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Annex A: Options for Ministers to consider

Option	Advantages	Risks
<p>1: Challenge the POL Chair and Board to change their litigation strategy.</p> <p><i>SoS/Kelly Tolhurst could express their dissatisfaction with the current status of the litigation at a meeting with POL leadership, following on from the Chair's recent reply to Kelly's letter. Ministers could provide clear guidance to POL to pursue early settlement of the case (either after the Horizon case or after the Court of Appeal).</i></p>	<ul style="list-style-type: none"> • Provides clear guidance to POL on the action the department wants them to take. • Begins the process of bringing the litigation to a close as soon as is possible. • Making such a challenge would not raise shadow director risks. • Avoids adding more uncertainty and delay by recruiting and embedding new leadership. 	<ul style="list-style-type: none"> • Risk that the Department's position is leaked, which will weaken POL's hand in any settlement negotiation leading to a more costly settlement. • The relationship between the SoS and the Board is set out in governance arrangement (Articles of Association). These enable the SoS to question and challenge but there is a risk (see para 11 of sub) if SoS strays beyond the confines of the Articles of Association and appears to direct or instruct and the POL follows. This could be considered as acting as a shadow director. This only really becomes critical in the event of insolvency which is low in these circumstances. • Should POL feel they have to implement SoS's view and settle quickly at all cost this could increase the likelihood of POL seeking BEIS funding for settlement costs.

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		<ul style="list-style-type: none"> • Providing guidance to the Board has a low risk of Ministers being regarded as a shadow director
<p>2: BEIS Ministers to state publicly that they want to see justice resulting from litigation for claimants with valid claims</p> <p><i>One opportunity for this would be the oral evidence session for the BEIS Select Committee inquiry on 25 June.</i></p>	<ul style="list-style-type: none"> • This would reinforce messages already delivered through the 'Dear Colleagues' letter and enable Ministers to demonstrate that they are sympathetic to the plight of postmasters. 	<ul style="list-style-type: none"> • It would require careful wording to avoid the risk of BEIS being in public conflict with POL potentially leading to a higher financial settlement. • POL might believe that they are being told to settle at all cost and act accordingly.
<p>3: Challenge Post Office to announce that it believes some of the claims have merit and intends to seek to settle a fair settlement of such cases expeditiously. POL will continue its appeal against the Common Issues judgement and will continue to resist settling claims which lack substance.</p> <p><i>Statement could be made at the conclusion of the Horizon trial (for example).</i></p>	<ul style="list-style-type: none"> • Clear statement of a change of strategy by POL and acceptance of fault in some cases. 	<ul style="list-style-type: none"> • Will encourage Claimants and could lead to a higher pay-out. • POL would continue with some aspects of the litigation meaning some of the companies resources will continue to be focused on handling the litigation and won't provide a 'clean break', with ongoing risk of reputational damage if there are further critical judgments.
<p>4: Commission POL to carry out a project on how to structure and operate a settlement – including a fund which would subsequently assess claims and award</p>	<ul style="list-style-type: none"> • Sends a clear signal on the direction of travel for the settlement of the litigation and would be a practical step towards taking this forward • Would begin to establish how any settlement would be funded and the 	<ul style="list-style-type: none"> • None

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compensation according to pre-agreed criteria	<p>potential costs to POL and BEIS involved.</p> <ul style="list-style-type: none"> This is work that POL should be undertaking as part of their settlement strategy in any regard, so lessens the risk of accusations of shadow directorship 	
5: Put UKGI lead legal counsel (or other legal adviser) on the POL litigation sub committee as director or observer	<ul style="list-style-type: none"> This would give Ministers additional assurance that the POL litigation strategy because it would be actively scrutinised and challenged by government legal advisors. Ministers would have direct legally qualified feedback from the litigation sub-committee in addition to feedback from the shareholder NED 	<ul style="list-style-type: none"> Shadow director risk if the appointee gives instructions to the sub-committee Director would have legal obligations to act in interests of the company
6: Invite Nigel Boardman, chair of the BEIS Audit and Risk Committee, to carry out some independent due diligence on POL's litigation strategy.	<ul style="list-style-type: none"> Would give Ministers an additional independent view of POL's handling of the litigation and their ability to deliver any new litigation strategy. We have informally discussed this approach with Nigel and he is willing to carry out this role. 	<ul style="list-style-type: none"> None
7: Go public with a stronger SoS statement than in option 2, giving SoS view against POL	<ul style="list-style-type: none"> Would enable Ministers to demonstrate their support for the postmasters' cause. 	<ul style="list-style-type: none"> Would be inconsistent with BEIS position taken thus far that this is an operational matter for POL. Would bring further pressure on SoS to take action when the only legal power he has is to appoint/remove directors.

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		<ul style="list-style-type: none"> • There is a significant risk that putting the Department on the opposite side to POL could hamper POL's ability to achieve a reasonable settlement with the claimants and lead to an increased pay-out. • Invites speculation/criticism that POL is out of control in the handling of the case and one of SoS's few levers is to criticise POL in public. • Given a SoS public statement POL may feel they need to settle at all cost.
8: Change Chair/Board or management team	<ul style="list-style-type: none"> • Provides a clear signal of the dissatisfaction you have with the way the litigation has been handled to date, and an opportunity to bring in new leadership with a clear steer on the direction Ministers want them to take. • Begins the process of resolving the litigation, though the time required to make changes will slow this down initially. 	<ul style="list-style-type: none"> • POL has already changed the management team by replacing the Company's chief Counsel. Further changes to the leadership team will risk disrupting the progress POL have been making in other areas of the operation of the business, including transforming the business from loss making to returning a profit for the first time in 16 years. • Ultimate responsibility at the company for the litigation rests with the Chair. Replacing the Chair needs to be seen against the background that he is generally viewed as having done an excellent job in steering the Company through its transformation over recent years.

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		<ul style="list-style-type: none"> • BEIS Ministers have appointed many of those currently in post on the board and leadership team, with the Chair having been reappointed only last year. Making changes to the board/leadership team could lead to criticism of BEIS/Ministers role in these appointments. (See Annex B for further background on the level of churn in POL at senior levels.) • Low risk of legal challenge (and associated cost) from those who have been dismissed from the board/leadership team if they feel they have been dismissed unfairly
<p>9: BEIS to take over litigation by instructing BEIS/UKGI legal advisors to assume control of the litigation strategy, working directly with POL's legal advisors, in consultation with POL</p>	<ul style="list-style-type: none"> • BEIS would have full control of the litigation strategy and action taken 	<ul style="list-style-type: none"> • Likely to significantly damage the relationship between the department and POL, displaying a lack of trust in POL's ability to deliver. • Ministers would be directly responsible for the conduct of the claim and compensating claimants. Ministers could no longer argue it is an operational matter for which POL is responsible. Political pressure for a generous settlement would increase. • Taking this action would likely to become known to the claimants which would weaken POL's negotiating position in any settlement discussions

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		<p>leading to a higher pay-out in compensation.</p> <ul style="list-style-type: none">• Serious questions over the feasibility/legality of this option. It would require POL's agreement and POL would have no incentive to cooperate. External legal support would be required as BEIS/UKGI Legal would not have the necessary litigation expertise or capacity.
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