabinet Office and not set up as fiduciary entities – namely, Non-Departmental Public Bodies and Executive Agencies – rather than government-owned companies and/or public corporations.

³ See Annex VI of an update provided by the ShEx shareholder team to the BEIS Audit & Risk Committee in December 2014 (index number 1) which sets out that as POL was a Public Corporation a Framework Document was not required.

⁴ These documents are described in more detail in paragraph A and the responses to questions 1 and 2 of the BEIS and UKGI response to the Inquiry's Batch Request 002.

alongside a broader workstream being conducted in POL which sought to re-examine the legal structure of the Post Office group of companies.⁵ In tandem, further work was conducted by UKGI in consultation with BEIS to review POL's Articles and to introduce updates to refresh the shareholder reserved matters and ensure they were fit for purpose from the perspective of the shareholder six years on from POL's separation from the Royal Mail Group.⁶ However, due to competing priorities within POL between Jan 2018 and April 2020, it took more time than originally expected for POL, BEIS and UKGI to reach an agreement on a final Framework Document.

- 1.5. UKGI has the following main observations in relation to the absence of a Framework Document prior to 2020:
- a. the main governance levers were clearly articulated (albeit not in one document) prior to their codification into a Framework Document in 2020, e.g. the Articles set out the Shareholder's consent rights, the Funding Agreement contained details of the policy conditions to which public funding was attached and the Entrustment Letter contained the State aid approval to enable POL to receive public funding; and
 - b. the governance framework for POL was also clear prior to 2020: the shareholder NED was appointed as a non-executive director of the company board, with the Shareholder Team able to access the information needed from the company to mount appropriate challenge to POL's delivery, and roles and responsibilities between teams were clearly understood based on a history of joint working.

We address these two points in turn below.

- a. *The main governance levers were clearly articulated (albeit not in one document) prior to their codification into a Framework Document in 2020.*

- 1.6. Prior to the adoption of the current Framework Document, the governance framework for oversight of POL, including the shareholder's existing governance levers, e.g. consent and information rights, were very similar to those in place today and were clear to the parties, albeit not consolidated into a single document. For example:
- a. the Articles set out the shareholder rights and reserved matters (for which POL required the Shareholder's consent) as well as appointment rights to POL's Board;⁷
 - b. the Funding Agreement sets out the obligations placed on POL by the Department including with respect to network size and scope (i.e. the minimum number of branches to be maintained), conditions for funding release and important reporting requirements to the shareholder; and
 - c. the Entrustment Agreement articulated the service and network requirements that justified and underpinned the State aid approval to allow POL to receive and use public funding (when applicable).^{8,9}

⁵ See for example the letter from Alex Chisolm to Tim Parker dated 04 February 2019 (provided as document index number 23 in support of the BEIS and UKGI response to the Inquiry's Batch Request 002) in which BEIS (with input from UKGI) set an expectation on the Chair in relation to this requirement: "We are supportive in principle of the Company's proposed restructuring and it is important that it also meets Government's requirements, including the completion of the framework document and updated articles as well as a structure that facilitates future dividend payments. I know that UKGI and BEIS officials are already working with the Post Office team to ensure our requirements are clear."

⁶ The Shareholder Team recall that an advanced draft of the Framework Document was available to all parties early in this process and much of the text settled (and therefore unchanged from the current Framework Document).

⁷ Paragraph 32.15 of the BEIS and UKGI response to the Inquiry's Call for Evidence contains further details of changes to consent rights.

⁸ Further details of the March 2010 and October 2010 Funding Agreements is contained in the BEIS and UKGI response to the Inquiry's Batch Request 002 question 2.

⁹ A copy of the Entrustment Letter dated 24 March 2010 was provided as document index number 5 in support of the BEIS and UKGI response to the Inquiry's Batch Request 002 question 2.

- 1.7. A practical example of the Shareholder Team exercising these levers to reinforce good governance can be found with respect to the information requirements set out in the Funding Agreement. As described more fully in the BEIS and UKGI response to the Inquiry's Batch Request 002, question 8a, the Shareholder Team recommended that BEIS withhold the disbursement of funding on two occasions until the team were satisfied with the quality of financial information, control arrangements and assurance provided by POL.
- 1.8. Prior to 2018, there had been no need to distinguish between the policy and shareholder roles as both were performed by ShEx/UKGI, as had been the case prior to and since POL's creation as an entity separate from the Royal Mail Group in 2012.
 - b. *The governance framework for POL was also clear prior to 2020.*
- 1.9. As set out in the Call for Evidence at paragraphs 32.5-32.7, the Framework Document does contain helpful additional clarity on key processes that underpin POL's governance framework, for example, (i) clarity on the detail expected by the Shareholder with respect to its business plans, (ii) additional consent rights for the Shareholder provided in key Government-wide policies applicable to POL as a Public Corporation. However, notwithstanding these additions, key aspects of the governance framework for POL were clearly defined prior to the Framework Document's adoption.
- 1.10. Pre-2020, UKGI would characterise POL's governance framework as appropriate to POL's status as a public corporation:
 - a. POL's primary source of oversight is provided by its own independent board, which was, and remains common practice for government-owned companies as well as much of the wider economy;
 - b. Since POL's creation as an entity independent from the Royal Mail Group, ShEx/UKGI has held a non-executive director appointment on POL's Board alongside the appointment of additional independent NEDs;
 - c. As set out in POL's Annual Report and Accounts, to the extent that it is applicable, POL seeks to comply with the Financial Reporting Council's Corporate Governance Code,¹⁰ and
 - d. POL has in place Articles which define the Shareholder's rights and reserved matters, including the flows of information the Shareholder can require.¹¹
- 1.11. While there are some items in the Framework Document which are reflective of the developing governance landscape (for example, litigation reporting as described in more detail in footnote 24 of the BEIS and UKGI response to the Inquiry's Call for Evidence), more generally items which might be seen as 'new' are in fact summaries or confirmations of existing positions. One key example of this is found in Appendix 2 of the Framework Document. This sets out a list of Government wide corporate guidance applicable to POL. While this guidance was in existence prior to the adoption of the Framework Document, at times – due to changing Government or industry guidance and policy – their application or otherwise to POL may have been uncertain. The Framework Document therefore serves to eliminate this uncertainty.
- 1.12. In sum, it is the UKGI view that whilst the Framework Document provides enhanced clarity on the governance framework for POL (primarily as a result of its drawing together the contents

