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Department for
Business, Energy
& Industrial Strategy

Date: X March 2021

Director General: Charles Donald

Lead Official: Joshua Scott (UKGI)

Lead Official Telephone: [REDACTED] GRO

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

Post Office Ltd. Historical Shortfall Scheme – Response to HMT Approval and Payment of *De Minimis* Claims

Summary

- HMT have approved the business case for the Post Office Ltd. (POL) Historical Shortfall Scheme (the "Scheme"), subject to a number of manageable conditions, and is content for BEIS to provide a guarantee to POL of funding up to £285m to support the Scheme.
- One of the conditions is for the BEIS Accounting Officer to provide certain assurances on the controls in place around value for money, fraudulent and invalid claims to HMT. A draft of the letter in response to this can be seen at **Annex A** for your approval.
- POL are keen to make the first settlement offers under the Scheme now that HMT have provided assurances about the funds. The first offers concern a category of claims termed '*de minimis*', i.e. under £8,000. The despatch of offers in respect of the quantified claims within this category and the approach to the unquantified claims have been approved by the BEIS Scheme Steering Committee ("SteerCo"). Given that these are the first settlement offers to flow from the Scheme officials are seeking your approval now that funding has been approved by HMT.

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Commented [CA-U1]: Flexible over what is included here but we should give a flavour of what HMT is asking for in the summary

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Commented [CA-U2]: They haven't actually provided the funds, just assured BEIS it will be forthcoming

Timing

- To clear **by 5 March**. POL are keen to issue settlement offers w/c 8 March (ahead of a preliminary hearing for a Judicial Review application regarding the Scheme).

Recommendations

- That you **approve** the draft AO assurance letter for HMT regarding the Scheme;
- That you **approve** the issuance of the first batch of quantified *de minimis* settlement offers (306 claims for £1.3m).
- That you **note** the approach for the remaining unquantified *de minimis* claims and **delegate** the approval of these to SteerCo (177 claims for c. £824k823k).

Advice

Background

- On 26 February the Chief Secretary to the Treasury (CST) provided his approval for BEIS to provide a guarantee to POL of funding up to a total of £285m if needed,

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subject to a set of conditions (**Annex B**) which officials believe are manageable. on the condition that further funding requests will be subject to review by HMT officials and CST approval. The approval stated that HMT expects POL and BEIS to fund Scheme claims from other budgets and underspends before any reserve claim is considered, with the level of any claim to be agreed at Supplementary Estimates. It also came with a number of other conditions (**Annex B**) which officials believe are manageable. Most have been addressed through bringing HMT formally onto the SteerCo and the working group that supports it.

8.

9. On 22 February HMT disclosed **AME cover** via Supplementary Estimates **should** BEIS **be required** 's to make a £285m provision to cover this funding however it was not specified that this was for POL or the Scheme.

10. In November Post Office wrote to BEIS to request consent to start making a number of payments for **shortfall claims only** under a *de minimis* threshold of £8k (excluding interest) i.e. to pay out eligible claims under this threshold without further investigation as it would be a disproportionate effort and cost to investigate. The approach has the approval of the POL Board and the Scheme's Independent Advisory Panel. At the time, **BEIS** approval was withheld as there were a number of outstanding issues, particularly regarding the setting of certain precedents, the treatment of partially quantified claims and the lack of approved funding **from HMG**.

11. In the *de minimis* cohort there are 306 quantified claims totalling £1.3m (incl. £450k compound interest) that are 'Panel-ready'. There are a further 177 likely *de minimis* claims where no total claim figure is given which POL estimate will total **£824k-823k** (incl. interest). The funding for these claims would come from POL's budget. A full breakdown can be seen at **Annex C**.

HMT Approval and AO Letter

12. HMT's approval for the HSS comes with conditions (**Annex B**), including that further funding requests will be subject to review by HMT officials and CST approval. The approval stated that HMT expects POL and BEIS to fund Scheme claims from other budgets and underspends before any reserve claim is considered, with the level of any claim to be agreed at Supplementary Estimates. It also came with a number of other conditions Most have been addressed through bringing HMT formally onto the SteerCo and the working group that supports it. The financial implications of the remaining conditions, particularly on budget implications for 2022/23, can be seen in para [x-y].

12. HMT's approval for the business case is welcome, however it came with a number of conditions (**Annex B**). Most have been addressed through bringing HMT formally onto the SteerCo and the working group that supports it.

13. One of the conditions of HMT's approval is for you to provide certain assurances to HMT on the controls in place around value for money, fraudulent and invalid claims to HMT. A draft of the letter in response to this can be seen at **Annex A**. It is drafted in the context of the activities officials have undertaken to date and controls we have put in place to assist POL in ensuring the Scheme delivers its objectives – to pay postmasters with eligible claims fair compensation whilst not spending more

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Commented [CA-U3]: BEIS isn't actually making the provision from this, it just gives them cover to. Daniel to check

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Commented [CA-U4]: Feels like this and para 11 can be scaled back

Commented [CA-U5]: We say in para 11 that interest is included. If November's request is relevant, can we clarify why we're now paying interest. It confused me so may confuse others

Commented [WB(BSR&PD6)]: Would recommend keeping these paras in the relevant section below. I became confused by Para 10 as it suddenly changed subject from the ones above.

