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**To:** Minister Kevin Hollinrake MP

**From:** UKGI

**SCS:** Lorna Gratton (UKGI) – GRO  
Carl Creswell (DBT) – GRO

**Date:** 17/12/2023

Confidential and privileged – please note this submission contains legally privileged advice and should be handled with appropriate care

**Post Office CFO Exit Options**

**Summary**

This submission sets out the options Post Office is considering to manage the exit of its CFO. GRO

GRO

GRO

The CFO's counsel has written a letter which suggests he may be able to return to work in a reduced role before an agreed exit in June 2024. Post Office believes that his return to work would be damaging to the nascent improvements to its management team and culture, and the CEO wishes to appoint a new permanent CFO. Whilst the Shareholder's locus over Post Office's decision depends on what Post Office wishes to do, ultimately, the company does not want to do something that the Shareholder cannot live with.

**Timing:** Urgent to allow Post Office to complete negotiations with the CFO on a timely basis

**Recommendation:**


Minister notes that:

- Post Office wishes to commence negotiations with the CFO to agree an exit now (Option A below) if possible. If this fails Post Office may need to offer the CFO a reduced role through to June in advance of him leaving (Option B below). An agreed exit is likely to require RemCo giving the CFO 'good leaver status' (for the purpose of paying STIP and LTIP entitlements).
- An agreed exit is likely to incur significantly lower costs than Post Office dismissing the CFO without adequate grounds (and therefore likely having to settle the resulting legal claims). A negotiated exit agreed now will be lower cost than an agreed exit after the end of the financial year due to the relatively weak performance of the bonus schemes to be paid this year.
- Any proposal to remove the CFO from the Board will be subject to SoS approval under the Articles of Association; and any exit payment outside of contractual commitments with good leaver status would also need SoS and HMT approval.

**Background**

- 1) In 2021, Post Office sought to remove the CFO largely due to issues of cultural fit. Ministers approved Post Office agreeing an exit package that included (a) an exit payment (£576,120) reflecting the CFO's contractual entitlement plus additional payments to cover the potential costs of the matter going to court, and (b) granting the CFO 'good leaver' status. Post Office and the CFO were unable to agree a package (due to the terms requested by the CFO) and the CFO threatened to bring a number of legal claims, including for unfair dismissal and age discrimination.

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- 2) In autumn 2021, a wide-ranging complaint was raised by **IRRELEVANT** against the CFO. This led to a warning being issued to the CFO and his performance rating being downgraded by one. The CFO contests that the investigation was inadequate and claims it did not engage with him or his team.
- 3) In March 2023, we updated you on the situation when Post Office was considering terminating the CFO's employment or suspending him pending an investigation into further informal and formal complaints about his behaviour. Since our meeting with you on 30<sup>th</sup> March 2023, Post Office completed these internal investigations and found that complaints against the CFO were not upheld. This means that there are no strong legal basis for dismissing him.
- 4) The CEO started engaging with the CFO again about a negotiated exit, however, no substantial progress was made before the CFO took a period of leave in late April **GRO**  
**GRO**  
**GRO** **UKGI** has raised the need to follow due process but, to date, there has been no proactive management of the CFO's absence and a referral has yet to be made to an occupational health practitioner.
- 5) In October 2023, the CFO's lawyers wrote to Post Office reiterating the age discrimination claim and other issues raised in 2021, raising further complaints about his treatment since then, and claiming that the 2021 investigation into the CFO's behaviour was inadequate. His lawyers state that the "hostile and wholly unsupportive treatment towards our client began to wear significantly upon his health and wellbeing." **GRO**  
**GRO**
- 
- 7) The CFO's lawyers raise the possibility that he returns to work with suitable adjustments to either his CFO role or a different role through to June 2024. This would allow him to work while also preparing for his appearance in the Inquiry. The CFO's lawyers have written to Post Office again in December 2023, asking again about the CFO's return to work in the absence of any settlement agreement being made.
- 8) The Shareholder NEDs have raised concerns over the past two years that the CEO has not been effectively performance managing the CFO. The best resolution to the issues would have been through the normal processes of feedback and performance management. However, investigations into the CFO's behaviour to date have not upheld the complaints which have been formally brought forward and, unfortunately, other colleagues have been unwilling to make formal complaints. As a result, Post Office has not been successful in managing the CFO's performance through the normal processes. The Shareholder NED is working with the Board to address the wider cultural and performance management issues at Post Office which have contributed to this situation, and is happy to discuss this with you further if helpful.