¹⁰ Post Office Annual Report and Accounts – Governance Statements (various) <https://corporate.postoffice.co.uk/secure-corporate/our-financials/post-office-annual-report/>

¹¹ A copy of POL's Articles of Association was provided as document index number 7 in support of the BEIS and UKGI response to the Inquiry's Call for Evidence question 32.

of a number of sources into one document) prior to its adoption the governance levers and landscape application to POL was well understood.

2 How clear were roles and responsibilities of the three organisations (POL, BEIS and UKGI) prior to the Framework document? Please provide any relevant agreement documentation and correspondence shared between the parties.

- 2.1. In answering the question on whether the roles and responsibilities between POL, BEIS and UKGI were clear prior to 2020 we have sought to summarise:
- a. the distinction between the shareholder role performed by ShEx/UKGI and that of the POL Board;
 - b. the roles and responsibilities of ShEx/UKGI from 2012-2018 once POL was an independent entity from the Royal Mail Group¹² including an analysis of the following time periods (i) 2012-2016 and (ii) 2016-2018; and
 - c. the separate roles and responsibilities of BEIS and UKGI from 2018 onwards to the present day.

Brief overview of the role of the POL Board as distinct from ShEx/UKGI

- 2.2. As set out in the Call for Evidence, at paragraphs C. to F. the government's governance model for POL as a Public Corporation relies on there being an independent and expert board, appointed by the shareholder, overseeing the performance of the company. As set out in the POL Board's terms of reference¹³, there are therefore areas of oversight for POL which are clearly within its remit and responsibility and where a shareholder should not intrude. These would have included, for example, board succession planning and executive team appointments as well as POL's operational performance, and business planning amongst other things. As the shareholder, therefore ShEx/UKGI would not consider it appropriate to get involved directly in commercial or operational matters beyond close monitoring and evaluation.
- 2.3. Additionally, to provide assurance over the proper use of public funds, the POL CEO, as well as being a director on the POL Board, is appointed an Accountable Person by the Permanent Secretary of BEIS. As per the Call of Evidence at paragraph E., the key accountability within POL for the proper use of public funds sits with the CEO and not the shareholder.
- 2.4. Finally, since 2012 POL's Annual Report and Accounts have contained a governance statement setting out the role of POL's Board and the governance framework in which POL operates. In sum, the roles of the POL Board and the CEO have been documented since POL's creation and are kept under review by POL on a regular basis¹⁴.

Role and Responsibilities of ShEx/UKGI between 2012-present day: General Observations:

- 2.5. At the outset, in terms of how ShEx and then UKGI has performed its shareholder role since 2012, we note that certain features of the shareholder model described in detail in the Call for Evidence at paragraphs J. to P. were established features from 2012 onwards. For example: the presence of a Shareholder NED on the POL Board, the existence of a dedicated

¹² We note that ShEx performed had a shareholder role responsible for POL prior to 2012 but for now we have focused on the description of the shareholder role post-2012 when POL was an independent entity from Royal Mail with a separate full Board.

¹³ A copy of the Matters Reserved for POL Board 2020 was provided as document index number 27 in support of the BEIS and UKGI response to the Inquiry's Batch Request 002 Annex (A).

¹⁴ See for example the roles of the POL Chair and CEO from 2013 (index number 2); the Terms of Reference for the Nominations Committee from 2015 (index number 3); and the Matters Reserved for POL Board 2020 (provided as document index number 27 in support of the BEIS and UKGI response to the Inquiry's Batch Request 002.

Shareholder Team within ShEx and formalised meetings, such as a quarterly shareholding meeting.

- 2.6. Similarly to today, from 2012 onwards there was a regular information flow from POL into the Shareholder Team: both through information linked to regular meetings that took place (such as monthly financial packs and quarterly shareholder meeting packs, which provided information with respect to commercial initiatives at POL) and through consistent interaction between POL and the Shareholder Team directly.
- 2.7. We also note that how ShEx/UKGI practically executed its shareholder role evolved over time. In the interests of time we have not provided details on this topic in our answer to this question, but would of course be willing to provide further details to further assist the Inquiry.

Role and Responsibilities of ShEx between 2012-2016

- 2.8. **Role:** Between 2012 and 2016, it is important to note that ShEx was a division within BEIS and therefore had no distinct or separate legal personality. ShEx also performed both the shareholder and policy oversight role for POL. Therefore, prior to the BEIS-UKGI MoU being agreed in 2016, there was no formal agreement between ShEx and BEIS with respect to the shareholder role ShEx performed, as ShEx was indistinguishable from the Department. As civil servants embedded in the shareholding department, and overseen by the Permanent Secretary in operational, policy and line management terms, formal documentation to set out the role ShEx undertook as part of BEIS would not have been necessary given the level of awareness of the unit's work and portfolio. Furthermore, there was no need to define the limits of the ShEx role e.g. with regard to policy, as there was no separate function to which that role was ascribed.
- 2.9. **Responsibilities:** In performing the shareholder role, ShEx's responsibilities incorporated the main elements outlined in paragraphs J. to L. in the BEIS and UKGI response to the Inquiry's Call for Evidence, including advising on appointments to the POL board and remuneration of these roles, the reviewing of objectives, strategy and business plans, and the overall monitoring of corporate and financial performance in particular against policy objectives and obligations in the Funding Agreement. With respect to policy, the ShEx team, would advise Ministers on policy objectives and outcomes, as well as supporting Ministers in answering correspondence and Parliamentary Questions, and preparing for occasional Parliamentary debates or other stakeholder meetings. For the Inquiry's reference we have included a paper (and supporting Annex) provided to the Department's Audit and Risk Committee by ShEx that outline the role and key responsibilities performed by the ShEx team for POL as at 2014.¹⁵

