

IN THE MATTER OF THE INQUIRIES ACT 2005
AND IN THE MATTER OF THE INQUIRY RULES 2006

THE POST OFFICE HORIZON IT INQUIRY

**WRITTEN OPENING SUBMISSIONS
ON BEHALF OF
THE DEPARTMENT FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY**

Introduction

1. This is the written opening statement of the Department for Business, Energy and Industrial Strategy ("the Department" or "BEIS") in relation to Phases 2 to 7 of the Post Office Horizon IT Inquiry. As this is the Department's first and only opportunity to make an opening statement to the Inquiry, it wishes at the outset to record its profound anger and dismay at the appalling events which led it to establish this Inquiry. As the Department has previously stated, the Horizon scandal should never have happened and, indeed, should never have been possible. The impact continues to this day and can never be put right: it has devastated many good people's lives, damaged communities and undermined a national institution. It is all the worse because the Post Office is Government-owned and exists to provide a public service. Insofar as the Department contributed to these events, it apologises unreservedly.
2. The Government set up this Inquiry in order *independently* to establish the facts, to identify fault, and to make recommendations. As the Department has stated

publicly on several occasions, including when establishing this Inquiry, it is essential that the necessary lessons are learned so that nothing like the Horizon scandal can ever happen again. The Department – and the Government as a whole – recognises that it too must be held to account. If it was at fault in any way, it will not shy away from admitting it. It is determined to learn the necessary lessons and will continue to make sure that where change is needed it is implemented.

3. The Department remains dedicated to supporting the Inquiry in its work. The Department, and Departmental witnesses, welcome the opportunity to provide any and all assistance the Inquiry may require in fulfilling its terms of reference. And further, the Department wishes to emphasise its firm expectation that all institutional Core Participants and individual witnesses should approach the Inquiry with the same commitment to openness, self-reflection and co-operation.
4. As the Department has previously explained, alongside providing all possible assistance to the Inquiry its objective throughout this Inquiry is to listen and to learn with a view to making whatever improvements are necessary. It listened carefully to the powerful evidence provided by affected postmasters and others during Phase 1 of the Inquiry, which made strikingly clear the devastating impact of the events to be considered by the Inquiry. And in the same way, the Department will consider with great interest and care the evidence to emerge in each of the subsequent phases of the Inquiry.

5. At the time of preparing this Opening Statement, the Inquiry's process of disclosing material to Core Participants, including the Department, continues at pace but remains in its relatively early stages. The Department does not wish to pre-empt or second-guess what the evidence may show, and considers it important that it should avoid rushing to any conclusions at this stage. Indeed, to do so would be directly inconsistent with its aims and objectives in establishing this independent Inquiry. For these reasons, the Department wishes to hear and consider all the evidence as it emerges in the forthcoming hearings before making detailed observations on any topic.
6. This Opening Statement therefore seeks to achieve four relatively limited aims, in the hope that this will be of some assistance in setting the scene and helping the Inquiry, Core Participants and the public engage with the evidence as it unfolds. These aims are:
 - (i) To briefly outline the disclosure, witness evidence and documentation provided by the Department to date.
 - (ii) To identify what the Department considers are likely to be the key themes, issues or questions for the Inquiry upon which the Department itself is likely to be able to provide direct assistance.
 - (iii) To provide an update on the Department's continuing work to ensure that affected postmasters are fully and fairly compensated.

- (iv) To provide a brief overview of the lessons already learned and changes already made by the Department as a result of the Horizon scandal.

