

THE POST OFFICE HORIZON IT INQUIRY

**OPENING STATEMENT ON BEHALF OF
UK GOVERNMENT INVESTMENTS**

INTRODUCTION

1. This Opening Statement is made on behalf of UK Government Investments Limited (UKGI). Its purpose is to outline the relevant aspects of UKGI's involvement in, and knowledge of, the issues relating to the Horizon IT system (Horizon), insofar as relevant to the Inquiry's terms of reference. In addition, and without seeking to pre-empt the Inquiry's investigation, UKGI sets out, in this Opening Statement, its reflections on the key aspects of the chronology and the lessons it has learned as a result. UKGI's predecessor was known as the Shareholder Executive (ShEx) and this transition is described in more detail in §28. Throughout this statement we will refer to ShEx and UKGI as appropriate during relevant periods, and to UKGI when referring to the organisation as it is now.
2. The principal focus of this Opening Statement is on the issues of 'Knowledge' and 'Government Oversight' as identified at §49 and §§206-210 of the Inquiry's List of Issues respectively, with particular regard to the period from April 2012 when the first Shareholder Non-Executive Director (Shareholder NED) was appointed to the Board of Directors of Post Office Limited (POL). The issues relating to prosecutions (including those listed in the 'Abuse of Process' section of the List of Issues) are dealt with in a separate, shorter section, reflecting UKGI's limited knowledge of, and involvement in, the criminal prosecution of subpostmasters.
3. UKGI wishes to make clear, at the outset, that it has sought to apply a rigorous, reflective and self-critical approach to the analysis of its role in the events with which this Inquiry is concerned. It has closely followed the human impact

evidence given to the Inquiry to date and it is intensely aware of the scale of loss and suffering endured by subpostmasters and their families. UKGI serves as central government's centre of excellence for corporate governance and that is a role it takes very seriously. That requires a frank assessment of whether it, at various points in its performance of the Shareholder role in respect of POL, could and should have identified the issues with the approach taken by POL, to its assessment of Horizon and its dealings with subpostmasters, and taken steps to mitigate the harm that was caused as a result. It also requires careful consideration of how UKGI should discharge its functions in the future so as to ensure, as far as possible, that the correct lessons are learned and the necessary improvements implemented.

4. It is with those essential questions that this Opening Statement is concerned. UKGI wishes to emphasise that it is well aware that conclusions as to what went wrong and recommendations for future improvement are ultimately matters for the Chair. However, UKGI has adopted a rigorous and proactive approach to the analysis of its role in the matters with which the Inquiry is concerned and that process of analysis and reflection undertaken by UKGI has been underway for some time. As a result, a significant amount of work has been undertaken by UKGI to identify the relevant aspects of its involvement, and it is hoped that this preliminary account of UKGI's key conclusions will be of assistance to the Inquiry, even at this early stage of its investigation. Moreover, UKGI has sought to approach this Inquiry in the manner that the subpostmasters, and the public at large, would hope and expect of a responsible public authority, and to provide the Inquiry, at the first available opportunity, with a frank account of its reflections, the lessons it has learned as a result, and where it considers that improvement is required.
5. The reflections set out in this Opening Statement, the analysis of what went wrong, and the lessons learned, have all been informed by hindsight. The proper application of hindsight is always one of the most challenging aspects of an investigation of this nature. It should, of course, be excluded from any assessment of the real-time actions and judgements of those directly involved in the material events who did not have the advantage of knowing what has now been

established through litigation and subsequent investigation. However, the exclusion of hindsight from the assessment of the actions of those involved in the material events does not mean that it cannot be applied in learning lessons and identifying improvements. It is a valuable tool in that process and there should be no limitations on its use. That is the approach that has been adopted by UKGI in this Opening Statement.