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**Advice**

- 9) Post Office is considering its options in how to respond to the CFO's lawyers, and it will need Shareholder approval if it wants to remove the CFO from the Board or make a severance payment outside of his contractual entitlement. If Post Office agrees a negotiated solution with the CFO and it is outside of his contractual entitlement, we will bring this proposal forward for a decision by the Secretary of State, as Shareholder, and HMT. The company does not want to agree anything with the CFO that will not be approved by the Shareholder when the time comes.

**IRRELEVANT**

[REDACTED]

To reach a negotiated agreement with the CFO, Post Office is likely to have to give him good leaver status. Without good leaver status the CFO would not be entitled to any of his bonus payments. His receipt of these payments would need to be published in Post Office's accounts. The CFO is not automatically entitled to good leaver status which is given at the discretion of RemCo. However, Post Office's legal counsel have advised that [REDACTED]

[REDACTED]

- 12) We (UKGI) are sympathetic to Post Office not wishing to have the CFO return to his role, and agree that it would be likely to destabilise the management team. As unpalatable as it is, we support Post Office's aim of reaching a negotiated exit with the CFO. Option A (as set out below) would be the most cost-effective solution and it would best support Post Office's efforts to strengthen its management team.
- 13) Option B would add further cost in continuing to employ the CFO for a further 6 months and would be disruptive to Post Office's senior management team. Furthermore the performance and value of the bonus schemes paid this financial year are likely to be far lower than those next year. This contributes to the CFO's exit this financial year (Option A) would be less expensive than next financial year (Option B, set out below).
- 14) Were Post Office to dismiss the CFO without legal grounds (Option C) it would face legal claims, including [REDACTED] This approach would be the most expensive approach and [REDACTED]
- 15) David Bickerton's view is that the preferred outcome would be Option B. This is on the basis that the CFO has been **GRO** and his giving evidence will be a stressful event for him. It is therefore desirable for POL to continue supporting the CFO through the time when he gives evidence to the Inquiry. This may be most easily done through Option B. Under Option B it may also be possible for the CFO to return to a role which does not impact the executive, including the interim CFO, and the developing culture at Post Office.
- 16) UKGI's expectation is that the CFO will not agree to Option A without exploring Option B. POL should then follow due process and conduct an occupational health

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assessment to determine the nature of a suitable temporary role for the CFO under Option B. This will also determine the appropriate level of remuneration and exit package available to the CFO under Option B. If he is only able to return to a relatively limited role, this may reduce the financial value of Option B for the CFO.

- 17) Our view is that POL should open the conversation with the CFO by exploring Options A and B, so that the CFO is able to make an informed decision, with the support of legal advice, on which option he would like to accept.
- 18) Details on Post Office's broad options are as follows:

Option A. Negotiated exit now with good leaver status

- 19) Post Office's view is that the best outcome would be for the CFO to agree to leave now while accepting an exit payment within his contractual entitlement. This would mean his not returning to the business and disrupting the improvements in the executive team. It would also allow the CEO to appoint a new permanent CFO who can help to stabilise the business. This approach would also be the most cost-effective solution even if the CFO were given good leaver status.
- 20) While this approach may be attractive to Post Office and represent the most cost-effective solution, the CFO may not accept this offer before the end of his entitlement to half pay in May 2024. At that point Post Office would legally need to go through the due process of conducting an occupational health assessment.
- If he is deemed fit to work then the CFO may not accept an exit on the terms offered and he will be entitled to return to work with reasonable adjustments. This leads to his being in an alternative role as per Option B but without having secured a commitment to his leaving.
  - If the CFO is not deemed fit to work then ultimately he may have to accept retirement on ill health grounds. In such circumstances the CFO would be entitled to good leaver status.
- 21) Any payment to the CFO (in a year during which he has been a board director) will be published in Post Office's annual accounts the following year. His remuneration in lieu of notice would be £315k which is in addition to his STIP and LTIP entitlements which would be paid in the years they fall due. Post Office estimates his incentive plans to be worth a maximum of £305k.
- 22) We believe that the actual pay out for the LTIP 21-24 could be around £75k lower than Post Office have estimated based on performance to date against the metrics. Post Office would aspire to only pay actual outturn value in any settlement reached before year end.