The Department's disclosure and evidence to date

- 7. Consistently with its open and co-operative approach to the Inquiry as a whole, the Department has *to date* assisted and supported the Inquiry by:
 - a. Providing, by way of disclosure to the Inquiry, many hundreds of documents covering a period of almost a quarter of a century;
 - b. Providing witness statements from four witnesses, including three former Government Ministers, in relation to Phase 2 of the Inquiry.
- 8. It looks forward to providing more disclosure, witness evidence and documents in due course, upon the Inquiry's further requests as it progresses its work through each of the phases of the Inquiry.
- 9. In relation to Phase 2 (which the Department notes concerns the procurement, design, pilot and roll out of and modifications to the Horizon system), it has assisted in providing statements and supporting documents from the following witnesses:
 - a. The Rt. Hon. Sir Ian McCartney

Sir Ian was Minister of State in the Department of Trade and Industry ("DTI", a predecessor department to BEIS) from May 1997 to July 1999. During this time his Ministerial portfolio included (amongst other things) responsibility for entities connected with the Post Office and he was involved at a Ministerial level in resolving issues connected with the Horizon project prior to its adoption. From July 1999 to June 2001, he was Minister of State for the Cabinet Office, during which time he led a review of major Government IT projects which resulted in the report "*Successful IT: Modernising Government in Action*" ("The McCartney Report"), published in the year 2000. After 2001, Sir Ian held a number of other Ministerial appointments. In his evidence, Sir Ian emphasises the importance of a transition to a modern IT system within the Post Office network, describes the serious issues that he encountered with the Horizon project as a Minister, and highlights the lack of IT and IT procurement expertise in relevant positions within the Civil Service at the time, a matter he sought to address in his review. He states that he was not made aware of any irresolvable problems with the Horizon system during his time as Minister.

b. The Rt. Hon. Stephen Byers

Stephen Byers was Chief Secretary to HM Treasury between July and December 1998, in which role he had oversight of a Treasury Private Finance Initiative taskforce which, amongst other projects, reviewed the Horizon project. Between December 1998 and June 2001, he was

Secretary of State for Trade and Industry, during which time he had overall ministerial responsibility for the Post Office (which was, at the time, a statutory corporation owned by government) and its network. Mr Byers gives evidence as to serious difficulties with the Horizon project, but states that computerisation was necessary for the continuing survival of the Post Office network. His evidence records that the Government received advice (from an expert panel chaired by Sir Adrian Montague) that, as at the end of July 1998, Horizon was technically viable, with basic infrastructure that was very robust for the future, and that ICL was managing risks around scalability and robustness well. His evidence is that a key Government priority was to ensure technical robustness through live trials. He states that he does not recall concerns about the technical integrity or robustness of the Horizon system being raised with him.

c. The Rt. Hon. Alan Johnson [WITN 03380100]

Alan Johnson, a former postman, was Parliamentary Under-Secretary in DTI between July 1999 and June 2001, in which capacity he chaired the Department's 'Horizon Working Group'. In his evidence he recalls that he had no involvement in technical aspects of the Horizon project. He states that he considered that technical issues were for the Post Office and ICL to fix and understood that testing had indicated that problems with system stability and accounting integrity had been satisfactorily resolved. Mr Johnson went on to a succession of other Ministerial posts,

including between May 2005 and May 2006 as Secretary of State for Trade and Industry, but recalls no Ministerial involvement with Horizon issues after June 2001.

d. David Sibbick

David Sibbick was a career Civil Servant until his retirement in the year 2000. He held the role of Director of Posts in DTI between July 1989 and 2000. In this role he was responsible (jointly with officials from HM Treasury) for monitoring the Government's interest in the Post Office in its ownership capacity. His evidence describes the historic motivations behind the Horizon project, the strategic tensions underlying it and the various issues involved in progressing it. He notes that *"on a project of Horizon's complexity and scale, technical issues were so far out of the expertise of Ministers and officials that experts were needed to report on them"* and refers to the work of the expert group chaired by Sir Adrian Montague. He states that *"Ministers and officials were effectively reliant on these experts to inform us of technical issues"*, and that the expert advice was that *"the project was technically viable, and likely to be robust and acceptably 'future proof'"*. He refers also to similar advice provided by KPMG. This was not to say that the Horizon system was believed to be entirely free of *"possible, probable and forecast technical issues"*, but the belief was that it would be possible to resolve them. He states that his understanding was that all technical issues had been resolved by the time Horizon was rolled out.