6. It is also important to note, at the outset, that the analysis set out in this Opening Statement is based upon the documentary evidence that UKGI has reviewed to date, the majority of which consists of its own records (as disclosed to the Inquiry). There is plainly a great deal more evidence, including witness statements, to be obtained and considered and it may be that amendments will be made both to the chronology of material events and the conclusions to be drawn from them. However, and for the reasons explained more fully in its oral opening statement, UKGI considers it appropriate to provide the Inquiry (and the other Core Participants) with its analysis and reflections on the evidence as it currently stands, and at the first available opportunity.
7. The Inquiry has made clear that it intends to investigate the implementation and failings of the Horizon system over the whole of its lifetime, a period of over 20 years. For the reasons set out in more detail below the focus of the investigation into the role of UKGI, and its predecessor ShEx in these matters is likely to be focussed on the period starting in April 2012 and the appointment of its first Shareholder NED to the newly formed POL Board (Board). Prior to that point, we are not aware that ShEx had any involvement in the development or implementation of the Horizon system, or in the prosecution of subpostmasters by Royal Mail Group (RMG). These matters formed part of the day-to-day management of the business and without a seat on the RMG Board, ShEx would not have, or expect to receive, updates on operational activity of this nature.
8. As a result, the focus of these submissions will be on the period starting in 2012 with the formation of the POL Board and ending in 2018 with the conclusion of the GLO litigation. Rather than adopting a strictly chronological approach, it is anticipated that the Inquiry may be better assisted by an analysis that addresses

the key themes and milestones that relate to the involvement of UKGI during this period, and so these submissions have been structured accordingly. Each section of these submissions contains an account of UKGI's reflections on that aspect of its involvement, and the final section is concerned with the lessons learned by UKGI as a result of its reflections and the steps taken to implement those lessons. The prosecutions issue is dealt with as a discrete topic at the outset because although prosecutions continued after 2012 (until they were stopped in 2014) the large majority had occurred before this point, and ShEx and then UKGI's involvement in this important aspect of the Inquiry's terms of reference was limited. Accordingly, these submissions are structured as follows:

- I. UKGI - BACKGROUND AND STRUCTURE
- II. PROSECUTIONS
- III. THE MEDIATION SCHEME
- IV. THE SECOND SIGHT REPORTS
- V. THE DELOITTE REVIEW
- VI. PANORAMA
- VII. THE PARKER REVIEW
- VIII. THE LITIGATION
- IX. LESSONS LEARNED/UKGI's RESPONSE

9. In identifying these key milestones in the chronology, and in analysing the evidence relating to them, UKGI has focussed specifically on its own role and that of the POL Board, as distinct from the management of the company, and sought to address squarely the fundamental corporate governance issues that arise from the contemporaneous evidence: Whether, and if so why, key pieces of work undertaken or commissioned in order to investigate problems with Horizon were not presented to the full Board; whether assurances that were provided by the POL executive management to the Board as to the integrity of the Horizon system were subjected to adequate scrutiny and challenge by the Board; whether the scale of the reported discrepancies and the prosecutions of subpostmasters should have served to cast doubt on those assurances and prompt the commissioning of further independent investigation on the part of the Board.

10. Each relevant stage in the chronology plainly requires its own analysis by reference to the contemporaneous documentation and it is important to place the actions of the Board, and ShEx and then UKGI in their proper context. However, in general terms it seems clear to UKGI, with the benefit of hindsight, that there were points in the chronology at which there was information which was, or should have been, made available to the Board which had the potential to cast doubt on the confident assertions being made by POL's executive management regarding the Horizon system which, had it been provided, should have prompted further debate and challenge, prompted (if necessary) by ShEx and then UKGI. The quality and sufficiency of the information that went to the POL Board with respect to Horizon is one of the central features in the examination of how governance operated within POL during this period.
11. Of particular significance in this regard are: (i) Deloitte's Project Zebra full report; (ii) the final Second Sight report; (iii) the whistleblowing allegations contained in the Panorama broadcast; and (iv) the report commissioned by Mr Parker (as Chair of POL Board at the time). It is also important to keep in mind the general context of persistent concern being expressed by subpostmasters and their representatives, which was very difficult to reconcile with the assurances being provided by POL's executive management. Whilst the Board may not have been in possession of the full facts from which to form a reliable judgement, its oversight of the litigation commenced by subpostmasters (which was to become the GLO) at the early stages could have been more rigorous. The Board could have also been quicker to recognise that the very fact that subpostmasters were compelled to launch litigation proceedings in 2016, together with the evidence being assembled by the subpostmasters, strongly indicated that there was another side to the story to be more fully interrogated.
12. Whilst it is plainly for POL's executive management to account for the decisions taken as to what information was, and was not, provided to the Board, UKGI considers that, on reflection, there were opportunities for the Board to appreciate that there was relevant information available which it had not seen, and to require provision of that material to it by POL. It is also apparent that, the Board did not commission its own independent rigorous investigation into the workings of the