Role and Responsibilities of UKGI between 2016-2018

- 2.10. **Role:** From 2016 onwards, ShEx and the Shareholder Team moved from being part of BEIS to UKGI, a company wholly owned by HM Treasury. As part of this Machinery of Government change to create UKGI in 2016, UKGI agreed to continue to perform the shareholder role for POL on behalf of BEIS as set out in the 2016 UKGI-BEIS Memorandum of Understanding.¹⁶ We note that this MoU did not summarise the key features of the shareholder role to be performed at the time. As ShEx had been a part of the Department, the established features of the shareholder role were known to BEIS Ministers and the Permanent Secretary.

¹⁵ Paper from ShEx to BIS ARC dated December 2014 (together with supporting Annex VI) (index number 1).

¹⁶ See BEIS-UKGI Memorandum of Understanding dated 01 April 2016 (index number 4).

- 2.11. **Responsibilities:** We note that post-2016, UKGI's key responsibilities for POL remained largely unchanged. As part of its broader mandate to perform a shareholder role for assets owned by a wider set of Whitehall departments, UKGI sought to clarify its shareholder role and responsibilities further. For example, we have provided a presentation prepared by UKGI that set out core features of its shareholder responsibilities to officials across Whitehall¹⁷.

Role and Responsibilities of UKGI from 2018 to present day

- 2.12. **Role:** From 2018 onwards, a BEIS policy team was set up to perform a separate policy role for POL. The rationale and purpose is further explained in the BEIS and UKGI response to the Inquiry's Call for Evidence at paragraphs 32.9 to 32.14. From late 2019 onwards, UKGI's relationship with BEIS (as for all client departments) was further refreshed through an updated Memorandum of Understanding ("**BEIS MoU**") which contains a detailed description of the shareholder role.¹⁸ This document helped clarify specifically the different role and responsibilities between the UKGI Shareholder Team and BEIS policy team.
- 2.13. **Responsibilities:** Paragraphs J. to M. of the Call for Evidence set out the key responsibilities of UKGI as a shareholder representative for POL. The shareholder role is also more broadly described in UKGI's publication of January 2020 '*UK government arm's length bodies: the case for them in specialised delivery and how to optimise their use*'.¹⁹
- 2.14. In sum, UKGI therefore assesses that whilst the Framework Document has provided enhanced clarity on the roles and responsibilities of BEIS, UKGI and POL, prior to its adoption there was still clarity between the parties on their respective roles and responsibilities.

¹⁷ UKGI Presentation on core features of shareholder responsibilities (index number 5)

¹⁸ See Memorandum of Understanding between UKGI and BEIS dated 12 December 2019 (provided as document index number 3 in support of the BEIS and UKGI response to the Inquiry's Call for Evidence).

¹⁹ https://www.ukgi.org.uk/wp-content/uploads/2020/03/UK-Government-Arms-Length-Bodies-A-View-from-Practitioners-January-2020_WEB.pdf

Please note that for ease of reading, we have inserted the response to Q4 in advance of Q3.

4 What role did UKGI (or its predecessor Shareholder Executive (SHeX) have in drawing up the Groups business plan, Entrustment Letter, Funding Agreement & Departmental objectives?

- 4.1. This response describes the involvement of UKGI (and formerly ShEx) in drawing up: (a) the Departmental Objectives (defined below), (b) the Group's business plan, known as the Strategic Plan (defined below); and (c) the Funding Agreement and Entrustment Letter.

Departmental Objectives

- 4.2. We have interpreted departmental objectives for the purposes of this Batch Request as being the Department's policy objectives for POL which, since the Funding Agreement of October 2010, can be broadly summarised as: (a) maintaining a network of c. 11,500 branches that meet the Access Criteria²⁰ and providing certain specified services across the network (as set out in the Funding Agreement (and formerly the Entrustment Letter)) (the "**Network Objectives**") and (b) investing in POL to make it more profitable and efficient and thereby reduce the financial burden on the taxpayer (as set out in successive Chair's Letters)²¹ (together, the "**Departmental Objectives**").
- 4.3. As set out in paragraph 32.10 of the BEIS and UKGI response to the Inquiry's Call for Evidence, the policy role was transferred from UKGI to BEIS in 2018. During the two years that the policy role sat with UKGI, policy work was undertaken by BIS civil servants (who had transferred to UKGI in April 2016 as part of the machinery of government change which created UKGI).
- 4.4. Policy for POL is set at the very highest level with reference to party manifestos (to the extent that POL featured therein) and is clarified or re-confirmed, from time to time, via submissions, meetings with Ministers, and through other mechanisms such as parliamentary debates, responses to parliamentary questions and answers to correspondence. However, the policy since 2010 has been fairly consistent and was reflected in the multi-year funding plans which often straddled administrations.
- 4.5. Government policy has in part been informed by two public and formal consultation exercises which commenced in 2011 and 2016 (undertaken by ShEx and UKGI, respectively) which largely focused on the public's view of the Access Criteria and the services provided by POL. These were undertaken as part of the State aid approval process, to justify the funding provided under the European Commission's State aid rules.

