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## **HISTORICAL SHORTFALL SCHEME**

### **POL / BEIS HSS OPERATIONS AGREEMENT**

#### **Purpose**

1. The purpose of this document is to establish a common understanding, between Post Office Limited (**POL**) and the Department for Business, Energy & Industrial Strategy (**BEIS**), of the operation of the Historical Shortfall Scheme (**HSS**, or the **Scheme**).

#### **Roles of POL and BEIS**

2. The creation of the HSS was agreed as part of the settlement of the Post Office Group Litigation (referred to as the “GLO”) in December 2019. Accordingly, both POL and BEIS and their respective agents will work to ensure that HSS is delivered successfully. In addition to resolving the claims that have been submitted to HSS, successful delivery of HSS will be an important milestone in resolving the issues raised by the Horizon IT system and restoring POL’s reputation as a business of national importance.
3. Throughout the duration of the HSS:
  - POL has responsibility for the design, implementation, administration, management and oversight and reporting of the HSS;
  - BEIS has responsibility for agreeing key decisions related to the Scheme, limited to those that affect its cost, fairness for claimants, the Value for Money being achieved and any major legal risk, as well as the funding; and
  - POL and BEIS are both responsible for progressing claims through the HSS expeditiously and avoiding undue delay.
4. Approval points and responsibilities have been set out in the flowchart in **Annex A** to reflect how the above roles interact with the decisions to be made.

#### **Key Decision Points**

5. POL and BEIS have agreed that BEIS has a number of approval rights in relation to the operation of the HSS. These are:

##### *5.1 Case Assessment Guidance*

The Case Assessment Guidance is a detailed guidance document prepared by Herbert Smith Freehills (**HSF**), solicitors instructed on behalf of POL, which sets out in detail the key applicable legal principles outlined in the HSS Terms of Reference and Consequential Loss Principles and Guidance. It will be used by HSS case assessors (**Case Assessors**) in their assessment of applicants’ claims to the HSS and in the recommendations they put forward for consideration by the HSS’s Independent Advisory Panel (the **Panel**).

BEIS will have the right to approve the Case Assessment Guidance prior to it being issued to the Case Assessors and any substantive variations after any such approval has been given.



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After any such approval has been given, it is proposed that the Case Assessment Guidance is provided to the Panel in advance of claims being put to the Panel for assessment and recommendation and the Panel is given an opportunity to comment on the legal analysis in the document. BEIS will have the right to provide input to POL's response to the Panel's comments.

## *5.2 Guidelines for determination of claims by the Panel*

POL will instruct HSF to put cohorts of similar claims (i.e. grouped claims for the same heads of loss) (the **Cohort** or **Cohorts**) to the Panel with the objective of developing guidelines for the assessment of similar claims going forward (the **Guidelines**). The claims constituting any single Cohort (anticipated to be in the order of 15 to 25) will enable the Panel to develop Guidelines which can then be applied to as many similar claims within the HSS (to those in the Cohort) as is possible.

POL will instruct HSF to work with the Panel to identify the issues for which the Panel wishes to develop Guidelines. POL will list the issues raised by the Cohort which is proposed to be put to the Panel. BEIS will have approval rights over the list of issues before the Cohort is provided to the Panel. If the Panel requests further or alternative cases to be included in the Cohort, these shall also be subject to approval rights for BEIS before they are shared with the Panel.

Subject to the views of Panel, it is proposed that the Guidelines could cover issues such as the Panel's fairness discretion and quantum ranges for differing types of claimed loss.

The purpose of the proposed Guidelines is to assist in ensuring a consistent approach is taken from the outset for all like claims, to streamline the process of investigating claims and to give POL and BEIS oversight on the approaches the Panel may take on these matters, and their anticipated financial implications.

BEIS will not participate in Panel discussions to develop the Guidelines, though it will have the right to review the issues to be considered and approve any subsequent Guidelines derived by the Panel. Although it is recognised that the Guidelines are not inflexible and all claims will need to be assessed on their own facts, POL retains final approval over all offers made by POL to applicants, which right of approval extends to BEIS through this Operations Agreement.

## *5.3 Determination of Precedent Setting Claims*

Some applicants' claims are likely to set a precedent for how similar applicants' claims should be treated by the Case Assessors and the Panel, and consequently will have implications for the overall cost of the HSS. It is envisaged that all claims which are initially put to the Panel for recommendation and assessment have the potential to set such precedents.

POL will notify BEIS as soon as practicable of all claims within each new Cohort (including by providing copies of the relevant application documents and case assessments) in advance of their being put to Panel for assessment and recommendation until such time as BEIS considers that a more targeted and streamlined approach is appropriate.