Horizon system in order to obtain a clear understanding of its operation (and potential failings), and to test the reliability of the assurances that it was being given by POL's executive management. Accordingly, and in addition to the need to rigorously scrutinise the information that *is* available, a key corporate governance lesson to be drawn from the handling of the Horizon issues is the importance of the Board being proactive in satisfying itself that the information and assurances provided by executive management on complex and controversial matters is accurate.

13. *These issues are all addressed in further detail below but before turning to the substance of its submissions, UKGI wishes to acknowledge the injustices, hardships and distress suffered by the great many subpostmasters and their families as a result of the deficiencies in the Horizon system and the way in which they were treated by POL and/or RMG. In addition to those who were wrongfully accused of and/or prosecuted for criminal offences, there were a great many more whose lives were ruined. UKGI has observed the human impact hearings conducted by the Inquiry and has been deeply concerned to hear the accounts of those who have given evidence and the significant consequences that they endured. Nothing stated below seeks to detract from those accounts, the conclusions reached by the Court of Appeal in overturning criminal convictions or the judgements of Mr Justice Fraser. In preparing this Opening Statement, UKGI has been acutely conscious of the fact that those affected by this scandal expect and deserve a frank and comprehensive account of the role played by each Core Participant, and that is what UKGI has sought to provide.*

I. UKGI - BACKGROUND AND STRUCTURE

14. The Inquiry will be familiar with the corporate history and structure of POL and the purpose of this introductory section is limited to identifying, in outline, the role played by UKGI, and its predecessor ShEx, in POL's ownership and corporate governance. A detailed account of the governance structure in place during the material period is set out in the Response to the Inquiry's Call for Evidence provided on behalf of both the Department for Business, Energy and Industrial

Strategy (BEIS) and UKGI (dated 23 February 2021)¹ and UKGI's Response to the Inquiry's Information Batch Requests 002 (dated 23 February 2021)² and 004 (dated 30 April 2021³ and 07 May 2021⁴) each of which are adopted without repetition.

15. Prior to 2012, POL was a subsidiary of RMG and did not have a substantive board of directors with independent non-executive directors (NEDs). While there existed a subsidiary Board of POL (comprised of RMG executives), the key decision-making body for the group as a whole (and the only substantive board comprising of a Chair and NEDs) was the board of Royal Mail Holdings Ltd (Holdings). The Government did not hold a seat on this board, but it did hold a special share in Holdings, which conferred consent rights over certain actions of Holdings and its group companies, including the right to request certain types of information from POL. In sum, the relationship between Holdings and Government at this time was akin to a private sector institutional shareholder.
16. The prevailing culture within RMG prior to 2012 was one of strong independence and the role of government did not extend to the day-to-day management of the business. The focus of central government's involvement was on the substantial strategic challenges faced by the entire group – which included the mails business run by RMG, the post office counters business run by POL and other areas, such as the logistics business – as it strove towards sustainable financial viability (including through improving efficiency, reducing costs, providing support through subsidies and providing better value for that taxpayer support).
17. The functions of central government in relation to RMG (including POL) during that period were carried out by ShEx, which had originally been established as part of the Cabinet Office in 2003 but had transferred to the (then) Department of Trade and Industry in 2004 (and subsequently its successor departments). Prior to 2012, whilst POL remained a subsidiary of RMG, there was a team within ShEx