Group business plan

- 4.6. As set out in paragraphs (A) to (C) of the BEIS and UKGI response to the Inquiry's Batch Request 002, POL produces both: (a) a business plan, defined as the Strategic Plan in the Funding Agreement, which details POL's objectives for the funding period and the steps it plans to take each year to deliver those objectives (the "**Strategic Plan**"); and (b) an annual plan as part of its normal budgeting process for the relevant year (the "**Annual Plan**"). We have interpreted the reference to the "**Group business plan**" in this Batch Request to mean the Strategic Plan.

²⁰ Access Criteria means the proximity criteria that Government set POL, to ensure that there was sufficient geographical spread of branches, e.g. 95% of the population in rural areas across the UK are within three miles of their nearest branch.

²¹ For further information about the Annual Chair's Letters please see paragraphs A. to C. of the Appendix to the BEIS and UKGI response to the Inquiry's Call for Evidence.

- 4.7. BEIS and UKGI (and previously ShEx) engagement with POL in relation to the Strategic Plan has always been on the basis that the Strategic Plan is owned by POL, which is responsible for its preparation and delivery. Following its approval by the Board (being the Royal Mail Group Board pre-2012 and the POL Board from 2012) and the completion of the due diligence exercise described below, UKGI is responsible for obtaining approval from the Shareholder (see paragraphs J to N of the Appendix to the BEIS and UKGI response to the Inquiry's Call for Evidence for further detail).
- 4.8. Each draft Strategic Plan is presented by POL management to the Shareholder Team who then lead a due diligence exercise which involves challenging and scrutinising the draft Strategic Plan from a range of perspectives, including: (a) interrogating POL's strategic view, the assumptions being made by POL and POL's financial forecasts; and (b) compliance with Departmental Objectives.
- 4.9. As set out in paragraph 9.12 of the BEIS and UKGI response to the Inquiry's Batch Request 002, UKGI's role in assisting BEIS in approving POL's Strategic Plan draws on a number of areas in which UKGI has experience, including: commercial strategy development; financial analysis; technical Business Case drafting; negotiating complex commercial arrangements; navigating large projects through Departments and HM Treasury; and the effective management of advisers. In addition, as evidenced in paragraph (B) of the BEIS and UKGI response to the Inquiry's Batch Request 002, in recent years the scrutiny provided by the Shareholder Team has been supported by external assurance from KPMG.
- 4.10. UKGI is not responsible for drawing up the Strategic Plan, however POL adapts its plan in response to challenge, comment and scrutiny from UKGI and the funding expected to be made available by BEIS. As a result of the process described above, the draft Strategic Plans change iteratively, which can lead to a change in the level of funding from government requested by POL. The Strategic Plan is then finalised and contractualised in the Funding Agreement.

Funding Agreement and Entrustment Letters

- 4.11. As set out in the BEIS and UKGI response to questions 2 to 5 of the Inquiry's Batch Request 002, the Funding Agreement and Entrustment Letters have broadly taken the same form since they were first implemented in 2007. Both documents were originally drafted by external counsel and each subsequent iteration has been based on the previous version.
- 4.12. The Entrustment Letter was developed in response to State aid requirements and was historically appended to the Funding Agreement. The Entrustment Letter entrusted POL with the provision and delivery of certain services of general economic interest which entitled POL to receive the Network Subsidy. Following the UK's exit from the European Union, the Entrustment Letter is no longer required and therefore the 2021 Funding Agreement incorporates the provisions historically set out in the Entrustment Letter.
- 4.13. In relation to each iteration of the Funding Agreement (and historically the Entrustment Letter), POL and its legal team review mark-ups of the previous versions of the documents produced by: (a) the Shareholder Team and the UKGI legal team, (b) the BEIS policy, legal and finance teams (who are required to sign off on the final documents) and (c) if needed, external lawyers. Members of the aforementioned teams then engage in discussions to agree the terms of the documents; the material discussions are usually around the quantum and use of the proposed funding.

3 How does UKGI satisfy itself that POL's annual reporting and financial statements meets the requirements set out in the Group business plan, Entrustment Letter, Funding Agreement & BEIS objectives? Are the reports and financial reporting analysed and scrutinised robustly by considering these documents? If so by whom and does it need to be signed off by Government Representative before being laid in Parliament?

Explanation of approach

- 3.1. The first part of this question seeks an explanation of how UKGI satisfies itself that POL's annual report and accounts ("ARA") meet the requirements set out in the Strategic Plan,²² the Entrustment Letter, the Funding Agreement and Departmental Objectives. However, we have reframed our response to reflect the following points of clarification: (i) the Departmental Objectives are set out in the Funding Agreement (and formerly the Entrustment Letter) and Chair's Letters, not the ARA; (ii) the evaluation of POL's performance against the Network Objectives²³ is set out in the Network Report, not the ARA; and (iii) the ARA does not reference the Strategic Plan.
- 3.2. As set out in the BEIS and UKGI response to the Inquiry's Call for Evidence and Batch request 002, whilst the Shareholder Team monitors and challenges POL, the primary responsibility for holding POL to account in respect of its performance, including assurance that its performance is in line with the targets in the Strategic Plan, the Funding Agreement (and formerly the Entrustment Letter) and Departmental Objectives, lies with the POL Board.²⁴