Key themes and issues

10. From the information and documents available to the Department at this point, it appears that the themes, issues and questions upon which the Department will be able to provide substantial assistance are likely to arise in:

- a. Phase 2, which concerns the procurement, design, pilot and roll out of and modifications to the Horizon system.
- b. Phase 5, which concerns redress, access to justice, Second Sight, Complaint Review and the Mediation Scheme, the conduct of the group litigation, responding to the scandal and compensation schemes.
- c. Phase 6, which concerns governance arrangements, including monitoring of Horizon, contractual arrangements, internal and external audit, technical competence, stakeholder engagement, oversight and whistleblowing.
- d. Phase 7, which concerns current practice and procedure and recommendations for the future.

Phase 2 – Horizon IT System

11. Phase 2, for which oral evidence hearings are due to commence on 18 October, will consider the procurement, design, pilot and roll out of and modifications to the Horizon system. Despite memories understandably having faded due to the passage of time, it is nevertheless clear that the procurement of Horizon was a fraught and difficult process with various significant and cross-cutting pressures on all the decision-makers involved.

12. In fully examining these issues, the Inquiry will no doubt wish to investigate the following topics:

- a. The broader business and political context for the Post Office at the time the Horizon project was being undertaken, in particular the serious threat to the Post Office's financial viability if Horizon did not proceed, and the pressure this put upon all stakeholders to make the project happen.
- b. The competing interests and factors which were relevant to the decisions being made, including concerns about the centrality of the Horizon project to the wider 'Modernising Government' agenda, the viability of the UK information and communications technology industry, and the Government's broader international trade objectives.

- c. The procurement process and contractual arrangements, and the level of expertise within the Civil Service at the time in negotiating complex arrangements of this type.
- d. How and why the Horizon project failed to meet initial expectations, such that the initial vision of a benefits delivery system which also served post offices proved unviable.
- e. Why the decision was made to change the aims of the project and whether the project should have proceeded in the way it did despite those changes.
- f. Whether, having decided to continue with the project, its launch should have been delayed.
- g. The level and form of assurance which POL, Fujitsu and others provided to the Government about the Horizon system's design and implementation, and whether the Government should have been more proactive in ensuring technical robustness.
- h. The extent of the incentives on POL to fix bugs in the Horizon system upon launch (especially given the terms of their contract with postmasters), and if not whether this could or should have been recognised and addressed by Government at the time.

- i. The extent to which it was the role of Government officials and Ministers to understand and scrutinise technical aspects of the Horizon system, and the extent to which they had the technical expertise to do so.

Phase 5 - Redress

13. As the powerful evidence heard in Phase 1 of the Inquiry made graphically clear, the impacts of Horizon continue to be felt to this day. The lessons for the future which will no doubt emerge from this Inquiry will not right those wrongs and, as it has previously emphasised, one of the Department's key priorities is therefore to make sure that affected postmasters are promptly, fully and fairly compensated for the financial losses, distress and hardship they have suffered over many years. Following on from the compensation issues hearings in July of this year, the Department has continued to work hard to ensure that serious progress is made in the various compensation schemes. The Department had planned to provide an update on these matters in its opening submissions, and the Chair's statement of 22 September 2022 on issues relating to compensation confirms that this is likely to be of assistance. The key recent developments are as follows.

Historical Shortfall Scheme

14. Positive progress has been made to deliver compensation for those currently in the Historic Shortfall Scheme ("HSS"). As of 30 September, 82% (1,938) of eligible claimants have now received an offer, meaning that £52 million has now

been offered. To that date, 1,628 claimants have accepted their offers and compensation payments totalling over £33 million have been made to them, helping to address the historical wrongs suffered by these claimants.

15. Following Government approval, and to reflect the rising complexity of HSS cases, Post Office is increasing the offer of legal support to claimants disputing their offer to ensure they are well informed as they proceed in the Dispute Resolution Procedure. Claimants whose claim relates only to shortfalls will be offered up to £5,000, while claimants with more complex claims (which may include consequential losses) will be offered up to £10,000 towards obtaining independent legal advice. Post Office will also additionally cover reasonable independent legal fees associated with reviewing offers.