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Commented [CA-U7]: Comment as per summary

Commented [CA-U8]: Can we try not to say ensure? This will never be ensured – we are more minimising risks. Sorry, this word makes me twitchy – think of another

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taxpayer money than we need to. The letter recognises that a number of areas (e.g. VfM) need to be monitored throughout. **Perm Sec – are you content with the AO letter at Annex A and for it to be issued to HMT?**

~~14. The financial implications of the remaining conditions, particularly on budget implications for 2022/23, can be seen in para [x-y].~~

Payment of Quantified *De Minimis* Claims

~~15.14.~~ Officials have undertaken a significant amount of work to address the concerns we raised in December. This has included responding to feedback from Nigel Boardman and SteerCo.

~~16.15.~~ Officials have sampled 65 of these claims (21%) and believe the approach being taken by POL appears straightforward (e.g., in a claim expressed as “approximately £x”, £x is taken as the amount claimed, or a total is constructed from figures given) and justifiable. In some instances where a range has been provided POL has treated the claimed amount to be the top end of the range – officials have received written confirmation that this approach will not set a precedent for claims outside the *de minimis* cohort (which will be investigated by HSF in the normal way).

Commented [CA-U9]: Is this outstanding? If so, flag it until it isn't

~~17.16.~~ Officials are now comfortable that the offers to settle the fully quantified *de minimis* shortfall claims on the basis of an application of 3.45% compound interest will set a precedent for all shortfall claims, as will Post Office's offer to pay a fixed contribution to a claimant's legal fees. SteerCo's concern that the approach to interest should be fair, considering the significant drop in rates following the 2008/9 Financial Crisis, prompted analysis which showed that the 3.45% flat rate was more generous to both cohorts (pre and post 2009) than 1% above prevailing rates, given the cumulative effect of the very low interest rates post 2009. Moreover, in our view, as the application of a 3.45% rate has been published, a change now to a percentage over prevailing rates could attract challenge and public criticism.

~~18.17.~~ SteerCo has approved the issuance of offers in settlement of the fully quantified claims and, given that these will be the first payments to be issued and the high-profile nature of the scheme, we are now seeking your approval. Should BEIS approval be given, these claims will be put to the Independent Panel. This would enable Post Office to make offers to settle 306 claims (12% of the c. 2,450 total claims received). **Perm Sec – do you approve the issuance of the first batch of quantified *de minimis* settlement offers?**

Approach to Unquantified *De Minimis* Claims

~~19.18.~~ There is a cohort of 177 likely *de minimis* claims where no total claim figure is given which POL estimate will total approx. £8234k (incl. interest). POL will contact these claimants to attempt to get to quantified numbers so the claim can be put to the Panel as above. Officials will also sample these claims.

~~20.19.~~ Those that POL cannot quantify will be taken out of the *de minimis* cohort and, if eligible, will be submitted to the Panel later. Again, we will review a sample of these claims before they are put to the Panel. SteerCo has agreed this approach.



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24.20. We do not envisage the need to come to you for every batch of claims. With that in mind, **officials ask that you note the approach for the unquantified *de minimis* claims and, if content, delegate the approval of these to SteerCo.**

Financial Implications

22.21. [Daniel to insert]

Communications

23.22. Officials have prepared an Oral Ministerial Statement which notes that POL will make the first offers to applicants shortly. Officials have also prepared appropriate lines to respond to any media enquiries or Parliamentary Questions.

Contributors

24.23. This advice does not contain Parliamentary Handling considerations.

25.24. This advice has Communications considerations, as advised by **Jess McKay**.

26.25. This advice has Financial considerations, as advised by **Daniel Heath**.



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Annex A – Draft AO Assurance Letter for HMT

Dear Steve,

I write to you as the Principle Accounting Officer (PAO) for Post Office Ltd. (POL) in response to the approval you have provided for BEIS to provide a guarantee to POL of funding for its Historical Shortfall Scheme (“the Scheme”) up to a total of £285m if needed, on the condition that further funding requests will be subject to review by HMT officials and your approval.

Firstly, I would like to thank you and your officials for the approval of this funding. The Scheme was a key commitment made by POL in the December 2019 Group Litigation settlement for postmasters outside of that claimant group to have their shortfalls in Horizon investigated and recompensed if appropriate. The Scheme received an unexpectedly high number of applications and is unaffordable for POL. Government providing this funding will not only ensure the successful delivery of the Scheme, but also protect the post office network as we know it today. This is a critical intervention that benefits current and former postmasters and the millions of customers that rely on their local post office branch.

Commented [CA-U10]: Increase the likelihood or something like that

In giving your approval you have asked me to provide assurances to HMT that I am comfortable that sufficient controls are in place to ensure value for money, including in relation to fraudulent and invalid claims. You have also asked for further assurance at key stages on key parameters of the scheme – for example in the treatment of precedent-setting cases and ensuring that precedents and guidelines are being complied with.