Annual Report

- 3.3. Responsibility for drafting POL's ARA lies with POL, and it is approved by the POL Board, of which the Shareholder NED is a member. POL's external auditors (currently PwC) conduct an audit of the ARA's figures, whereby they provide an opinion as to whether the accounts give a true and fair view of POL's financial performance.
- 3.4. In addition, the ARA is approved by the Audit and Risk Committee ("ARC") (of which the Shareholder NED is a member)²⁵ which holds discussions with the auditors and management as part of its review of the document. The PwC audit partner attends each ARC meeting and, as above, the ARC obtains assurance from PwC's audit of the accounts. PwC presents its audit findings on POL's controls and financial records to the ARC in a detailed report. The Shareholder Team also receives a copy of the audit findings in order to understand any concerns expressed by the auditors as well as any issues have come up in the audit. During ARC meetings, the Shareholder NED is able to challenge POL's internal audit team and PwC on the approach taken in relation to the ARA. In addition, outside of formal meetings, the Shareholder Team occasionally meets with PwC about specific points in the ARA. Once the ARC is comfortable with the ARA, it recommends that the ARA be submitted to the POL Board for approval and they are signed by the POL CEO, as POL's Accountable Person.²⁶
- 3.5. UKGI's involvement in the preparation of POL's ARA is limited and consists of the Shareholder Team conducting a review of the draft ARA produced by POL and providing comments to POL

²² As with question four, we have interpreted "Group business plan" as referring to the Strategic Plan.

²³ Maintaining a network of c. 11,500 branches that meet the Access Criteria and providing certain specified services across the network (as set out in the Funding Agreement (and formerly the Entrustment Letter)).

²⁴ See paragraph 9.1 of the BEIS and UKGI response to Batch request 002.

²⁵ See the BEIS and UKGI response to the Inquiry's Call for Evidence and Batch Request 002 for further information on the Shareholder NED's membership of the ARC.

²⁶ See paragraph E. of the BEIS and UKGI response to the Inquiry's Call for Evidence for further detail about this role.

on the ARA's narrative and disclosures, focusing on the descriptions of the relationship and interactions between BEIS/UKGI and POL. For example, UKGI challenged the accuracy of references to potential future government support in the going concern statement in the 2019-20 ARA. For the 2019-20 ARA, UKGI's comments were incorporated into the final version by POL.

- 3.6. As a private limited company, the disclosures required of POL in its ARA are set out in the Companies Act 2006 ("CA 2006") and (in accordance with paragraph 9.4 of the Framework Document) applicable provisions of the Financial Reporting Council's UK Corporate Governance Code 2018 ("CGC 2018"). The CA 2006 and the CGC 2018 do not require companies to reference business plans in their annual report and accounts and POL's ARA²⁷ therefore do not refer to POL's Strategic Plan.
- 3.7. There is no requirement in POL's Articles or Framework Document that BEIS approve the ARA. The BEIS policy team leads on the process of laying the ARA in Parliament. POL prepares and publishes communications to align with the publication of the ARA. The BEIS communications and policy teams with input from the Shareholder Team prepare communications which are not proactively published and are only used should BEIS be asked any questions about POL's ARA in Parliament. The BEIS teams work with POL's communications team to ensure that BEIS and POL are aligned on factual matters in the ARA.

Network Report

- 3.8. As with the ARA, UKGI's involvement in the Network Report is limited to reviewing the report prior to publication.
- 3.9. As set out above, the Network Objectives are documented in the Funding Agreement (and formerly the Entrustment Letter). POL's compliance with the Network Objectives is set out in the Network Report, which is prepared by POL and laid in Parliament each year. This document is required under section 11 of the Postal Services Act 2011²⁸ and provides a public assessment of whether the POL network satisfies the Network Objectives. Responsibility for drafting the Network Report lies with POL and it is approved by the POL Board. The 2020 Network Report was subject to an Internal Audit by POL and, at UKGI's request. Going forwards POL has agreed that the Network Report will be independently audited.²⁹
- 3.10. Paragraphs O. and P. of the Appendix to the BEIS and UKGI response to the Inquiry's Call for Evidence set out the Shareholder Team's role in network reporting more broadly.
- 3.11. There is no requirement in POL's Articles or Framework Document that BEIS approve the Network Report. As with the ARA, BEIS (with UKGI's support) leads on the process of laying the Network Report in Parliament and preparing communications should BEIS be asked any questions.

Taxpayer support reduction

- 3.12. The final Departmental Objective (not set out in the Funding Agreement or, historically, the Entrustment Letter) is that POL should become more profitable and efficient, thereby reducing the need for Network Subsidy and Investment Funding. As a result, the financial burden on the taxpayer would reduce. BEIS's desire for POL to become commercially

²⁷ POL's 2019-20 ARA dated 22 March 2021 (index number 6).

²⁸ POL 2020 Network Report dated March 2020 (index number 7).

²⁹ The independent audit of the 2021 Network Report has been delayed as a result of Covid-19.

sustainable and for taxpayer support to reduce is regularly discussed between BEIS, UKGI and POL and regularly included in Chair's Letters.

- 3.13. For the 2020/21 financial year, the government's financial support for POL was publicly announced following the cross-government comprehensive spending review process and contractualised in the Funding Agreement.³⁰ UKGI monitors compliance with the Funding Agreement and writes a quarterly submission to the BEIS Permanent Secretary and responsible Minister which sets out whether POL has met the conditions required under the Funding Agreement so that BEIS can take a decision about releasing payments.³¹ The amount of Network Subsidy and Investment Funding paid out to POL is reported on in the ARA.
- 3.14. POL's funding history is carefully considered as part of each governmental spending review process, with the overarching objective of reducing the amount of taxpayer support over time.³²

