

IN THE POST OFFICE HORIZON IT INQUIRY

**RESPONSE ON BEHALF OF
POST OFFICE LIMITED**

Legal Professional Privilege

1. This response is provided on behalf of Post Office Limited ("**POL**") to the announcement by Sir Wyn Williams regarding legal professional privilege issued on 8 November 2021 (the "**Chair's Announcement**"), and the specific request that POL waives privilege over material relevant to the Inquiry's Terms of Reference, as carried into effect by the Provisional List of Issues and as supplemented by the four themes that were the subject of the Preliminary Hearing on 8 November 2021, from the date of the first pilot of the Horizon IT System to 26 February 2020.
2. As POL hopes has been apparent since the establishment of the Inquiry, POL is committed to cooperating with the Inquiry openly and transparently and to assisting the Inquiry in fulfilling its Terms of Reference. POL recognises and agrees that on many of the issues that are identified in the Provisional List of Issues, as supplemented, it will be important and necessary for the Inquiry to consider materials that are subject to legal professional privilege.
3. POL is therefore willing as a general principle to waive legal professional privilege for the purpose of this Inquiry over materials that were created in the period up to 26 February 2020 that are relevant to matters within the Inquiry's Terms of Reference and the Inquiry requests. This will result in POL waiving privilege widely and the Inquiry having extensive access to the privileged materials which will be of most assistance to the Inquiry, including those relating to the following areas (which are not exhaustive but are put forward to assure the Inquiry of POL's commitment to transparency):
 - a. Civil and criminal proceedings brought by POL against postmasters, managers and assistants who were alleged to have been responsible for shortfalls shown by the Horizon IT System;
 - b. The contractual liability of postmasters, managers and assistants for shortfalls shown by the Horizon IT System;

- c. Complaints made by postmasters, managers and assistants in relation to the Horizon IT System and POL's approach to handling and investigating the same;
 - d. The conduct and strategy of the Common Issues Trial and Horizon Issues Trial in the GLO proceedings (including for the avoidance of doubt all related applications); and
 - e. The formulation of any policies and guidelines in relation to the above issues.
4. It is nevertheless important and in the interest of fair process for POL to be able to take legal advice and participate in disputes and remediation activities that are currently ongoing or in reasonable prospect or contemplation with the protection of privilege and so to a very limited extent POL will need to maintain privilege. The issues that arise in these contexts are highly complex and, if POL is unable to protect its legal advice (unlike POL's counterparties), its ability to resolve them fairly will be hampered or undermined.
5. It appears to POL that the main disputes and remediation activities in which POL is involved largely fall outside the Inquiry's Terms of Reference, as carried into effect by the Provisional List of Issues, as supplemented, or its request to waive privilege. These are as follows:
 - a. The Historical Shortfall Scheme ("**HSS**"), which is the claims scheme set up to independently assess and resolve applications from current and former postmasters who believe they may have been affected by shortfalls related to the Horizon IT System. Although substantive work on the HSS began in January 2020, shortly before the temporal limit on the Inquiry's request for POL to waive privilege (26 February 2020), POL's understanding of the Inquiry's Terms of Reference (which provide for assessment of whether the commitments made by POL within the mediation settlement "*including the* [HSS]" have been properly delivered) is that they do not extend to the any assessment of the decisions taken as to the structure of the scheme.
 - b. The proceedings commenced in June 2018 by over 100 claimants, supported by the Communication Workers' Union, in the Employment Tribunal in *Baker and others v Post Office Limited* (Case no: 1402149/2018). The claimants are current or former postmasters, directors of corporate postmasters and/or members of partnership postmasters. They assert that they are all 'workers' within the meaning of certain statutory employment legislation, and so are entitled to statutory rights such as the paid holiday they claim. This worker status issue is not within the Terms of Reference or the Provisional List of Issues, as supplemented.

- c. The claims (including claims for interim payments) which have been made, or are anticipated may be made, by individuals whose criminal convictions are or will be quashed in the criminal appeal courts and ongoing remediation activities.
6. There are also, in principle, claims that may be brought in the future to which legal advice given before 26 February 2020 is directly relevant. This includes for example advice on possible claims against third parties and in respect of measure of loss issues.
7. Against this background and in the short time since the Chair's Announcement, POL has at this stage identified a need to maintain privilege over materials that were previously created for the dominant purpose of:
 - a. dispute resolution processes or remediation activities (including those at paragraphs 5a, 5b and 5c above) that are currently ongoing, or in reasonable prospect or contemplation, or on issues that are or could reasonably be the subject of, or relate to the conduct, disposal or settlement of, such processes or activities; and
 - b. giving or obtaining legal advice or evidence in connection with whether individual postmasters, the directors of corporate postmasters, and/or the members of partnership postmasters have or had employed or worker status (or some similar status conferring rights against POL) for any purpose.
8. Notwithstanding the need to maintain privilege in these very limited areas, POL believes that the Inquiry will have access to the material that it needs in order to address the issues in the Terms of Reference.
9. POL hopes that the approach set out in this note will assist in meeting the Inquiry's objectives, which approach is fully intended to assist the Inquiry and demonstrate POL's commitment to transparency. POL would, of course, be willing to address any questions or concerns that the Inquiry may have.

15 November 2021