¹ Document 1, in the schedule of documents appended to this Written Opening Statement

² Document 2

³ Document 3

⁴ Document 4

(separate from the Royal Mail team) which had shareholder responsibility for the Post Office functions and policy responsibility for POL in respect of the post office network. This team reported to a Director-level civil servant within ShEx. The shareholder role during this period included reviewing financial and performance reports, engaging with the business to secure Government funding to deliver the policy objectives set for the business by the Department, managing the process for the appointment of the CEO and Chair and providing policy input on key high-profile issues (e.g. strike action). The principal aim of Government for POL at this time was the maintenance of as many post offices as could be kept viable (including with the assistance of a Government subsidy), a theme which continues throughout the relevant period. The team were also preparing for the separation of POL from RMG in connection with the privatisation of Royal Mail. Without a seat on the board of Holdings, the role of ShEx was limited primarily to receiving information from RMG and engaging with it on matters of funding (including the administration of a working capital facility), network change and policy. At this stage, ShEx did not have the broader shareholder role and corporate governance responsibilities for POL it was to assume later.

18. The position changed significantly on 1 April 2012 when POL became a public corporation operating independently from Royal Mail and owned directly by the Secretary of State for Business, Innovation and Skills (BIS), the predecessor Department to BEIS, and the preparatory work for the separation completed by ShEx was actively implemented. As set out in UKGI's Response to the Inquiry's Call for Evidence⁵, as a public corporation POL was expected to operate at arm's length from Ministers and Government. As per the Treasury's Consolidated Budgeting Guidance it is a core tenet of the operation of public corporations that they are afforded, '*...appropriate levels of freedom to exercise commercial judgment, within appropriate delegated authority arrangements that protect departments*'⁶. A key feature of this devolved governance model meant that neither the Secretary of State as shareholder, nor Government officials would have had any involvement in the day-to-day operations of POL. Rather, the responsibility for oversight of POL's operations rested with its new Board, comprised of senior management and

⁵ Ibid, Document 1

⁶ Document 5

independent non-executive directors, including a representative of the Secretary of State, through ShEx, in the form of a Shareholder NED. It is not for central government to micro-manage the operation of large commercial entities such as POL and there are good and obvious reasons why they should be given the autonomy, subject to the oversight of their boards, to take decisions in the best commercial interests of the business. The challenges faced by this newly-formed Board were substantial. The establishment of POL as an independent entity following its separation from Royal Mail was a very significant undertaking in its own right and had to be managed alongside the numerous issues which were considered existential threats to the business.

19. POL also had an executive management team which was responsible for executing the operations of the company, and which was led by a chief executive and subject to the control and oversight of the Board. As in almost all companies, it was the responsibility of the executive management team to provide the Board with accurate, up-to-date, information on the operation and management of the company and it was the responsibility of the Board to satisfy itself that the company was being properly and effectively run, including by requiring the executive management team to provide further information, should that be necessary.
20. Post its separation from RMG in 2012, ShEx continued to perform a shareholder role for POL. It performed this in two primary ways, via a dedicated shareholder team (the Shareholder Team) and by holding a non-executive Director seat (the Shareholder NED) on the POL Board. The appointment of a Shareholder NED to the POL Board was a novel concept for Government at the time. Prior to 2012, very few Arm's Length Bodies (ALBs) had Government officials on their boards in a shareholder representative capacity, and the appointment of such a NED to the POL Board reflected a shift in approach to asset ownership designed to provide Government with an enhanced line of sight into ALBs activities. Given its historic independence from Government, convincing POL to allow a Shareholder NED onto its new Board was particularly challenging.