Ongoing analysis and scrutiny of performance

- 3.15. Outside of UKGI's involvement in POL's ARA and Network Report, UKGI provides scrutiny of POL's performance by carrying out the following activities:
- a. UKGI plays an active role in the formulation and ongoing monitoring of POL's financial strategy, performance and investment spend, which is described in paragraphs J to N of the Appendix to the BEIS and UKGI response to the Inquiry's Call for Evidence;
 - b. UKGI monitors the financial and operational performance of POL against its commitments in the Funding Agreement (and formerly the Entrustment Letter), as set out in the response to question nine of the BEIS and UKGI response to the Inquiry's Batch Request 002.
 - c. UKGI leads on providing a Quarterly Update on POL to the Permanent Secretary and Ministers with a description of the material issues. This update provides regular information to the Department and includes an update on POL's financial, investment and network performance and is the main means by which POL's performance is communicated within BEIS (and is referenced in paragraph 9.4 of the BEIS and UKGI response to the Inquiry's Batch Request 002).
 - d. There is a regular dialogue between POL, BEIS and UKGI via the frequent, scheduled and *ad hoc* meetings, as set out in paragraph 32.8 of the BEIS and UKGI response to the Inquiry's Call for Evidence.

³⁰ See paragraphs (A) to (G) of the BEIS and UKGI response to the Inquiry's Batch Request 002 for further detail.

³¹ See paragraphs J. to N. of the Appendix to the BEIS and UKGI response to the Inquiry's Call for Evidence for further detail).

³² See paragraphs 9.7 to 9.12 of the BEIS and UKGI response to the Inquiry's Batch Request 002 for further detail.

Responses to questions 5 and 6 will be provided by Friday 03 May 2021 as noted in the email from Lucie Lambert to Leila Pilgrim and the Inquiry Secretariat dated 28 April 2021 @ 09:00.

7 What, if any, changes have UKGI put in place or does it plan to put in place to support/strengthen its role in relation to POL, because of the findings in the group litigation (Bates v Post Office Limited) regarding the Horizon IT system.

- 7.1. As outlined in the Call for Evidence, UKGI and BEIS introduced certain new measures between 2018 and 2020, to augment the governance and oversight of POL as a Public Corporation. In doing so, UKGI and BEIS had to ensure that any enhancements to established practices or new measures would not undermine the autonomy that is intrinsic to POL's status as a Public Corporation, or indeed the independence of POL's Board, who are ultimately responsible for POL's operations. Paragraph 32.2 of the Call for Evidence provides a high-level summary of the key measures that UKGI and BEIS introduced during this time period and these are addressed in more detail in the UKGI and BEIS response to question 32 of the Call for Evidence more broadly. If the Inquiry should find any further detail in relation to the detail provided to date, we will of course stand ready to assist.
- 7.2. Notwithstanding the new measures that have already been introduced to enhance the governance landscape for POL during a period of significant difficulty, and the UKGI/BEIS response in the Call for Evidence that indicates that our current view is that the governance and oversight framework for POL is currently appropriately balanced and sufficient, UKGI is constantly reflecting on how to further enhance the governance landscape for POL. Examples of this ongoing work are as follows:
- a. UKGI has taken steps to strengthen POL's Board given the primary role it performs in providing oversight of executive action. As set out in the Call for Evidence at paragraph 32.20 UKGI has supported the addition of two Postmaster Non-Executive Directors ("NEDs") to the Board which we think is a crucial step in terms of POL rebuilding trust with Postmasters.
 - b. In addition, UKGI, in collaboration with BEIS, have taken recent steps to encourage POL to bolster the strength and capability of its Board via the recruitment of a new POL NED with a legal background. The addition of this new NED will assist the POL Board in overseeing and challenging the executive on resolving historical litigation matters, for example the delivery of the Historical Shortfall Scheme.
 - c. UKGI continues to emphasise the importance of cultural change within POL, for example via the POL Chair's letter. For example, UKGI recently worked collaboratively with the BEIS Policy Team, to issue a new Chair's letter to Tim Parker on 31 March 2021 which set new expectations on the Chair in relation to key post-GLO issues.³³ These include:
 - i. prioritising cultural change and building a more productive relationship with postmasters, including that POL continues to work on conducting surveys and focus groups with postmasters;
 - ii. building a diverse board and taking responsibility for the induction of two postmasters NEDs; and
 - iii. working towards resolving historical litigation issues.
 - d. In relation to (c) (i) above, we note that UKGI and BEIS have regularly followed up with POL on their progress on conducting surveys and focus groups with postmasters since this was introduced by the Permanent Secretary as an expectation in the 2020 POL Chair letter: *"I know that you have recently conducted an Occupational Health survey as well as surveys and focus groups with postmasters and customers. I'd be keen to see an update*

³³ Letter from Sarah Munby to Tim Parker dated 31 March 2021 (index number 8).

*on these and to hear how you plan to reflect the feedback as you put together your new strategy.*³⁴ UKGI and BEIS have raised this issue via the Minister through his regularly monthly catch ups with the POL CEO; and also through the Shareholder Meeting process, most recently in both the November 2020 and February 2021 meetings where POL has updated officials on the progress of its postmaster consultation. Shareholder meetings³⁵ provide BEIS and UKGI an opportunity to formally discuss with and challenge POL Management directly, for example in November 2020 BEIS praised POL on their work in this area but also pressed the need for effective metrics that linked back to the Organisational Health Index work POL undertook in 2019.³⁶