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POL will provide updates to BEIS reporting on the recommendations made by the Panel with respect to any precedent cases and the likely cost implications to the overall Scheme.

BEIS will have the right to approve any recommendation made by a Case Assessor to the Panel that is considered to set a precedent, including in respect to each Head of Loss, part quantified and unquantified claims. BEIS will retain the right to approve any offer made by POL to an applicant following a recommendation by the Panel.

Since it is expected that a number of applicants' claims may contribute to the setting of any given precedent, BEIS's approval rights will extend to all such applicants' claims.

A precedent setting case is considered to be any claim where a recommendation made by the Case Assessors or the Panel establishes a position regarding any given aspect of that claim or a position regarding the size of any offer made to an applicant that could be considered repercussive or determinative for one or some other applicants' claims.

As all initial cases in each Cohort have the potential to be precedent-setting, POL will work with BEIS to ensure that BEIS has visibility over all such cases and to provide BEIS with sufficient information, including as to the cost implications to the overall scheme of the precedent being set, with which to make an informed decision on the relevant cases or principles.

Once a critical mass of claims has been determined, POL will work with BEIS to agree which future claims should be treated as precedent setting (for example, a precedent setting case may be one where the recommendation, by either the Case Assessor or the Panel, is outside of a financial tolerance range to be agreed with BEIS). Subject to (1) agreement between POL and BEIS about the financial tolerance range, and (2) HSF's agreement that it can reasonably identify offers which fall inside and outside of that range, POL will procure HSF to identify any such case which falls outside of the financial tolerance range to BEIS, and BEIS will have the right to approve any such precedent-setting offer prior to it being made.

POL will work closely with BEIS during points [ ] and [ ] of the flow chart to consider and review precedent setting cases, and this will include such meetings as are required.

#### *5.4 Escalation and Mediation*

Since applicants to the HSS are not compelled to accept offers made to them by POL, POL has included a good faith meeting, an escalation meeting and a mediation stage into the design of the Scheme which an applicant can elect to pursue. POL will not make any increased offers to applicants at a good faith meeting, as the purpose of these meetings is to allow POL to explain to applicants the basis on which an offer has been made to them. BEIS does not have approval rights over these meetings. BEIS will however have the right to approve the parameters determining POL's negotiation position in relation to any escalation meeting or mediation meeting.

#### **Value for Money Analysis**



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6. POL will provide BEIS with a Value for Money (**VfM**) analysis, updated from time to time, that demonstrates the merits of proceeding with the HSS instead of proceeding with any alternative options. Any anticipated increase in the expected overall cost of the HSS will require HMG approval and an updated VfM analysis.
7. It is understood that POL has provided BEIS with an initial estimate of £160m - £320m for settlement costs pursuant to the HSS. POL should provide BEIS as accurate a cost estimate as possible, with updated information as the Scheme progresses, to enable overall cost of the HSS to be monitored and assessed against that estimate regularly. Updated cost estimates will provide a detailed analysis of movements in the cost estimate to include changes in claim estimates, claims settlement experience, movements in claims from unquantified or partially quantified to quantified etc.

### **Monitoring Arrangements**

8. POL and BEIS have agreed to the following monitoring arrangements:

#### *8.1 Monthly Monitoring Meeting*

POL will meet with BEIS's working level team monthly, or more frequently if required, to discuss progress made during the operation of the HSS, including provision of updated monitoring information to BEIS within an agreed reporting template. This will include but is not limited to:

- MI covering all applications to the Scheme including a split by where they sit within the various stages of the HSS;
- an up to date cashflow forecast;
- an up to date cost estimate for the HSS (including explanatory notes);
- any major changes to the risks / issues assessment reported at the quarterly Senior Responsible Officer meeting; and
- Information to monitor POL and BEIS's responsibilities under the Public Sector Equality Duty (PSED)

POL and BEIS will agree an initial cost estimate and a template for monitoring movements in the cost estimate prior to any settlement offers being made to claimants other than in relation to *de minimis* claims. This will include target ranges for the number of applications processed and together with the initial cost estimate will be used as a baseline for monitoring going forward. This will be updated from time to time.

It is recognised that that monitoring information may change from time to time as the Scheme develops and/or other priorities arise over the Scheme's lifecycle.

#### *8.2 Quarterly Senior Responsible Officer Meeting*

POL will meet with BEIS's senior HSS team on a quarterly basis, including the BEIS Senior Responsible Officer, to provide an update on Scheme progress and outlook for expected cashflows and costs. The information reported at this meeting will be the same as the information provided at the most recent Monthly Monitoring Meeting but also include an assessment of risks and issues affecting the Scheme. This meeting will be a stocktake for BEIS and will provide the opportunity for BEIS to pause the HSS if VfM can no longer be established or if there are serious operational issues with the HSS until such time that these issues are resolved.