21. The role of the Shareholder NED is an important lever in the performance of the shareholder role. Key aspects of the role of the Shareholder NED are set out in UKGI's Response to the Inquiry's Call for Evidence at §§ N to P⁷. Unlike other NEDs on the POL Board, the Shareholder NED is not appointed to the POL Board to provide specific subject matter expertise. Rather, the officials that perform the role of the Shareholder NED are primarily appointed for their ability to bring a government perspective to aid the POL Board's decision-making. It is also important to note that the Shareholder NED is only one of a number of members of the Board, and their responsibilities, as set out in the Companies Act 2006, are the same as those of their fellow directors. The Shareholder NED participates in collective decision making around the Board table, in the same way as their colleagues, and does not have any powers to direct the actions of the Board or override decisions of which they do not approve.

22. Although the Shareholder NED had, and continues to have, the same legal obligations and responsibilities as other NEDs on the POL Board, the discharge of their functions also involves regular interactions with Government, in keeping with the purpose of their role in enhancing Government's visibility of activities within POL. A key tenet of this enhanced visibility is the information flow that the Shareholder NED, together with their Board colleagues, receive in Board papers from the management team. At the inception of the role in 2012, the Shareholder NED met regularly with the designated Shareholder Team within ShEx and also had some interaction with Ministers. Over time, the Shareholder NED's engagement with the Department and the Shareholder Team has become more intensive. For example, the Shareholder NED now regularly meets with BEIS officials within the separate BEIS POL policy team and, when appropriate, Ministers to discuss developments at POL and relevant Departmental/Ministerial interests, and provides this relevant context and perspective to the POL Board to aid its decision-making. They also provide BEIS with insight into the quality of the POL Board and management in the performance of their functions.

⁷ Ibid, Document 1

23. In addition, as set out in the Response to the Inquiry's Call for Evidence⁸, the present-day position is that the Shareholder NED also leads, and is supported by, the Shareholder Team, which interacts with the POL executive management and BEIS officials at a working level on a regular basis. Key aspects of the Shareholder Team's present-day responsibilities are set out in the Response to the Inquiry's Call for Evidence at §§ J to P⁹. Whilst the Shareholder Team role has been subject to a degree of evolution since 2012, its role and responsibilities included assessing and monitoring financial performance, negotiating Government funding arrangements with POL and promoting effective corporate governance within POL (for example, in its role in appointing the CEO and Chair to the Board), as well as (until 2018) performing a policy role.
24. Again, the Shareholder NED's role as the head of the Shareholder Team was not a feature of the role in 2012 and has evolved over time. In the early years following POL's establishment as an independent corporation (2012-2014) the Shareholder NED and the Shareholder Team operated as separate, but collaborative, units, with the former focussed on their responsibilities as a member of the Board and the latter focussed on policy, governance, finance and commercial issues concerning POL. The Shareholder NED and head of the Shareholder Team interacted on a regular basis, but the sharing of information between the Shareholder NED and Shareholder Team was initially subject to certain restrictions. In 2014, the structure was amended and the Shareholder NED became the head of the Shareholder Team, and over time the relationship with POL developed such that the Shareholder Team were able to receive full sight of POL Board papers and information shared with the Shareholder NED. We set out further detail on the evolution of the Shareholder NED's role in practice at §§~~30~~ below.
25. The first Government official to act as Shareholder NED, Susannah Storey, who held the post until March 2014, was on the Pensions sub-committee, on the Audit, Risk and Compliance (ARC) sub-committee only briefly until March 2013, was not on the Remuneration sub-committee at POL and was also not the head of the

⁸ Ibid, Document 1

⁹ Ibid, Document 1

Shareholder Team. Part of the rationale for this arrangement at the time was to accommodate a deep-seated concern within POL that having a ShEx Shareholder Team member on the Board at a time when POL was negotiating funding arrangements would create an unacceptable conflict of interest.

