

STRICTLY CONFIDENTIAL & SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE

UKGI / Post Office Limited Information Sharing Protocol

BACKGROUND

- A. UK Government Investments ("UKGI"), on behalf of the Secretary of State for Business, Energy and Industrial Strategy (the "Secretary of State"), oversees Her Majesty's Government's 100% shareholding in Post Office Limited ("POL").
- B. POL is the Defendant in the "Post Office Group Litigation", *Bates & Others v. Post Office Limited*, High Court of Justice, Queen's Bench Division, Claim No's HQ16X01238, HQ17X02637, HQ17X04248 ("Group Litigation"). POL is also assisting the Criminal Cases Review Commission investigate a number of cases where former Post Office agents (most of whom are claimants in the Group Litigation) claim to have been wrongly convicted of a criminal offence prosecuted by POL (the "CCRC Investigations", together with the Group Litigation, the "Postmaster Complaints").
- C. The Secretary of State and UKGI share with POL a common interest in understanding the matters in issue in the Postmaster Complaints, POL's position on them, and the exposures they present to POL's operations, finances and reputation. This common interest is based (among other grounds) on the Secretary of State/UKGI's ownership of POL, the investment they make in POL's activities to support the important public and social purpose POL serves, and the accountabilities the Secretary of State/UKGI have for that ownership and investment to Parliament and to the public.
- D. Consistent with that common interest, POL wishes to share with the Secretary of State and UKGI information about the Postmaster Complaints. That information may include material which is confidential and/or covered by legal professional privilege, and it is expressly agreed by the Secretary of State, UKGI and POL that it is in their common interest to maintain any and all such privilege and confidentiality.
- E. This protocol therefore sets out the basis on which information about the Postmaster Complaints will be shared with the Secretary of State and UKGI so as to promote their common interest and preserve privilege and confidentiality.

SHAREHOLDER REPRESENTATIVE

- 1. The Secretary of State has appointed a shareholder representative (Tom Cooper) to POL's Board of Directors who, in his capacity as a director, will receive all information submitted to POL's Board about the Postmaster Complaints.
- 2. The Secretary of State/UKGI's shareholder representative has been appointed a member of the "Postmaster Litigation Advisory Board Subcommittee" established by the Board to receive legal advice on the Postmaster Complaints, and will receive all information submitted to the Subcommittee about the Postmaster Complaints.

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3. The shareholder representative may share all information described in paragraphs 1 and 2, including legally privileged and confidential information, with the Secretary of State/UKGI. Where the shareholder representative shares or proposes to share legally privileged and confidential information, he shall only do so in accordance with the relevant safeguards set out in Appendix B.
4. Transmission of information to the shareholder representative in this manner shall not be deemed to be reporting or notifying any of the matters concerned to the Secretary of State/UKGI as described in paragraphs 5, 6, 7, 8 and 9.

REPORTING

5. Following any meeting of POL's Board at which the Postmaster Complaints are discussed, POL will provide written updates to the Secretary of State/UKGI's nominated legal advisors (the "Legal Advisors") which address as fairly as possible the material issues and risks (financial and non-financial) in the Postmaster Complaints.
6. Meetings of POL's Board and Subcommittee have been scheduled around the "Group Litigation Timetable" attached as Appendix A to this Protocol. The Group Litigation Timetable may change as a consequence of further case management directions from the court or other developments in the Group Litigation.
7. POL shall promptly inform the Legal Advisors of any significant changes to the Group Litigation Timetable or status of the litigation, including but not limited to notifying promptly BEIS/UKGI of any:
 - a. change of hearing dates;
 - b. interlocutory or urgent hearings;
 - c. potential press coverage of which POL would reasonably be expected to be aware; or
 - d. case developments which POL reasonably considers could have a significant reputational impact.
8. The Secretary of State/UKGI may request through the Legal Advisors an additional written update report to reflect revisions to the Group Litigation Timetable.
9. The Secretary of State/UKGI may request through the Legal Advisors information and assistance to enable them to respond to any ad hoc queries made to the Secretary of State/UKGI about the Postmaster Complaints. POL agrees to use reasonable endeavours to respond to such ad hoc requests as soon as possible.

CONFIDENTIALITY and PRIVILEGE

10. Information shared between POL, the Secretary of State and/or UKGI about the Postmaster Complaints is likely to include material which is covered by legal professional privilege or is otherwise confidential. POL, the Secretary of State and UKGI

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each agree to treat such information so as to promote the preservation of that privilege and/or confidentiality.

11. Legally privileged and confidential information will be marked as such by POL and treated by the Secretary of State, UKGI, their employees and their agents in accordance with the "Obligations in Relation to Legally Privileged and Confidential Information" set out in **Appendix B** to this Protocol.

