

UK Government
InvestmentsDepartment for
Business, Energy
& Industrial Strategy

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OFFICIAL SENSITIVE AND SUBJECT TO LEGAL PRIVILEGE**UPDATE ON APPROACH TO MEDIATION IN POST OFFICE LTD. (POL) LITIGATION****Summary**

- POL is preparing for a mediation meeting with the Claimants in the Horizon litigation case, ahead of further legal judgments that are expected imminently. In order to enter mediation POL must have agreed how much it is prepared to offer to settle the case, and this figure must have prior approval from BEIS Ministers and CST. This note provides background on POL's approach to the mediation in advance of submitting a business case for the settlement figure itself. **The business case will be submitted on 15 November and will require rapid approval, ideally by 22 November** in order to prepare for the mediation to begin on 27 November.

Timing

- Routine. We will continue to work with POL on their mediation strategy and will provide further urgent advice shortly.
- Ministers should be aware that the subsequent "for approval" advice will require agreement quickly, ideally by 22 November. We intend to submit this advice on 15 November and send it to HMT in parallel in order to get CST approval and prepare POL for the mediation appropriately.
- Perm Sec's Office have confirmed that this issue is classed as 'essential business' which should be allowed to continue during the pre-election period. The scheduled mediation can not reasonably be delayed until after the General Election without posing significant risks to POL's strategy. There is also a risk that, should we ask to re-schedule the mediation to a later date, this would be looked upon unfavourably and could ultimately lead to increased costs to the taxpayer.

Recommendation

- We recommend that you note the contents of this submission.

Background

- POL continues to contest the group litigation of 551 (mostly former) postmasters about liability for unexplained losses, the contractual relationship between POL and its postmasters and the reliability of POL's internal accounting systems. The litigation has been divided into various sub-trials, progress of which can be seen below:



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- Common Issues Trial – Judgment handed down in March 2019. This focussed on the contractual relationship between POL and its postmasters and was largely critical of POL. POL have applied to The Court of Appeal for permission to appeal the Judgment with an oral hearing scheduled on 12 November. A decision on whether POL will be granted permission to appeal is expected shortly afterwards. If permission is granted any appeal is likely to take several months before being heard by the court.
 - Horizon Trial – Took place over the summer and POL are awaiting the Judgment. This was expected in “early November”, but the Judge has recently indicated that it may be further delayed.
 - Further Issues Trial – scheduled to take place in March 2020. This will focus on the principle of what loss postmasters can claim for.
 - Further trial(s) to take place at a later date(s) and will focus on individual postmaster claims.
7. To date, there has been significant media interest in the trials including a Daily Mail campaign against POL criticising their treatment of postmasters and from parliamentarians from across the House.
8. The upcoming Horizon Judgment is likely to further criticise POL, attract negative media attention and overall continue to foster the negative atmosphere around POL and the perceived treatment of its postmasters.

Mediation

9. POL have been considering together with their new legal advisers, Herbert Smith Freehills, what a settlement could look like, how they could approach mediation with the Claimants and the process by which a settlement would be approved by BEIS and HMT (noting the novel and contentious nature of the expenditure). POL's external advisers have drafted an initial strategy paper that was discussed at the 29 October Board meeting and a BEIS/HMT/UKGI settlement working group has been meeting to further challenge POL's mediation strategy.
10. The settlement working group consist of attendees from UKGI, BEIS and HMT including the BEIS ARAC Chair Nigel Boardman. It plans to meet on 14 November where we also expect Herbert Smith Freehills to attend to discuss the settlement business case and mediation strategy.
11. Mediation is scheduled for 27/28 November. There is a possibility that the date will be pushed back if the Horizon Judgment is further delayed, but we must be prepared for it to proceed as planned. At this stage it is very unlikely that the settlement amount proposed will be acceptable to the claimants. However, POL cannot enter the mediation without an agreed and approved settlement strategy – specifically a starting position and a ceiling beyond which it will not be willing to go in the initial mediation.
12. Given the highly negative outcome of the Common Issues Trial, POL has changed its approach to the litigation. It has already indicated to the court its desire to resolve the litigation. While it is possible that a settlement could be reached in this mediation, it is considered unlikely not least because of the Claimants' success in the litigation so far.
13. Although no precise figure has been put forward, the indications are that the Claimants will be starting at a level very substantially higher than the level that POL's advisers believe could be achieved if the litigation runs its full course. POL's primary objective in the mediation is to obtain a better understanding of the Claimants' negotiating position, better

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understand the full extent of the claims and to make arguments to the Claimants to support its offer in order to reduce the Claimants' expectations to a more realistic level. This will inform the approach to likely subsequent mediation prior to the next trial in March 2020 or any settlement talks that take place in the meantime.

14. We are expecting to receive a business case from POL soon for the settlement range they are proposing and will work with HMT and BEIS colleagues to enable POL to table an amount to kick-off discussions with the Claimants in good faith.
15. POL have indicated that they could absorb up to £100m and should the settlement be less than this the expenditure will be funded entirely from POL, resulting in no direct financial impact to BEIS. There would be a direct financial implication for BEIS if a settlement exceeds the £100m limit POL has suggested it can absorb.
16. Although funding from within POL does not create a financial risk for BEIS – assuming it is below £100m – any settlement payment may reduce the amount of any agreed future dividend payment to BEIS from POL should Ministers decide to implement one. However, at present there is no dividend payable.
17. Given the novel and contentious nature and Managing Public Money principles, this will require approval by CST as well as by BEIS Ministers.

Next steps

18. The immediate timeline over the coming weeks is as follows:

- w/c 11 November – Possible Horizon Judgment handed down and/or Court of Appeals decision.
- 12 November – Oral hearing on permission to appeal 'Common Issues' Judgment
- 13 November – POL submit settlement business case for HMG scrutiny.
- 14 November – HMT/BEIS/UKGI settlement working group meeting to review the business case and input into advice to Ministers
- 15 November – "For approval" written advice on settlement range submitted to BEIS Ministers and HMT.
- 22 November – Decision required by BEIS Ministers and HMT CST to approve the settlement range.
- 27/28 November – POL/Claimant mediation
- March 2020 – 'Further Issues' Trial (mediation can take place up to this point)

Comms Handling

19. As noted above, this issue has attracted significant media attention in the past. Given that we are now in Purdah, the BEIS Press Office will be restricted in its ability to comment if approached by media. As far as possible, we will point any enquiries to existing PQ responses setting out the government's position and direct media to published Purdah guidance for an explanation as to why government can approve spend of this nature during the election. Outside of Purdah, we will prepare full reactive media handling working closely with POL, though are likely to be somewhat constrained by ongoing legal proceedings and mediation.

Contributors

20. BEIS POL policy and finance colleagues have been consulted on this advice and are content with its contents. UKGI Legal have also been consulted.