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Date: 28 February 2020
 Director General: Sarah Munby
 Lead Official: Carl Creswell
 Lead Official Telephone: **GRO**

Recipient	To Note / Comment	To Approve / Decide
1. Permanent Secretary	X	
2. Minister Scully	X	
3. Special Advisers	X	
4. Secretary of State		X

Post Office: Follow-up to PMQs

Summary

- Following the exchange at this week's PMQs about the Post Office, we are seeking your views on our proposed approach to implementing the PM's response to calls for an independent inquiry. We will then seek approval from No 10.

Timing

- Urgent – we would welcome your steer ahead of BEIS oral PQs.

Recommendations

- That you agree that we should recommend to No 10 that we invite an independent reviewer to assess whether the Post Office has sufficiently learned the lessons from the Horizon case and will behave differently in future. We recommend that the best timing for this would be later this year, following the conclusion of the current inquiry by the Criminal Cases Review Commission (CCRC).

Advice

- As you are aware, the Prime Minister at PMQs on Wednesday answered a question raised by Kate Osborne MP, who asked if he would commit to launching an independent inquiry into the issues that postmasters had faced in relation to the Horizon accounting system including 'errors [that] have resulted in bankruptcies, imprisonment and even suicide'. The Prime Minister responded as follows: 'I am indeed aware of the scandal to which she alludes and the disasters that have befallen many Post Office workers and I am happy – I've met some of them myself – and I am happy to commit to getting to the bottom of the matter in the way that she recommends.' (A full transcript of the exchange is at Annex A.)
- Following those comments, you have requested advice on ways to respond to this commitment. Our understanding is that No 10 is open to our advice about the best way to proceed.
- Post Office Limited (POL) has been involved in a long-running dispute with its postmasters, which culminated in an agreed settlement of a group litigation claim for £57.75m in December 2019. In the past, a number of postmasters were prosecuted by POL following allegations of theft and fraud (see Annex B). The company has operational independence, with Government as the sole shareholder. Over the last year, BEIS and UK Government Investments has provided challenge to the Post Office on reaching an agreement with the postmasters and changing its

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culture to take a more positive approach to engaging them in its business. Mr Justice Fraser has also said in court– based on expert evidence– that the Horizon system is now ‘relatively robust’.

7. The December settlement followed two lengthy trials and a number of legal judgments, in excess of 1000 pages which carefully detail what went wrong at POL. There are also two live independent reviews into alleged miscarriages of justice:
 - (i) The CCRC is assessing the cases of some of the convicted postmasters, including some of the claimants, and is due to consider them on 24 March. It may result in some or all of the cases they are assessing being referred to the Court of Appeal. This is clearly of great significance for the individuals and we need to be careful not to undermine the live review or create delay to the process. It should be a priority for the postmasters to have access to justice in relation to a potential overturning of their convictions.
 - (ii) The Director of Public Prosecutions has also received a referral from Mr Justice Fraser on Fujitsu's behaviour in this and their involvement in individual postmaster trials
8. These are the appropriate bodies to review those issues and should be allowed to proceed without the risk of delay to obtaining remedies for any convicted postmasters who may have been wrongly convicted
9. We advise that those steps on their own, however, are not sufficient. Although the Post Office (under the leadership of its new CEO, Nick Read), are showing positive signs of starting to change, we believe that we need assurance that people can have confidence that POL has learned the lessons and will behave differently in the future. We have already written to the POL Chair, Tim Parker, outlining our expectation that the Post Office change its approach in light of the postmaster's concerns and explain to the Government what it is doing. We have also asked them to tell Ministers before undertaking any enforcement action. Nick Read promised that POL would not exercise its right to bring a private prosecution under the Prosecution of Offences Act 1985 in a call with Lord Callanan this week. These powers are not specific to the Post Office. We could also release into the public domain information about the commitments that POL made within its settlement agreement to improve its relationships with postmasters.
10. Beyond this, we recommend that we should commission an independent assessment of whether the Post Office has properly moved on. We believe that the best time for this would be after the CCRC has completed its consideration of the criminal cases because we do not want to colour this independent review. If you agree with the proposal, we advise that you commit to launching a review by the end of the year. This would provide an independent assessment of whether the Post Office has properly learned and changed, focusing on the relationship between POL and the postmasters and the controls that they have in place. We could also point to encouraging the CCRC and DPP to conclude their inquiries as quickly as possible.