Option B. Return to work in a different role before exiting

- 23) The CFO has a legal right under the Equality Act 2010 to request reasonable adjustments to his role or another role which fits his disability. Post Office can offer him another role at a reduced salary which he may choose to accept. On this proposal the CFO would also continue to have access to Post Office resources and support while he gives evidence to the Inquiry. His evidence session is expected to be complete by June 2024. Should Post Office find themselves in a

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position where they have agreed option A with the CFO, then we would anticipate they would support the CFO in the Inquiry regardless.

- 24) Post Office could create an agreement whereby the CFO takes a less demanding role through to June 2024 and then is obliged to accept an exit payment based on his contractual entitlement at that point. This CFO would very likely look for this exit payment to include good leaver status. Part of the aim of this approach would be to create a more attractive settlement while staying within the CFO's contractual entitlement and aligning with the requirements of managing public money.
- 25) The total cost of this option would be around £830k which is significantly more than Option A. This is largely because it continues to pay the CFO's salary for another 6 months and he continues to accrue more bonus entitlement. This assumes that Post Office are unable to agree a significant reduction in the CFO's salary in his new role. The cost of this option would be spread between the CFO's:
- Ongoing pay and bonuses this year financial year which will be reported in the accounts expected to be published in December 2024;
  - Pay and bonuses next financial year which will not be published in the accounts because he would no longer be a board member; and
  - Exit payment next financial year which would be covered in the accounts but anonymously.
- 26) Post Office has two significant issues with this option:
- Post Office believes that the CFO's behaviour is not in line with the cultural changes required at Post Office. His return would undermine the progress being made in strengthening the Executive, including the Interim CFO, Kathryn Sherratt, who has been working successfully with both internal and external stakeholders. For example, the CEO expects that Kathryn would leave the business if the CFO returned to Post Office.
  - The CFO was a Board member at the time when Post Office attempted to recuse Justice Fraser prior to the GLO judgement. Given that Post Office wishes to part company with the CFO regardless, they have a preference for doing so before the relevant phase of the Inquiry, so as not incur more criticism for not having done so already. We have, on the other hand, reminded Post Office of its duty of care towards the CFO given GRO and the challenges he will face at the Inquiry.

Option C. Dismissal

- If Ministers are not content for Post Office to attempt to negotiate a settlement with the CFO, then it would be possible for the company to give the CFO notice and give him his contractual exit payment. Post Office's legal advice is, [REDACTED]

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[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

29) [REDACTED]

**Comms Handling**

- 30) As noted above, any legal claim from the CFO could give rise to comms risks. On the other hand, given the current context of intense scrutiny of Post Office leadership (which has included criticism for previous remuneration arrangements), a large pay-out would likely generate significant criticism in the media.
- 31) We will prepare strong defensive lines when a final decision is needed.

Annexes:

- A – Draft Letter from Henry Staunton to Secretary of State [March 2023]
- B – Legal Advice to Post Office from Pinsents on options

**Contributors**

- DBT Legal have been consulted on this advice and are content with its contents.
- We will consult with DBT Finance and Comms when a final proposal from Post Office is made.





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[REDACTED]

Yours sincerely

Chairman

Post Office Limited

**Appendix attached**

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Appendix 1

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

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ANNEX B: Legal Advice to POL from Pinsents on options

**IRRELEVANT**

Current Position/Background

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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	Option	IRRELEVANT	Total	Will it achieve settlement/consequences		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

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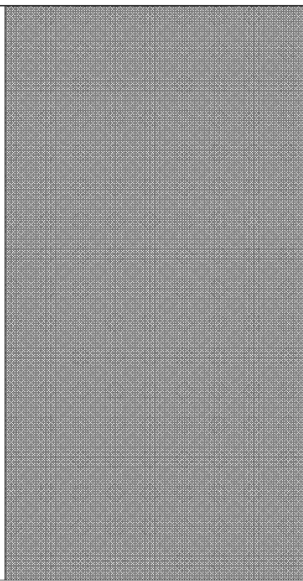
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]





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	<p>[REDACTED]</p>					
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