- 7.3. In addition to the above, UKGI has also taken steps to strengthen the oversight role it performs as a shareholder representative for POL (as well as other assets in our portfolio) as a result of the GLO outcome in the following ways:
- a. In late 2018, UKGI entered into a litigation protocol agreed between POL, BEIS and UKGI to provide enhanced access to UKGI and BEIS on the legal advice being provided to POL in the context of the GLO and to significantly enhance the visibility of the shareholder into POL's handling of substantial litigation going forward. This was the first such protocol that UKGI had entered into and was implemented due to UKGI's evolving position at the time on the role of a shareholder with respect to material litigation.³⁷
 - b. Since late 2017 / early 2018 and in part due to the surprise outcome of the GLO, UKGI has reflected further and considers that where an asset is dealing with potential or actual material litigation, UKGI should take steps to challenge an asset's Board on the issues and risks related to material litigation. As a result, UKGI has taken steps to introduce specific provisions into all new and revised frameworks documents for assets for which it performs the shareholder role to permit greater visibility on substantial litigation. A provision to this effect was included in the 2020 POL Framework Document.³⁸
 - c. When material litigation arises, UKGI shareholder teams are now expected to consider, for example on issues relating to an asset's legal capability, the commissioning of second opinions in relation to legal advice obtained by the asset and the litigation strategy being employed, including settlement strategy and contingency planning.
 - d. In addition, UKGI continues to reflect on the findings in the GLO that touch on POL's culture and the treatment of key stakeholder groups e.g. when they are raising concerns or allegations of wrongdoing. For example:
 - i. with respect to culture, UKGI is currently reflecting on how to incorporate deeper and improved considerations relating to an asset's culture into its existing internal portfolio review process, including for example, exploring

³⁴ Chairs letter from Alex Chisholm to Tim Parker – Governance expectation of the Chair (26 February 2020) was provided as document index number 15 in support of the BEIS and UKGI response to the Inquiry's Batch Request 002.

³⁵ As described more fully in paragraph 32.8 of the BEIS and UKGI response to the Inquiry's Call for Evidence.

³⁶ Extract from 5 November 2020 POL Quarterly Shareholder Meeting (index number 9): *"CC praised POL for the work in this area and asked if the metrics could be linked back to the Organisational Health Index (OHI) work POL undertook in 2019. CC also raised the issue around communications and making sure POL got this right, especially at the point when it is about to embark on a big change programme."*

³⁷ Prior to 2018, the prevailing view was that HMG in its capacity as shareholder should keep at relative arm's length from and not interfere in the oversight or conduct of an asset's litigation matters. This was particularly so for ALB's operating at a significant degree of autonomy from HMG such as with Public Corporations.

³⁸ See POL Framework Document published 25 March 2020 (provided as document index number 24 in support of the BEIS and UKGI response to the Inquiry's Batch Request 002) at paragraph 13.4 and 14.

- with and challenging its assets to articulate their purpose and values both to the shareholder and in core governance documentation;
- ii. with respect to enhanced shareholder oversight of assets where allegations and/whistleblowing concerns are being raised, UKGI is planning to build its expertise in this area via specific learning and development initiatives to ensure that both its NEDs and Shareholder Teams (including for POL) have the relevant skills and experience to challenge an asset's Board on appropriate actions;
 - iii. UKGI is giving further thought as to how it can enhance the understanding of its Shareholder Teams and NEDs (via learning and development) on the key operational and risk/control framework of the assets within in its portfolio.

Historical Shortfall Scheme (UKGI)

8 Minister Scully recently outlined Government's intention to fund POL to run the Historical Shortfall Scheme due to wider financial constraints.

Did UKGI play a role (advisory or otherwise) to Minister Scully which resulted in this decision?

- 8.1. As stated by Minister Scully on 18 March 2021, the number of applications to the Historical Shortfall Scheme ("HSS", a key POL commitment from the 2019 GLO settlement), was significantly higher than POL had anticipated in May 2020 when the HSS was launched and consequently, the expected costs for delivering the HSS are unaffordable to POL. The POL Chair formally notified the Department of this on 30 October 2020³⁹ and engagement between BEIS and UKGI officials and POL increased from around that time to understand the potential cost implications and to consider funding mechanisms. The cost estimates for the HSS were modelled by POL's legal advisers (Herbert Smith Freehills, "HSF"); UKGI worked closely with HSF and POL to understand, and provide challenge in respect of, HSF's estimates.
- 8.2. The approval process for the decision to fund POL to run the HSS followed the standard process within BEIS. As a project with a total life-cost above £70m, a business case (using HM Treasury's Green Book model) was submitted to the BEIS Project & Investment Committee for approval prior to final BEIS approval by the BEIS Permanent Secretary. Following BEIS approval, the business case was submitted to HM Treasury for final clearance.
- 8.3. In the months leading up to the decision, UKGI's role was as follows (noting that, in each case and as set out in paragraph 32.14 of the BEIS and UKGI response to the Inquiry's Call for Evidence, Ministerial responsibility and decision making lies with BEIS Ministers and accountability to Parliament lies with the BEIS Permanent Secretary (as Principal Accounting Officer)):
 - a. to be responsible for the coordination and drafting of the business case: while the drafting of business cases is an atypical role for the Shareholder Team (and falls outside the scope of the MOU), BEIS and UKGI agreed that, given the familiarity of the Shareholder Team with POL litigation-related matters, the Shareholder Team, working collaboratively with colleagues across the Department (and engaging with POL and HM Treasury officials as appropriate) would lead the drafting in this case;
 - b. to design an appropriate monitoring and governance framework: given the significant estimates of public money to be allocated to the HSS, a key factor in any commitment to fund was the implementation, in consultation with POL and BEIS officials, of a governance framework that allowed UKGI, on behalf of BEIS, to oversee and monitor the HSS with the aim of striking a balance between postmasters being paid fair compensation in a timely manner, whilst protecting taxpayer funds.⁴⁰ Further detail on the governance arrangements is set out at paragraphs 8.4 to 8.7 below; and
 - c. to assist BEIS and POL in agreeing appropriate documentation formalising Government's commitment to fund the HSS.⁴¹

³⁹ HSS Letter from Tim Parker to Minister Scully dated 30 October 2020 (index number 10).