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11. If you agree, we will subsequently provide advice on a potential candidate whom you might wish to approach to undertake this review and proposed terms of reference
12. We would not recommend commissioning another review into the facts of the case. Those have been comprehensively detailed through a series of extensive legal judgments from Mr Justice Fraser, at cost to the public purse, and it is important not to undermine what has already been determined in court. Any such review would be lengthy. The policy decisions that established POL's practices in the past relating to actions against postmasters originated in the late 1990s when Horizon was introduced and early 2000s when POL was still part of Royal Mail. Furthermore, the vast majority of claims in the litigation and all the prosecutions relate to events in the period from the late 1990s until around 2013 when POL stopped prosecuting in its own name. All the people involved in Board and senior management positions in the company during this period are no longer with the Company.

Communication Handling

13. The Prime Minister's comments were reported in The Daily Telegraph, which noted that the government "will commit to holding an independent inquiry". His comments were also reported in trade titles Better Retailing and Computer Weekly, as well as in Kate Osborne's local newspaper, Chronicle Live. Until there is agreement from No 10 on the proposed approach, we recommend continued use of lines agreed with No. 10 in response to the Prime Minister's comments:

A Government spokesperson said:

"We take the Post Office's relationship with its postmasters very seriously and closely monitored the situation during the legal proceedings. The Post Office, under its new CEO, has since accepted it got things wrong, apologised and has said it aims to re-establish a positive relationship with postmasters. The Department for Business, Energy and Industrial Strategy is working actively with the Post Office on this matter and will hold them to account on their progress. We are also looking into what more needs to be done."

14. When No 10 are content with the proposed approach, we will provide an updated holding line (agreed with No 10) to be used until Collective Cabinet Agreement has been reached. Following the conclusion of write round, we will work with No 10 on the timing and nature of any announcement and prepare reactive Q&A on the timelines and nature of the inquiry, both of which are likely to disappoint some parties who are seeking this to cover compensation, oversight by Government and accountability of individuals within POL.

Contributors

15. This advice contains financial considerations, as agreed with Vanisha Patel. There is no allocated budget for the cost of an independent review in BEIS's 2020/21 Budget. Depending on the cost of the inquiry, BEIS would either look to manage the pressure within existing budgets or seek further funding from HMT.

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16. Legal: Patrick Kilgariff, Louise Jackson and Richard Watson have been consulted and agreed the content of this advice
17. Communications considerations have been taken into account and agreed with Calum Grant
18. This advice does have parliamentary handling implications as there have been a number of PQs and Debates in his area, as agreed with Carl Creswell.

Annexes

- A. Extract from PMQs, 26 February 2020
- B. Background to Horizon case

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Annex A: Extract from PMQs, 26 February 2020

Kate Osborne (Jarrow) (Lab)

Like many other sub-postmasters, my constituent Chris Head was victim to the Post Office Horizon IT system scandal. These errors have resulted in bankruptcies, imprisonment and even suicide. Will the Prime Minister today assure Chris and others that he will commit to launching an independent inquiry? [900849]

The Prime Minister

I am indeed aware of the scandal to which the hon. Lady alludes and the disaster that has befallen many Post Office workers—I have met some of them myself. I am happy to commit to getting to the bottom of the matter in the way that she recommends.

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**Annex B: Background to Horizon Litigation**

1. In 1999, POL introduced a computerised electronic point of sale and accounting system called Horizon, which postmasters were required to use in their branches. Horizon requires postmasters to account for stock, sales and takings, and, as part of their balancing process, identifies shortfalls or discrepancies. Under the terms of their contracts, postmasters are required to make good any shortfalls out of their own funds.
2. Over the years Horizon recorded shortfalls which POL investigated and implemented various audit and collection procedures to minimise losses from the network. Many of the postmasters had their contracts terminated, some summarily for breach and others on notice. Up until 2013, in cases they deemed appropriate, POL also prosecuted postmasters for criminal offences– principally theft, fraud and false accounting.
3. In 2009, some postmasters formed the “Justice for Subpostmasters Alliance” (JFSA) claiming that bugs in Horizon had caused the shortfalls in cash, that they were not the fault of the postmasters and that POL’s approach to their cases was unreasonable and unjust. This subsequently attracted significant parliamentary and media interest.
4. Between 2013 – 2015 there was an independent mediation scheme set up by POL in which postmasters could have their case investigated and then potentially put forward for mediation. There was disagreement between POL and postmasters for which cases were accepted for mediation accompanied by negative media coverage and attention from MPs.
5. In April 2016 this litigation was commenced led by Alan Bates (Alan Bates and Others v Post Office Limited) involving 555 postmasters. 61 claimants have criminal convictions and many of these make up the 55 cases that are currently being considered by the Criminal Case Review Commission (CCRC), who have the power to refer cases to the Court of Appeal to consider whether convictions are unsafe).
6. The Group litigation was widely publicised by the postmasters’ legal representatives (Freeths LLP) and funded by a third-party hedge fund (Therium Group).