26. In March 2014, Richard Callard succeeded Ms Storey as the Shareholder NED. Since December 2013, he had also been the head of the Shareholder Team which meant that upon appointment as Shareholder NED he was able to provide a more direct line of communication between the POL Board, the Shareholder Team, and Ministers, as a consequence of the more regular day to day contact with the Shareholder Team as a whole. This had the consequence of ensuring that the Shareholder Team and Government were sighted more contemporaneously on relevant aspects of Board decision making, and the Shareholder NED was more integrated into the day-to-day Shareholder Team activity at a working level. He also sat on a number of POL Board sub-committees during his tenure including the Pensions sub-committee, the ARC sub-committee (from January 2016), and the Project Sparrow sub-committee (from its inception in April 2014; Project Sparrow was concerned with issues relating to Horizon). Mr Callard's role and responsibilities remained essentially unchanged following the transfer of ShEx's functions to UKGI in April 2016.

27. Mr Callard remained in post until March 2018 when he was succeeded, as Shareholder NED and head of the UKGI Shareholder Team, by Tom Cooper, who continues in that role to date. In addition to the POL Board, he currently sits on the Remuneration, ARC and HRC (Historical Remediation Committee - since its inception in July 2021). From 2018-2020 he also sat on the Board's Postmaster Litigation Sub-committee. Although the essential structure of Mr Cooper's role is unaltered there has been a process of formalising the governance arrangements, both between BEIS and UKGI (through an updated Memorandum of Understanding, the most recent of which is dated 12 December 2019)¹⁰, between BEIS and POL (through the Articles of Association, the most recent of which are

¹⁰ Document 6

dated 1 April 2020)¹¹ and between BEIS, UKGI and POL (through a Framework Document, the most recent of which is dated March 2020)¹².

28. In April 2016, ShEx's functions were transferred via a machinery of government change (alongside UK Financial Investments Limited) to create the corporate structure of UKGI as it exists today. In practice this meant that the civil servants that had comprised the ShEx division within BEIS (and its predecessor Departments) along with UKFI were transferred to a company wholly owned by His Majesty's Treasury, operating outside and independently of a Government Department. Since 2016 UKGI has an independent Board and a range of clearly defined responsibilities set out in its own Framework Document¹³. The transition from ShEx to UKGI did not result in any fundamental change in the structure of its role in relation to POL. A Shareholder NED remained on the POL Board and that individual remained the head of the Shareholder Team within UKGI.
29. Throughout the period during which UKGI has performed the shareholder role in respect of POL on behalf of BEIS, it has also continually worked to establish and develop its own corporate reporting procedures and risk registers as distinct to those ShEx adopted from within a Government Department. These are now ultimately overseen by the UKGI Board. The net effect is that the corporate governance role performed by the UKGI Shareholder Team has developed, alongside the sophistication of the organisation in general, throughout its existence to become more formally structured.
30. There is one further aspect of the structural arrangements which should be noted at the outset. In 2018, BEIS and UKGI took the decision that the policy and shareholder functions should be separated, with the UKGI Shareholder Team focussed purely on commercial and governance matters and a dedicated BEIS Policy Team taking the lead on policy matters. This decision was made: (i) to align the governance of POL to the best practice model adopted for other BEIS owned ALBs (which is to separate the policy and shareholder function); and (ii) as a

¹¹ Document 7

¹² Document 8

¹³ Ibid, Document 8

consequence of the increased volume and complexity of policy-related interactions between POL and BEIS, including (but not only), due to the issues relating to Horizon. The benefits of this new structure are addressed at §256 below. Prior to its adoption, and for the majority of the material period, the role of the Shareholder Team (including the Shareholder NED) included advising Ministers on the then limited matters of policy relating to POL.

31. Finally, it is important to note the context in which ShEx and then UKGI was performing its role from 2012 onwards and the multiple issues on which that it was engaging with POL as the shareholder representative. For example, matters with which the POL Shareholder Teams in ShEx and UKGI were engaged (at various points in the chronology) included, among others, establishing the governance of POL as an entity separate from Royal Mail, provision of (and State Aid approvals for) subsidy funding, consideration of mutualisation, pension arrangements and Network Transformation. All of these items were considered by ShEx and then UKGI as existential matters for the business which were key to the continued viability of the Post Office network.
32. Having summarised the Shareholder Teams' and the Shareholder NEDs' roles and responsibilities over the relevant period, we now turn to what we perceive to be the key aspects of the chronology from UKGI's perspective, and our reflections upon them.