16. Post Office provides interim payments to claimants experiencing financial hardship while awaiting an offer. The Department has agreed with Post Office to extend this policy to those claimants who wish to dispute their offer so that they do not feel obliged to settle due to financial hardship. At this stage, when over 80% of claims have received an offer, the Department understands that Post Office are not planning to bring in a wider interim payment policy, as it is focused on making full offers to all claimants as soon as possible. The Department will continue to monitor progress and keep these issues under review.

Overturned Historic Convictions

17. Progress continues to be made on claims received from those with Overturned Historic Convictions. An Early Neutral Evaluation (“ENE”) was held in July by former Supreme Court judge Lord Dyson, to consider specifically the appropriate monetary ranges for non-pecuniary heads of loss presented by convicted postmasters. Good progress is being made to settle non-pecuniary claims, with a number of these claims within the ENE being fully or partially settled, including full and final agreements of the first two lead cases. A number of claims outside the ENE have also been received. The majority of these are for non-pecuniary heads of loss, rather than full claims. Overall, only c.30% of potential claims have been received to date, including those within the ENE group. Only three have been fully quantified so far. The Government continues to encourage eligible postmasters to submit their claims. As at 29 September, 80 claims for interim compensation had been received, 76 payments made and £7,575,000 paid.

18. The Department is supporting the Post Office to address barriers to reaching negotiated settlements through a range of Alternative Dispute Resolution tools. This has included the process of ENE, as described above. Government will continue to encourage Post Office to use the appropriate tools available, which could include good faith meetings and mediation, to reach negotiated settlements with claimants.

19. The Economic Secretary to the Treasury announced on 23 September ([HCWS 303](#)) a tax exemption for compensation payments to those with overturned historic convictions. Compensation under the HSS included any income tax payable. The tax treatment of further compensation for Group Litigation Order (“GLO”) claimants will be decided in the light of these precedents once the overall shape of the scheme is clearer.

Additional compensation for Group Litigation Order claimants

20. As the Department has previously acknowledged, there is a clear and compelling need to finalise and pay further compensation to the GLO claimants as quickly as reasonably possible. The Government shares the Inquiry’s view of the urgency of this work. To that end, the Parliamentary Under Secretary of State wrote to all of the GLO claimants on 2 September 2022, seeking their views on options for a scheme. A copy of this correspondence was provided to the Inquiry. Responses were requested by 26 September and will be taken fully into account in designing the scheme.

21. As the Inquiry is aware, the Department has made provision of £19.5 million for interim payments to members of the GLO (other than those who were convicted, who are receiving other forms of compensation as their convictions are overturned).

22. As of 29 September, all but 75 of these payments had been made. Of the remaining cases, 12 relate to claimants who have not yet provided sufficient

information (such as bank account details) to allow payments to be made. The remainder relate to complex cases, notably bankrupt or recently deceased claimants. The Department has been working with the Insolvency Service to establish the best way of ensuring that each postmaster receives as much of their interim payment as possible. Good progress is being made, and the Department continues to strive to ensure that interim payments are made as soon as possible to all eligible postmasters.

Phase 6 – Governance

23. Phase 6, in relation to which oral evidence hearings will take place in 2023, will look at matters of governance, including the monitoring of Horizon, contractual arrangements, internal and external audit, technical competence, stakeholder engagement, oversight and whistleblowing. A key question will doubtless be the nature of the relationship at various times between the Government and POL, and therefore the balance of accountability.

24. Successive governments of different political stripes have since 1969 consistently reached the conclusion that it is impossible for an effective business in this sector to be run directly by politicians and Civil Servants. A public corporation has been considered the only viable model.

25. A public corporation is a form of arm's length body ("ALB"). It is, more specifically, a government-controlled market body that derives more than 50% of its production cost from the sale of goods or services at economically

significant prices (i.e. prices which have a substantial influence on the amounts of products that producers are willing to supply or the amounts of products that purchasers are willing to acquire) for all or most of the goods and services it produces¹.

