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Sent: Wed 26/05/2021 7:48:34 AM (UTC)
To: Munby, Sarah (BEIS) [REDACTED] GRO
Cc: Permanent Secretary [REDACTED] GRO; Keoghan, Michael (TIUA) [REDACTED] GRO; Brooks-White (Jobshare) [REDACTED] GRO; Kilgariff, Patrick (Legal) [REDACTED] GRO; Wones, Eleri (BEIS) [REDACTED] GRO
Subject: Update on Post Office compensation next steps - OFF SEN COMMERCIAL

Hi Sarah,

Following on from last week's Inquiry announcement, I wanted to update you on where we have got to on the compensation issues. This is likely to be the next area of pressure, as we've seen in the HoC and HoL debates that Minister Scully and Lord Callanan have led recently.

This is where things stand on the various workstreams:

- (i) **Compensation for criminally-convicted postmasters:** POL have now received the awaited merits opinion from their lawyers. We understand it provides an assessment of the strength of potential 'malicious prosecution' claims from those whose convictions were overturned at the Court of Appeal and concludes that all postmasters are likely to have a strong basis for a claim (rather than, say, all who were prosecuted after 2010). This means we're looking towards the upper end of the financial cost band. It might also make things easier because POL shouldn't be tempted to resist any legal claims from this group of postmasters. Our plan for the short-term is to seek approval, within BEIS and then HMT, for interim payments for these individuals (e.g. perhaps for as much as £100k each). My team will work with UKGI on the business case for this and we plan to submit an 'in principle' submission to you in the next few days. I may need to ask you to prompt Charles Roxburgh if it looks like we're going to run into HMT issues on the proposed interim payments, but that should wait until after we've agreed the business case here.

We then need to do further work, with UKGI and POL, on how we administer the rest of the compensation, and Mike and I would welcome your thoughts. **It looks increasingly likely to me that we should consider taking on responsibility for the design and delivery of the compensation scheme within BEIS, though that would have large resource implications.** The current HSS scheme (see below) is taking a long time and doesn't offer the best model for the type of scheme we will need here.

The big question for us, which Mike and I have been discussing, is whether we should set up a parallel team alongside the current Post Office policy team (perhaps at Director level) to oversee the criminal compensation scheme that we're likely to need. Ministers are currently saying that the design and delivery are for POL, which has its advantages, but we are all likely to face criticism if compensation does not flow quickly. Much depends on whether it is decided that we should go for mediation or to court with some 'malicious prosecution' test cases. We still aren't completely sure what the postmasters want either, though we are pressing POL for this information.

Either way, some kind of compensation scheme is likely to be needed, so a first step if we take it on would be to design a potential framework for a scheme, based on legal advice and an assessment of which avenue the postmasters are likely to prefer. Doing this would reduce the pressure on Nick Read, who would be keen for us to take this on, and allow him to focus on the core POL business. I tend to think it would be better for BEIS, rather than UKGI, to oversee it,

though you might want to test it with Charles Donald. The main downsides are that it would open BEIS up to potential JR risks if we get it wrong – and we would obviously need to seek additional funding and resourcing for our admin costs, alongside the cost for the compensation itself. **I would be happy to provide a fuller assessment of the pros and cons and an outline of how this could work, if you would welcome that.**

- (ii) **The Historical Shortfalls Scheme that POL committed to run, following the GLO settlement, to recompense postmasters for losses:** this scheme is progressing and we have overseen the first round of payments, but the pace has slowed somewhat. I wrote recently to Tim Parker and Nick Read to encourage them to speed up the POL Board's process, since we haven't yet received an acceptable group of 'test cases' which will pave the way for principles that we need to sign off under the agreed process. UKGI are also making good progress recruiting a legal NED to join the POL Board to give this more oomph. Nick Read plans to replace the POL lead on this scheme too ahead of when the current lead's contract expires in July; this should also be helpful as long as they can replace him with someone who can get up to speed quickly.
- (iii) **The £58m settlement that was agreed with the group of 555 postmasters in December 2019, following their GLO claim:** we continue to face pressure to reopen the 'full and final settlement' from December 2019 or to deliver separate, additional compensation to cover the costs of the postmasters who had to go to court in the first place. Minister Scully met with Alan Bates last week and affirmed that this question is still excluded from the Inquiry's terms of reference. We are working with BEIS Legal, however, following the meeting that you and I had with Minister Scully recently to explore how we might overcome the various barriers that we would face if we were directed to do something here. We expect this to come up at PMQs today and the external political pressure remains high, as Minister Scully heard at the Post Office APPG last night; I'm not convinced that HMT will agree, on VfM and precedent grounds, so this would probably take us into potential direction territory depending on what Ministers think about our advice. We will obviously advise you in the first instance.

In the short-term, I am going to be bolstering the Inquiry and Post Office policy teams a little, as a result of recent events, recognising that this will have to be at risk until Supplementary Estimates, when the plan with Finance is to seek further budget from HMT. We will continue to need to work with BEIS Legal (who are helpfully going to engage an external QC to provide additional expertise to help us on these issues), including on subsidy control questions that could apply across all these areas.

I'd welcome any thoughts you have on this – including whether a short chat would be helpful, please.

Thanks,
Carl.



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