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9. Should BEIS take the decision to pause the scheme as above, BEIS and POL will agree an action plan to resolve the issues identified with the aim of restarting progress on the scheme (or an alternative scheme to replace the Scheme to resolve legitimate claims under the Scheme) as soon as BEIS and POL are confident that the issues have been addressed. Issues should be escalated via the appropriate channels within BEIS and POL when required
10. BEIS reserves the right to undertake an independent audit from time to time of settlement offers made through the Scheme to ensure operating parameters are being adhered to.

#### **Cost Sharing Arrangements**

11. The cost sharing arrangements regarding the funding of the costs to deliver the HSS will be set out in the relevant Funding Commitment Letter.

#### **Review Points**

12. The operation of the Key Decision Points and Monitoring Arrangements will be reviewed before the end of March 2021, June 2021, September 2021 and December 2021 and thereafter as required by POL or by BEIS.
13. Through these Review Points BEIS may request that the HSS be paused should material risks / issues be identified and appropriate remedial action be taken in a similar manner as noted in 8.2 and 9.
14. BEIS reserves the right, acting in good faith and with reasonable justification to withdraw its support for the Scheme at any point. This includes, but is not limited to, if BEIS considers the overall Scheme cost has or could unreasonably increase above the estimated ranges (as updated from time to time), if VfM can no longer be established or if there are serious operational issues with the HSS. Should this be the case, BEIS and POL will work together in good faith and expeditiously to find alternative means to resolve legitimate claims under the HSS. The right of BEIS to terminate the support for the Scheme is without prejudice to the funding commitment of BEIS contained in the funding commitment letter dated [ ] 2021.

#### **Other**

15. It is recognised between BEIS and POL that the HSS Operations Agreement is considered a 'live' document that will be updated from time to time as needed.
16. Any amendments must be approved by both POL and BEIS respectively.

Version [X] as at [X February 2021]