Commented [CA-U11]: Do a Ctrl+F on ensure...

I am confident that BEIS and UKGI officials have put in place a sufficient monitoring and controls regime to ensure that cost and claim progress are tracked appropriately. Officials were not involved in the detailed design of the Scheme that launched in May 2020, however a significant amount of work has been undertaken and agreed with POL to ensure that claims are assessed thoroughly and fairly, whilst protecting the independence of the Scheme’s Independent Advisory Panel (“the Panel”) – this is fundamental to ensure the credibility of the Scheme.

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However, it is worth putting the applicants to the Scheme and their claims into context. The claims stretch back over 20 years, some to 1999 when Horizon was first introduced, and the documented evidence that would typically be required to prove such claims in a court will not be available in many cases. The hardship that postmasters have gone through as a result of the recovery of these shortfalls, as you are aware from the Group Litigation, is well documented. POL has no desire to see postmasters put through further court proceedings and this was the premise for the creation of the Scheme. Claims will be assessed for eligibility against set criteria¹ and POL’s external advisors will assess each claim against legal principles before they are put to the Panel who will consider the claim against both that assessment and in terms of what it believes would be fair in the circumstances.

¹ https://www.onepostoffice.co.uk/media/47798/historicalshortfallscheme_eligibilitycriteria_october-2020.pdf



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What my officials have put in place aims not to disrupt the above process, but rather ensure BEIS and UKGI are involved appropriately at each step. This includes having review and approval rights over the guidance used by case assessors, reviewing precedent setting test cases and working with POL in developing and approving the guidelines used by the Panel. [My officials had a productive meeting with the Panel on 4 March and intend to have a further discussion once it has developed its thinking regarding the guidelines and test cases].

This process is managed by a working group within BEIS that supports a Steering Committee ("the SteerCo"). The SteerCo has been making steady progress and I am pleased to welcome HMT as a formal member of both the SteerCo and working group. Through the SteerCo, BEIS and HMT will have sufficient oversight of cost and Scheme progress. [Attached for your information is the SteerCo Terms of Reference].

Commented [SJ-U12]: To update with HMT attendance

Whilst POL has provided BEIS with an initial estimate of £160m - £320m for settlement costs pursuant to the Scheme, there are inherently a number of uncertainties that will only be worked through once cases progress through the Scheme e.g. how the Panel treats certain heads of loss. These decisions will impact on the final cost of delivering the Scheme, which is not known today, but more accurate estimates will be determined over the coming months as the Panel undertakes its work.

The funding BEIS has sought will cover the upper estimate of the possible cost, but we will not spend more of taxpayer's money than is necessary to ensure the Scheme meets its objectives. It is my expectation that the total spend on the Scheme will be lower than this. POL has provided as accurate a cost estimate as possible based on the information it currently has available and the SteerCo will use this, with updated information as the Scheme progresses, to monitor, among other things, value for money for the taxpayer.

BEIS reserves the right 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 Scheme.

Commented [CA-U13]: Add in the point about the quarterly formal reviews to look at big picture points like this?

These governance arrangements have been assessed both within my department through the BEIS Projects & Investment Committee and in HMT through a Treasury Approval Point, both of which support the arrangements in place.

I hope you find this letter useful.

Yours sincerely,



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Annex B – HMT Conditions for Scheme Approval

1. POL will use any proceeds from the sale of its Telecoms business to fund HSS claims, before HMT funding is used. POL and BEIS must also consider and indicate whether there are any additional asset sales that could reasonably contribute to HSS funding.
2. The BEIS AO must provide assurance to HMT that they are comfortable that sufficient controls are in place to ensure value for money, including in relation to fraudulent and invalid claims. They must provide further assurance at key stages on key parameters of the scheme – for example in the treatment of precedent-setting cases, and ensuring that precedents and guidelines are being complied with.
3. The source of any funding in 2022/23 will be determined at the next Spending Review.
4. HMT must approve the case assessor guidance, the Independent Panel 'guiding principles', and the precedent-setting cases.
5. HMT representation on the Senior HMG Steering Committee and the HSS Working Group.
6. BEIS will report monthly to HMT on the progress of the scheme.
7. BEIS must inform HMT as and when funding for HSS claims is transferred to POL.
8. All press and announcement materials related to the HSS must be cleared with HMT.

Commented [CA-U14]: Best to include the earlier lines in Ed's email too.



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Annex C – Breakdown of *De Minimis* Claims

Historical Matters Unit

HSS

De Minimis

Fully Quantified -Panel Ready					
	No.	Claim Total	Interest	Legal	Total
<=8000	306	737,547	448,267	122,400	1,308,214
	306	737,547	448,267	122,400	1,308,214

Other - Not Panel Ready					
De Minimis	No.	Claim Total	Interest	Legal	Total
<=8000	177	468,036	284,463	70,800	823,299
	177	468,036	284,463	70,800	823,299

Total					
De Minimis	No.	Claim Total	Interest	Legal	Total
<=8000	483	1,205,583	732,730	193,200	2,131,513
	483	1,205,583	732,730	193,200	2,131,513