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Department for
Business, Energy
& Industrial Strategy

Date: 10 August 2018

Director General: Mark Russell

Lead Official: Stephen Clarke

Lead Official Telephone: GRO

Recipient	To Note / Comment	To Approve / Decide
Permanent Secretary	X	

**POST OFFICE LTD (POL) – HORIZON LITIGATION UPDATE (CONTAINS
LEGALLY PRIVILEGED MATERIAL RELATING TO POL)**

Summary

1. We are submitting: (i) the Disclosure Protocol (***the Protocol***) that now governs the flow of legally privileged and confidential information in respect of the Horizon litigation case from POL to UKGI/BEIS, designed to give you proper oversight while protecting POL's legal defence; (ii) a background briefing from POL's Legal Counsel on the litigation, including their QC's views on the merits of the case, together with a further update following POL's last board meeting on 31 July; and (iii) a proposed agenda and list of attendees for the oral briefing that POL's Legal Counsel will give you and the Minister for Small Business, Industry and Enterprise on 10 September, focusing on the considerable financial, reputational and operational implications of an adverse ruling and POL's contingency plans to manage this.

Timing

2. Routine. The litigation itself is not a new issue but under the recently agreed Protocol, POL will from now on provide written updates on the litigation after any board meetings that discuss the case. To bring you up to speed, POL provided an initial background briefing, including their QC's view, which they have since supplemented with an update following POL's last board meeting on 31 July. POL's written updates will allow you oversight in the run up to the November 2018 hearing and March 2019 hearings, while the oral briefing from POL's Legal Counsel on 10 September will provide a chance to discuss key issues and contingency planning ahead of the hearings.

Recommendations

3. That you note the issues set out below.

AdviceThe Protocol (*Annex 1*)

4. The Protocol provides a framework for POL to report to UKGI/BEIS on the litigation, to allow you proper oversight while protecting the legally privileged nature of the information so that POL's legal defence is not compromised.
5. The main reporting channel, at present, is between POL's Legal Advisors and UKGI's Legal Advisors (lawyer-to-lawyer communication is common practice for this type of information and POL regards this as an additional safeguard).

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However, an individual in BEIS legal can be nominated in addition to this should you so wish. In the meantime, BEIS legal has been consulted on the Protocol and is content with the current approach. The Shareholder's Representative on the Board, Tom Cooper, also receives legally privileged information directly in his capacity as Non-Executive Director. However, the Protocol makes clear that though he may forward this information to you and the SoS (subject to following safeguards to preserve both confidentiality and privilege), POL cannot consider this channel of information as satisfying their obligation to report on the litigation.

6. The key terms of the Protocol are:

- (i) After POL Board meetings at which the litigation is discussed, POL will provide UKGI Legal Advisors with written updates addressing material issues and risks.
- (ii) As can be seen from the Group Litigation Timetable attached to the Protocol as Appendix A, POL's Board Meetings and its litigation sub-committee meetings (PLSG SteerCo), have been synchronized to projected dates for key events in the case, with a view to handling being discussed at critical junctures in the legal process.
- (iii) POL will promptly inform UKGI Legal Advisors of any significant changes to the timetable or the status of the litigation, including in relation to hearings, potential press coverage and significant case developments.
- (iv) Legally privileged and confidential information will be marked as such by POL.
- (v) The SoS, UKGI, their employees and their agents will treat privileged information received in this manner in accordance with the agreed "Obligations in Relation to Legally Privileged and Confidential Information" set out in Appendix B of the Protocol.
- (vi) UKGI/BEIS may request further assistance from POL via UKGI Legal Advisors to deal with any ad-hoc queries received in relation to the litigation.
- (vii) The Shareholder representative to POL's Board, Tom Cooper, may share legally privileged information with SoS/UKGI/BEIS in respect of the case as long as he follows the safeguards referred to in (v) above.

7. In order to comply with the obligations referred to in (v) above, we have worked with BEIS officials to put in place a closed circulation list for such material, outside of which the information is not to be disseminated. This is burdensome, but necessary to protect the privileged nature of the information. To manage this, we hold a list of approved recipients who have signed a "Pre-onboarding Protocol" (*Annex 2*) confirming that they will treat privileged information in accordance with the "Obligations in Relation to Legally Privileged and Confidential Information" appended to the Protocol.