II. PROSECUTIONS

33. The issue of POL's prosecution of subpostmasters and others arises throughout the period covered by these submissions and is therefore addressed as a discrete topic, rather than being dealt with piecemeal as and when it arises in the chronology.

2012

34. In the period between 1999 and 2020 over 900 private prosecutions were brought against subpostmasters and others¹⁴. Prior to 1 April 2012, responsibility for bringing those criminal prosecutions sat with RMG. The team conducting these prosecutions dealt with all prosecution activity (including theft from post, interference with mail etc.) at a group-wide level. Following the transfer of responsibilities to POL, 78 further prosecutions were brought¹⁵, before ceasing altogether in 2016.
35. This transfer of responsibilities, as part of the separation of POL from RMG, also coincided with ShEx first having a seat on the POL Board, with Susannah Storey being appointed as the Shareholder NED. During this initial stage, very limited information concerning POL's criminal prosecutions against subpostmasters was provided to the Board: the 'significant litigation' reports that were circulated as part of the Board's papers from April 2012 were for noting and summarised civil claims only¹⁶.
36. In July 2012, a spreadsheet of the '*Top-10 Criminal Cases*' was first appended to the significant litigation report. By September this had been reframed to detail the '*principal criminal cases brought by POL*', defined as cases involving more than £500,000 or which were of a sensitive nature¹⁷.
37. During this period, the Department's oversight of POL's operations was limited: at a meeting of the POL Board in May 2012, the Shareholder NED (Susannah Storey) confirmed - in line with an agreement between POL and ShEx to address POL's concerns about conflicts and information flow - that she would not be sharing Board papers with her colleagues in ShEx¹⁸. Accordingly, even when issues concerning the prosecution of certain MPs' constituents were raised during

¹⁴ Document 9

¹⁵ Ibid, Document 9, which confirms 2012: x47; 2013: x27; 2015: x4

¹⁶ Document 10

¹⁷ Document 11

¹⁸ Document 12

the Board's meeting in May 2012, this was not information that would have been formally passed back to the Department.

38. In October 2012, the Board were informed that an independent investigator – later confirmed to be Second Sight (as described in more detail at §65 and then §114 below) – had been appointed to review “...up to 10 cases where SPMs allege that Horizon caused them losses”¹⁹. The Shareholder NED and Shareholder Team were both aware of, and welcomed, this initiative.

2013

39. Second Sight continued with this work up until July 2013, when its interim report²⁰ was delivered and disclosed to Parliament. At the Board's meeting on 16 July 2013, POL's CEO (Paula Vennells) provided the Board with an update on Horizon and the Second Sight report. The minutes record that, “...the Board were concerned that the [Second Sight] review opened the Business up to claims of wrongful prosecution”²¹, reflecting a degree of caution on the Board's part, of which Susannah Storey was a member.
40. What the Board does not appear to have been informed about, however, is POL's receipt of legal advice the previous day, in which Simon Clarke of Cartwright King Solicitors had advised POL that it had ‘breach[ed its] duty as a prosecutor’ in failing to provide disclosure of ‘bugs’ in the Horizon system (quoted in *Hamilton v Post Office* at §86²²). Indeed, there is nothing in the evidence we have seen to suggest that this advice was ever shared with the POL Board (and therefore the Shareholder NED), the Shareholder Team or the Department. That is also the case in respect of: (a) the three conference calls that are understood to have taken place in the days following POL's receipt of Mr Clarke's initial advice; and (b) in respect of Mr Clarke's follow-up advice dated 2 August 2013, in which he is understood, to have “...emphasised the seriousness of any attempt to abrogate the duty to record and

¹⁹ Document 13

²⁰ Document 14

²¹ Document 15

²² Document 16, paragraph 82 onwards

retain material, observing that a decision to do so may well amount to a conspiracy to pervert the course of justice” (as summarised in Hamilton v Post Office at §89²³).