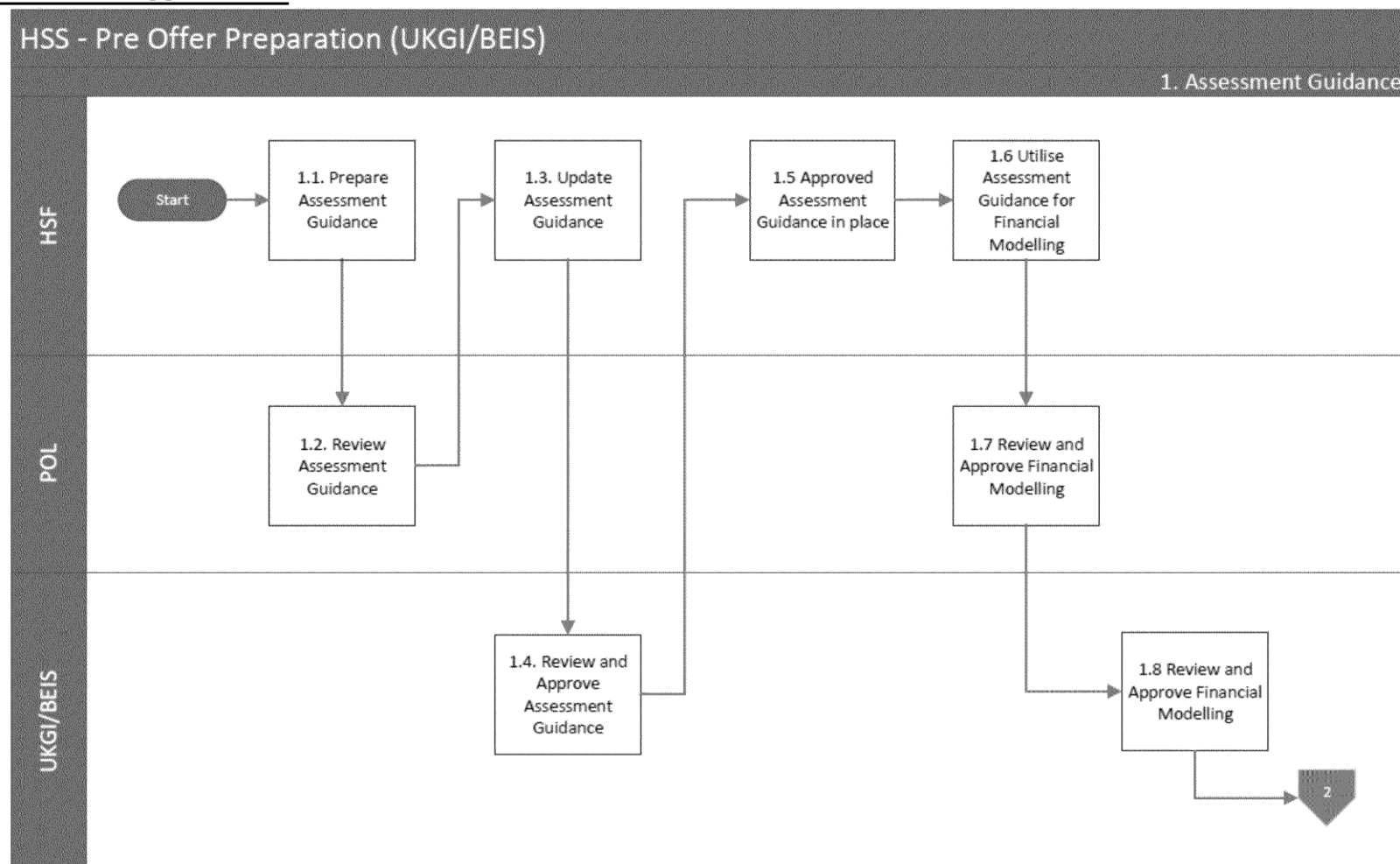


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**18. ANNEX A: Flowchart of HSS Process**



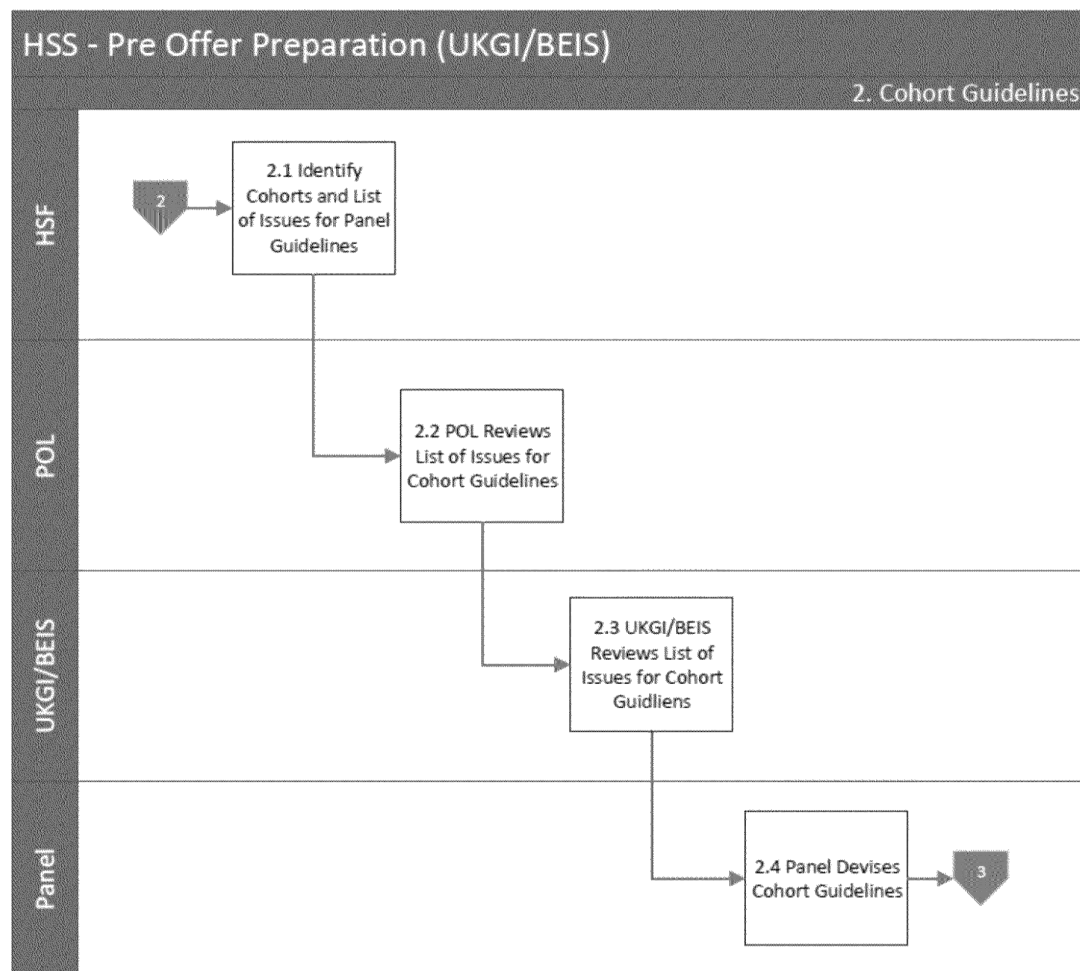


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**19. ANNEX A ctd: Flowchart of HSS Process**