26. The essential idea is therefore that the corporate body has operational control of its affairs, whilst the Government sets the high-level strategic direction. Accountability for the public corporation rests with the Board and executive team who are appointed based on their expertise and specialisms to manage and oversee the company. The public corporation should have appropriate levels of freedom to exercise commercial judgement, within appropriate delegated authority arrangements. Neither the Secretary of State nor any Departmental official has any involvement in the day-to-day operations of a public corporation, but rather the Board is accountable in turn to the Secretary of State in his capacity as shareholder.

27. Within the overall public corporation model, the precise form of relationship between the Government and the Post Office has evolved over time since 1969. This has included the separation of what is now Post Office Ltd and its branch network from what is now Royal Mail plc, adjustments in the machinery of Government which have seen the relevant department with responsibility for Post Office matters change on several occasions, the creation of the Shareholder Executive to undertake corporate governance and finance

¹ See for reference:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220612/pesa_2011_chapter8.pdf

functions and its subsequent transformation into UKGI. The most significant changes have been the result of different enabling and regulating legislation being passed by Parliament. The key dates up until 2016 were as follows (with developments since 2016 set out later):

- a. Between 1969 and 2000 the Post Office was a publicly-owned statutory public corporation, established under the Post Office Act 1969. It was responsible for transmission of the mail as well as for the functions of Post Office branches. That legislation, along with later provisions of the British Telecommunications Act 1981, set out the responsibilities of government and the powers and duties of the Post Office. DTI was the government department with oversight from October 1970.
- b. Pursuant to the Postal Services Act 2000, the Post Office's branch network was transferred to Post Office Counters Ltd ("POCL"), of which the Government was ultimate shareholder. As such, POCL was subject to the Companies Act 1985 and conventional company law principles. On 1 October 2001, POCL was renamed Post Office Ltd ("POL").
- c. POL's Articles of Association were later amended on 20 December 2002, with a special share class created. POL issued a special share to the Secretary of State, and the Secretary of State was thereafter the 'special shareholder' with enhanced rights including in connection with appointments to POL's Board.

- d. In 2004 a body called the Shareholder Executive ("ShEx") was established within DTI to act as the representative of the Secretary of State in his capacity as special shareholder.
- e. In 2007 DTI was renamed the Department for Business, Enterprise and Regulatory Reform ("BERR").
- f. In 2009 BERR was merged with the Department for Innovation, Universities and Skills to become the Department for Business, Innovation and Skills ("BIS").
- g. The Postal Services Act 2011 paved the way for the separation of Royal Mail Group plc and POL. On 1 April 2012, Royal Mail Group plc transferred its shares in POL into the direct ownership of Royal Mail Holdings plc ("RMH plc"). The following day, one special share in POL was issued to the Secretary of State for Business, Innovation and Skills ("SSBIS"), with RMH plc remaining the shareholder of all ordinary shares. The SSBIS and the Solicitor for HM Treasury remained sole shareholders in RMH plc.
- h. On 10 September 2013, RMH plc was renamed Postal Services Holding Company plc ("PSHC plc") and the SSBIS became its sole shareholder and, thereby, sole ultimate shareholder of POL.

- i. In 2016 BIS merged with the Department of Energy and Climate Change to become the Department for Business, Energy and Industrial Strategy (“BEIS”).
- j. In the same year the functions of ShEx were transferred into a new company, UK Government Investments Ltd (“UKGI”), which is wholly owned by the Solicitor for HM Treasury.

28. The Department is clear that central Government lacks the expertise – on a day-to-day basis – to efficiently manage or oversee the operations of a business such as the Post Office, and that such a business cannot operate effectively if operational decisions are primarily affected by political, rather than commercial, considerations. It therefore remains clear in its view that an arm’s length model is the right one.

29. It is apparent, however, that the system of governance oversight failed to identify and / or prevent the events with which this Inquiry is concerned. In particular, it failed to prevent the grave injustices suffered by postmasters. That is a matter of serious concern to the Government. The Department is absolutely clear that the treatment of postmasters has been utterly shameful; and, naturally, it should have been provided with all relevant information *at the time*.

30. The Department is therefore extremely interested to understand how the failure of governance oversight happened and whether there were problems with the way the system was structured, how it operated in practice, or both. In other words, was this a systemic failure or an operational failure?