Litigation background briefing and updates

8. Following the agreement of the Protocol, POL's Legal Counsel provided an initial background briefing on the litigation (*Annex 3*), including their QC's view on the merits of the case, and has since provided a further update (*Annex 4*) following

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discussion of the case at POL's last board meeting on 31 July. For ease of reference, in Annex 4 UKGI has highlighted in yellow any information that is new and worthy of note. These briefings do not yet address contingency planning, but Tom Cooper has asked POL's Legal Counsel to focus on this in the run-up to the November 2018 hearing, particularly the question of how POL would handle the business implications of losing, and to provide you with a paper addressing these issues in advance of the 10 September briefing session.

9. POL will provide additional written updates via UKGI Legal Advisors following any Board meetings where the litigation is discussed. According to the schedule in the Group Litigation Timetable, in practice this should mean updates from POL every one to two months, which we will forward to you.
10. In between these scheduled updates, under the Protocol POL will inform UKGI Legal Advisors should there be any significant changes in the status of the litigation. Between Board meetings, POL's senior management keeps apprised of developments through the PLSG SteerCo sub-committee that meets regularly with POL's legal advisors to consider the issues as they arise on behalf of the Board. Shareholder representative director Tom Cooper also sits on this sub-committee.

Oral briefing from POL's Legal Counsel on 10 September

11. The briefing is confirmed in your diary and the Minister's diary for 10 September. A proposed agenda and list of attendees drawn up between UKGI and POL is attached here (*Annex 5*). POL's Legal Counsel, Jane MacLeod, Chair Tim Parker, and CEO Paula Vennells (via telephone/video link) will brief you on the key issues at stake, as well as on the financial, reputational and operational implications (which could be considerable) of an adverse ruling at November's "Common Issues Trial" and/or at the "Horizon Trial" in March 2019 and POL's contingency plans for dealing with these risks. This will be an excellent opportunity for you and the Minister to exercise Shareholder scrutiny and seek reassurance on any issues of concern. To make this session as productive as possible, we have asked POL to share in advance a paper covering the key issues on the agenda. Given the closed distribution list under the Protocol and legal privilege considerations, we aim to keep additional attendees to a minimum while ensuring that essential stakeholders and experts (who are signed up to the Pre-onboarding Protocol) are involved.

Communications Advice (agreed with BEIS Comms)

12. The JFSA has generated considerable coverage on this issue in the past, including The Daily Mail, The One Show, Panorama and parliamentary debates, though coverage has been minimal since 2016 as the matter has rested with the courts. Until any ruling at the November 2018 and March 2019 hearings, we will refer any media to POL and state that this is a matter for POL and the courts and that it would be inappropriate for Government to comment. Should the court case be dropped by the complainants at any stage, we would give media a line stating that we respect the judgement of the courts and refer back to the independent investigations by Second Sight that found no evidence of flaws in the Horizon IT system. In the run up

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to the November trial, we will ask POL to share their communications plan and materials and to agree lines covering both favourable and unfavourable outcomes.

Contributors

13. This advice does not include financial considerations, as agreed with BEIS Finance (Syed Maghrabi). Financial advice will be provided once a better quantification of the claim can be established.
14. BEIS Legal (Gareth Evans) and UKGI legal have been consulted and agreed the content of this advice.
15. Communications considerations have been taken into account, and agreed with BEIS Comms (Annabelle Miles).
16. Parliamentary handling has been taken into account, and agreed with Tom Aldred. As noted above, this issue flares up periodically, but whilst the case remains with the courts it is less likely that the issue will be considered in Parliament.

Annexes

17. The following annexes are attached:

Annex 1: The Disclosure Protocol (to which is also attached the “Group Litigation Timetable” as Appendix A and “Obligations in Relation to Legally Privileged and Confidential Information” as Appendix B)

Annex 2: The Pre-onboarding Protocol to which is attached at Appendix B the list of approved recipients within BEIS and UKGI for receiving litigation information.

Annex 3: A background briefing on the litigation from POL’s Legal Counsel. Password will be sent separately (POL has password-protected this doc as an extra safeguard).

Annex 4: A litigation update from POL following their last board meeting on 31 July.

Annex 5: Proposed agenda and attendees for oral briefing by POL’s Legal Counsel.