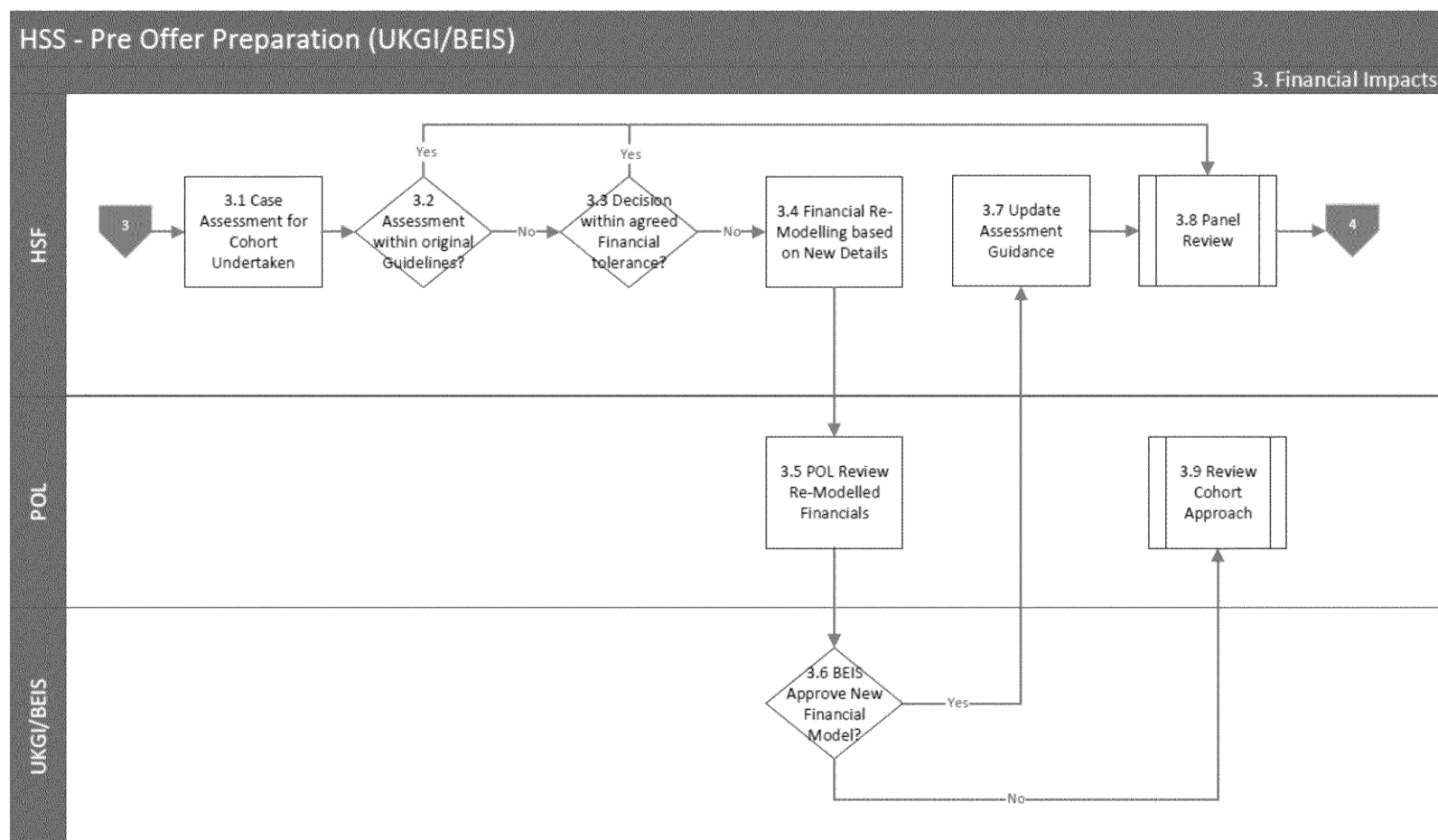


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**20. ANNEX A ctd: Flowchart of HSS Process**



**21. ANNEX A ctd: Flowchart of HSS Process**





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# HSS - Pre Offer Preparation (UKGI/BEIS)

## 4. Panel Review