Dated 11 June 2018

STRICTLY CONFIDENTIAL & SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE**Appendix A – Group Litigation Timetable**

| Date | Trial | Activity | Whom |
|-------------|--------------|---|--------------|
| 12.06.2018 | NA | PLSG Call | NA |
| 15.06.2018 | CIT | File and serve Louise Dar's Defence | Defendant |
| 15.06.2018 | CIT | File and serve document summarising matters to be discussed at Costs Management Conference | Both Parties |
| 15.06.2018 | HIT | Defendant to arrange for both parties' IT experts to jointly be given 2 days access to inspect Fujitsu's systems known as (i) Peak and (ii) TFS. | Defendant |
| 19.06.2018 | CIT | Costs Management Conference | Both Parties |
| 22.06.2018 | HIT | IT experts to have commenced meetings and discussions | Both Parties |
| 25.06.2018 | NA | PLSG SteerCo Meeting | NA |
| 26.06.2018 | HIT | Parties' IT experts to compile a list of error codes used by Horizon or Horizon support staff. The Error Codes List is to be jointly provided to Fujitsu by the parties' solicitors by this date. | Both Parties |
| 26.06.2018 | HIT | Parties' IT experts are to compile a list of information which they consider they require in order properly to opine on the Horizon Issues. | Both Parties |
| 26.06.2018 | NA | Board Meeting Away Day | NA |
| 27.06.2018 | NA | Board Meeting Away Day | NA |
| 29.06.2018 | HIT | Defendant to provide Stage 3 Disclosure documents which have been collated to date | Defendant |
| 06.07.2018 | CIT | Lead Claimants to file and serve Replies to Defences by 4pm | Claimants |
| 17.07.2017 | NA | PLSG SteerCo Meeting | NA |
| 17.07.2018 | HIT | Defendant to provide Claimants with remaining Stage 3 Disclosure documents | Defendant |
| 17.07.2018 | HIT | Claimants to provide Defendant with documents they wish to rely on at HIT | Claimants |
| 20.07.2018 | CIT | File an agreed Statement of Facts in respect of Common Issues by 4pm | Both Parties |
| 24.07.2018 | NA | PLSG SteerCo Meeting | NA |
| 27.07.2018 | HIT | Claimants to serve provisional / outline document setting out the nature of the allegations in relation to Horizon | Claimants |
| 31.07.2018 | NA | Board Meeting | NA |
| 01.08.2018 | NA | PLSG SteerCo Meeting | NA |

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|-------------------|-----------|---|--------------|
| 08.08.2018 | NA | PLSG SteerCo Meeting | NA |
| 10.08.2018 | CIT | File and serve Witness Statements in respect of each Lead Claimant and Common Issues by 4pm | Both Parties |
| 17.08.2018 | HIT | IT experts to have produced first joint statement | Both Parties |
| 13.09.2018 | NA | PLSG SteerCo Meeting | NA |
| 14.09.2018 | CIT | Updated Merits Opinion | NA |
| 14.09.2018 | HIT | File and serve Witness Statements for HIT | Both Parties |
| 28.09.2018 | HIT | Claimants to serve expert Report | Claimant |
| 19.09.2018 | HIT | CMC for outstanding pre Horizon Trial issues | NA |
| 21.09.2018 | HIT | File and serve Witness Statements in response for HIT | Both Parties |
| 25.09.2018 | NA | Board Meeting | NA |
| 30.10.2018 | NA | Board Meeting | NA |
| 16.11.2018 | CIT | Defendant to serve expert report | Claimant |
| 05.11.2018 | CIT | Common Issues Trial (listed for 20 days) | Both Parties |
| 23.11.2018 | CIT | End of Common Issues Trial | Both Parties |
| 27.11.2018 | NA | Board Meeting | NA |
| 14.12.2018 | HIT | Parties shall meet to hold preliminary discussion about their reports | Both Parties |
| 18.01.2019 | HIT | Exchange supplemental expert reports | Both Parties |
| 29.01.2019 | NA | Board Meeting | NA |
| 20.02.2019 | HIT | Parties experts to have produced second joint statement | Both Parties |
| 22.02.2019 | HIT | Pre Trial Review | Both Parties |
| 11.03.2019 | HIT | Horizon Trial (listed for 20 days) | Both Parties |
| 26.03.2019 | NA | Board Meeting | NA |

APPENDIX B - OBLIGATIONS IN RELATION TO LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION

- 1.1 **“Privileged and Confidential Information”** means any and all legally privileged and other confidential information relating to the Postmaster Complaints provided by Post Office Limited (**“POL”**) in any form or by inspection or observation, whether supplied or received before or after the date of this Protocol, and wherever or however stored, compiled or memorialised, together with any copies of and notes made in respect of such information.
- 1.2 **“Purpose”** means understanding the matters in issue in the Postmaster Complaints, POL’s position on them, and the exposures they present to POL’s operations, finances and reputation, all of which are of common interest to POL, the Secretary of State and UK Government Investments (**“UKGI”**). This common interest is based (among other grounds) on the Secretary of State/UKGI’s ownership of POL, the investment they make in POL’s activities to support the important public and social purpose POL serves, and the accountabilities the Secretary of State/UKGI have for that ownership and investment to Parliament and to the public.
- 1.3 **“Secretary of State”** means the Secretary of State for Business, Energy and Industrial Strategy
- 1.4 UKGI and the Secretary of State (each a **“Receiving Party”**) will:
 - 1.4.1 treat and safeguard the Privileged and Confidential Information as private and confidential;
 - 1.4.2 not use or disclose any of the Privileged and Confidential Information for any purposes other than the Purpose;
 - 1.4.3 ensure proper and secure storage of the Privileged and Confidential Information;
 - 1.4.4 handle, preserve and protect such Privileged and Confidential Information using a high degree of care and at least the same degree of care as the Receiving Party affords its own confidential information of like sensitivity and importance;
 - 1.4.5 permit access to the Privileged and Confidential Information only to such of its executives, officers, employees and professional advisors, and those of the Secretary of State (together **“Individual Recipients”**), as reasonably and necessarily require access to the same in respect of the Purpose and then only on condition that each such Individual Recipient is made aware of the privileged nature of the Privileged and Confidential Information and agrees to comply with the obligations imposed on the Receiving Party under this Protocol.
- 1.5 The Receiving Party shall retain up to date records of all Individual Recipients.
- 1.6 The Receiving Party will ensure that such Individual Recipients are aware of the relevant obligations under clause 1.4 of this agreement not to disclose any Privileged and Confidential Information except in accordance with this Protocol.