31. In this respect, the Inquiry will no doubt wish to consider the following issues:

- a. What the arm's-length model for POL–government relations was at the relevant times and why this model was used.
- b. How the relationship between POL and government was supposed to work in practice.
- c. To what extent, and when, government was informed about the problems emerging with Horizon and any concerns about the prosecutions and/or civil law steps being brought against postmasters.
- d. To what extent, and when, government was informed about POL's intended approach to the group litigation.
- e. Why government oversight mechanisms did not lead to earlier and more effective intervention in the Horizon scandal.

Phase 7 – Current practice and procedure and future recommendations

32. Phase 7 of the Inquiry will look at matters of current practice and procedure and recommendations for the future.

33. Since the Horizon scandal came to light, the Department has given careful thought to the system of governance and oversight which failed to prevent it. It is committed to a process of continual learning and improvement and, together with UKGI, has introduced several new measures to improve the governance system and enhance oversight of POL as a public corporation. The key changes to date are as follows:

- a. The introduction of a Framework Document which sets out all the governance interactions, roles and responsibilities between the Department, UKGI and POL in one place. This document provides clarity to all parties as to how oversight of POL by government is to be conducted, sets expectations and outlines the standards which POL must observe. Perhaps most relevantly, the Framework Document specifies the information flow that the Department is entitled to receive, and POL is expected to share proactively, including detail about how legally privileged information about material litigation matters is to be shown to the Department and UKGI.
- b. A broader range of regular meetings with POL has been instituted to ensure a two-way flow of information. These now include, in addition to shareholder meetings and monthly financial and investment meetings between UKGI and POL: (i) a monthly Ministerial meeting between the responsible Minister and the POL CEO; (ii) meetings between the responsible Minister and the POL Chair; and (iii) a Ministerial working group with the NFSP and POL which meets a number of times a year.

There are also subject-matter-specific meetings on network development and matters including the ongoing consequences of the settlement to the group litigation and the compensation schemes. The Department has used these more frequent meetings to oversee changes within POL.

- c. A policy team within the Department has been created to provide enhanced clarity and detail of policy objectives. Until August 2018 the shareholder and policy roles in relation to POL were both carried out by UKGI. The policy function is responsible for identifying the desired policy outcomes POL is required to deliver, securing appropriate funding from HM Treasury, and monitoring whether policy outcomes are being delivered. The shareholder function focuses on how POL is being managed, its capability and its organisational performance. This has now been separated and the policy function is carried out by the Department whilst the shareholder function remains with UKGI, although the two work closely together. Separation of these two functions is now recognised as best practice. It creates a further interface between government and POL and therefore a second opportunity for scrutiny and challenge.
- d. Updated Articles of Association for POL and its group companies were brought in from 19 March 2020, in order to provide the Secretary of State as special shareholder with further governance rights, including an expanded range of reserved matters requiring specific consent,

enhanced ability to give directions and a veto over the appointment of the Chair.

- e. The Department has appointed a high calibre POL CEO who has a strong background in relevant areas. Its annual letter to the POL Chair sets out the Department's priorities; the resolution of historic issues arising from the Horizon scandal have been prominent amongst these. More widely, the Department, UKGI and POL have engaged in a substantially enhanced dialogue in respect of issues of corporate culture, postmaster relations and compensation for victims of the scandal. This includes regular updates on progress on such issues at the Shareholder Meeting.
- f. The Government Internal Audit Agency has undertaken a series of reviews in recent years to review whether approaches to governance are meeting best practice standards. Appropriate actions are taken following these reviews.

34. The Department also recognises, of course, that the intensive and far-reaching investigation to be undertaken by the Inquiry may well identify additional, or different, areas for improvement. The Department looks forward to receiving the Inquiry's findings and recommendations in this respect.

Conclusion

35. The Department looks forward to the evidence to be provided and heard in the forthcoming phases of the Inquiry, and to assisting the Inquiry in that process. It does not seek to pre-empt what that evidence may show. It will welcome the Inquiry's findings and recommendations, and is committed to implementing any changes that are needed so as to ensure that nothing like this can ever happen in future.

4 October 2022

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