⁴⁰ In drafting the business case and designing the monitoring and governance framework, UKGI consulted officials across Government regarding other Government-supported compensation schemes, to incorporate lessons learned (including in respect of Windrush, Thomas Cook and the Icelandic Water Trawlermen schemes).

⁴¹ 11 March 2021 Funding Commitment Letter from BEIS to the POL Board (index number 11) and 11 March 2021 Comfort Letter for POL Counterparties (index number 12).

What, if any, role does UKGI have in relation to the HSG (administration, oversight or in any other capacity)?

- 8.4. The HSS was set up in March 2020 and was designed by POL and HSF in consultation with the Historical Shortfall Group ("**HSG**") (the POL / GLO claimant working group that was set up following the December 2019 GLO settlement). The HSS was designed so as to be independent of both POL and Government;⁴² as such, neither BEIS nor UKGI took part in its initial set-up or design.⁴³ Following the notification from the POL Chair in October 2020 (that the costs of the HSS would be unaffordable, as noted at paragraph 8.1 above) however, UKGI, BEIS and POL worked to develop a monitoring and governance framework to facilitate delivery of the HSS in a way that provides additional information and oversight for BEIS.
- 8.5. UKGI assumes the day-to-day lead in engaging with POL on the oversight and monitoring of the HSS, including providing appropriate challenge to POL. UKGI does not make any decisions related to the HSS: BEIS, through the BEIS HSS Steering Committee ("**SteerCo**") has responsibility for approving key decisions related to the HSS and is responsible for overall strategic direction (the Shareholder NED sits on the SteerCo as an observer only).⁴⁴ POL, as the owner of the HSS, has responsibility for its design, implementation, administration, management and oversight.
- 8.6. In ensuring effective oversight and monitoring of the HSS on an ongoing basis, UKGI undertakes various activities to engage with POL including, for example:
- a. working with POL and BEIS to develop and maintain effective governance arrangements in respect of the HSS: for example, UKGI, in consultation with BEIS and POL, developed the HSS Operations Agreement⁴⁵, setting out the roles and responsibilities of POL and BEIS in operating the HSS (and provided challenge on key governance documentation, as set out at paragraph 8.7(a) below);
 - b. through a working level group of UKGI and BEIS officials, which meets on a weekly basis, collaborating on HSS matters that require BEIS approval or discussion at the SteerCo, for example, agreeing the Terms of Reference for the working group and the SteerCo;⁴⁶
 - c. through regularised meetings between UKGI, BEIS and POL, including (in addition to ad hoc discussions with POL on specific issues, regular internal meetings and monthly legal costs updates):
 - i. a Monthly Monitoring Meeting with BEIS and POL, led by UKGI, to allow the parties to discuss monitoring information provided by POL (this is provided by HSF on POL's behalf on a weekly basis) and progress on the operation of the HSS;
 - ii. the Quarterly Shareholder Meetings⁴⁷; and
 - iii. Interim Monthly Meetings with senior stakeholders at UKGI and POL, to discuss overall strategic issues and scheme governance;
 - d. ensuring consistent information flow and reporting from POL to UKGI through regular communication with, for example: POL's HSS project management team, who provide

⁴² To achieve independence for the HSS, POL appointed an Independent Advisory Panel ("**Panel**") that is constituted of individuals with the relevant expertise and has its own Terms of Reference.

⁴³ As the cost estimates for claims under the HSS at the time of initial set up fell within the delegated authority of the POL Board (£50m), the POL Board approved the HSS in March 2020 and no approvals from Government were required.

⁴⁴ BEIS responsibility is limited to those decisions that affect the HSS cost, fairness for claimants, value for money being achieved and any major legal risk, as well as funding.

⁴⁵ HSS Operations Agreement (index number 13), to establish a common understanding, between POL and BEIS, of the operation of the HSS.

⁴⁶ Historical Shortfall Scheme: BEIS/UKGI Working Group and Steering Committee Terms of Reference, approved on 27 January 2021 and updated on 2 March 2021 (index number 14), to set out the terms of reference between BEIS and UKGI in relation to the HSS.

⁴⁷ As referred to in paragraph 32.8(i) of the of the BEIS and UKGI response to the Inquiry's Call for Evidence.

progress reports on the case pipeline and operational matters; the HBMU senior team, to allow UKGI to be sighted on key strategic issues and decisions; and the HSS Finance Director, who provides UKGI with financial estimates (and the key assumptions applied in reaching those estimates).

- 8.7. There are a number of ways in which UKGI has and continues to, provide appropriate challenge to POL, including by way of example:
- a. providing scrutiny in respect of the core governance documentation for the HSS, including on the Case Assessment Guidelines and Panel Guidelines⁴⁸,
 - b. providing the secretariat function for the SteerCo, which will allow for UKGI analysis and challenge of any proposals being put forward for approval by the SteerCo;
 - c. ensuring sufficient Board oversight and capability; for example, recognising the significance of the various litigation issues facing POL and the increased pressure on the POL Board, UKGI encouraged the appointment of a non-executive director with a legal background to the POL Board, to chair a POL Board sub-committee to oversee litigation matters; and
 - d. in addition to challenging the assumptions underlying the cost estimate model developed by HSF (as referred to in paragraph 8.1 above), UKGI has mounted challenge to, for example, the HMBU, for the purpose of ensuring that material decisions (i.e. those that impact on the overall costs of the HSS) are subject to appropriate risk assessments and external advice or assurance.

⁴⁸ For example, UKGI provided challenge in respect of the Case Assessment Guidance (a detailed guidance document prepared by HSF, on behalf of POL, that is used in the assessment of applicants' claims to the HSS) and will assess the Panel Guidelines (which set out the Panel's proposed principles and rationale for making award recommendations), before providing advice to the SteerCo.