- 1.7 The Receiving Party shall:
- 1.7.1 ensure that all its executives, officers and/or employees, professional advisors and those of the Secretary of State who work with the Individual Recipients are aware that the Individual Recipients are required to keep the Privileged and Confidential Information confidential and that if such executives, officers, employees, professional advisors and/or those of the Secretary of State should obtain any Privileged and Confidential Information, that they too shall keep it confidential and keep it secure in the same way as the Receiving Party secures its own confidential information;
 - 1.7.2 promptly and in any event not less than three working days after becoming aware notify POL in writing where any unauthorised use or disclosure of any Privileged and Confidential Information has taken place;
 - 1.7.3 to the extent that any Privileged and Confidential Information is proprietary to any third party other than POL, the Receiving Party shall ensure that all Individual Recipients shall only use such Privileged and Confidential Information for the Purpose unless POL expressly advises otherwise in writing.
- 1.8 These obligations of confidentiality do not apply to any information which in the reasonable opinion of the Receiving Party:
- 1.8.1 was known to the Receiving Party before the Privileged and Confidential Information was provided or made available by or on behalf of POL and was not held under an obligation of confidence to POL whether directly or indirectly;
 - 1.8.2 is subsequently received from any third party legally in possession of the Privileged and Confidential Information and who was not restricted from disclosing it;
 - 1.8.3 is in or subsequently comes into the public domain (other than by breach by the Receiving Party of its obligations under this Protocol);
 - 1.8.4 is subsequently authorised to be used or disclosed as non-confidential information with the prior written approval of POL;
 - 1.8.5 is independently acquired by an employee, consultant, contractor or professional advisor of the Receiving Party in a manner which does not constitute a breach any obligation of confidence;
 - 1.8.6 is required to be disclosed by applicable law or by any court of competent jurisdiction, the rules and regulations of any body or any enquiry or investigation by any governmental, parliamentary, official or regulatory body which:
 - (a) has the power to compel disclosure of the Privileged and Confidential Information from the Receiving Party or any of the Receiving Party's officers, employees, advisors or consultants; or
 - (b) is otherwise lawfully entitled to require any such disclosure, subject always to the Receiving Party complying with Clause 1.10; or

- 1.8.7 is requested by supervisory or regulatory authorities, to whose jurisdiction the Receiving Party reasonably believes itself to be subject, in connection with their examination or supervision of the Receiving Party, subject always to the Receiving Party complying with Clause 1.10.
- 1.9 Without prejudice to the generality of Clause 1.8.3, Privileged and Confidential Information will not be deemed to be in the public domain by reason only that it is known to only a few of those people to whom it might be of interest, and a combination of two or more portions of the Privileged and Confidential Information will not be deemed to be in the public domain by reason only of each separate portion being so available.
- 1.10 If the Receiving Party is required pursuant to Clause 1.8.6 or 1.8.7 to disclose any Privileged and Confidential Information, the Receiving Party will: (i) endeavour, to the extent permitted by law, to provide POL with prompt written notice of such requirement so that POL may assert such interest as it has in the Privileged and Confidential Information, and (ii) ask the court or regulatory authority to treat the Privileged and Confidential Information as confidential.
- 1.11 The parties acknowledge that the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (SI 2004/3391) (EIR) potentially apply to Privileged and Confidential Information disclosed by POL to the Secretary of State/UKGI. If the Secretary of State/UKGI receives a request for the disclosure of information that includes within its scope Privileged and Confidential Information, it shall:
- 1.11.1 promptly, and in any event within three business days of receipt, inform POL's Legal team of the request; and
- 1.11.2 allow a reasonable period for representations to be made by POL as to whether prejudice to its interests would occur were the Privileged and Confidential Information to be disclosed, provided that POL shall make such representations within 5 business days from the date of the notification by the Secretary of State/UKGI.
- 1.12 The Secretary of State/UKGI will consider any representations it receives pursuant to Clause 1.11.2 but it retains sole discretion as to whether any Privileged and Confidential Information falls to be disclosed under FOIA or EIR.

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