41. Instead, what was communicated to the POL Board at its meeting on 25 September 2013, was that Brian Altman QC had been instructed to oversee the process by which Cartwright King were reviewing POL’s historical criminal cases; to advise on POL’s continued disclosure obligations; and to recommend whether POL should continue to bring private prosecutions, and if so, to assist with re-drafting POL’s prosecutions policy. From ShEx’s perspective, the instruction of a highly regarded senior criminal QC (and former First Senior Treasury Counsel) to carry out these tasks appeared to be a reasonable response to the concerns that had been raised following receipt of Second Sight’s interim report.

42. Ahead of the Board’s meeting on 31 October 2013, POL’s CEO (Paula Vennells) prepared a report²⁴ addressing eight issues, the last of which summarised the progress of Project Sparrow and included an explanation that Cartwright King had completed its review of 301 past prosecutions and had concluded that disclosure of Second Sight’s interim report was appropriate in 10 of those cases²⁵. Ms Vennells also explained that Brian Altman QC’s review of the overall process had reached the conclusion that the process was “*fundamentally sound*”. Whilst any disclosure issues were plainly important to resolve, the overall impression created by the CEO’s update can reasonably be described as positive. That impression would also have been reinforced by the ‘significant litigation’ paper provided to the Board for noting, which stated that “*...no appeal has been made to the Court of Appeal against any conviction obtained in the criminal courts, following [disclosure of] the Interim Report*”²⁶.

43. As a member of the Board, the Shareholder NED (Susannah Storey) would have received the CEO’s paper and litigation report. However, as the minutes indicate, she left the meeting before the CEO’s report was discussed²⁷. Even if she had still

²³ Ibid, Document 16, paragraph 89

²⁴ Document 17, pages 18 - 22

²⁵ Ibid, Document 17, page 22

²⁶ Ibid, Document 17, page 148

²⁷ Document 18

been present, the minutes record that the only discussion of the Project Sparrow element of the CEO's report, was focussed on the mediation scheme (the Scheme) and not on the review of past criminal prosecutions, indicating that (notwithstanding its significance) the prosecutions review did not feature as a top priority amongst the Board's considerations at the time.

44. The evidence indicates that in November 2013, POL's ARC sub-committee met and discussed the issue of prosecutions²⁸. From a ShEx and then UKGI perspective, it should be noted that the Shareholder NED did not have a position on the ARC sub-committee at this time and would not therefore have been privy to the committee's discussions, except insofar as these were reported to the full Board. In the absence of a NED position on the ARC sub-committee, there was also no mechanism by which the Shareholder Team within ShEx would have had access to any of the sub-committee's reports.

45. The POL Board next met on 27 November 2013, although Susannah Storey gave her apologies and was not in attendance²⁹. In relation to prosecutions, the Board received a Project Sparrow Update paper which explained that the overall policy for investigating and prosecuting future criminal cases had been presented to the ARC sub-committee on 18 November 2013³⁰. The minutes of the November Board meeting confirm that the Board discussed: (i) past prosecutions and whether those cases would be included in the mediation process; (ii) the approach to future prosecutions; and (iii) the fact that the ARC sub-committee had not reached any decisions on the issue. POL's CEO (Paula Vennells) also explained that prosecutions were not brought lightly and that the business was reviewing its approach, alongside other deterrents (e.g. suspension or giving notice to subpostmasters). Referring to the details of the four cases in the 'significant litigation' paper³¹ (which again was noted), it was suggested that there was a need to continue to prosecute, where appropriate. The Board therefore agreed that it would consider the approach to prosecutions again at a later date, alongside

²⁸ Document 19

²⁹ Document 20

³⁰ Document 21, pages 1 - 2

³¹ Ibid, Document 21, pages 73 - 75

improved support processes for subpostmasters, so as to reduce cases. The minutes record that the Board asked for a note explaining who had been named in past prosecutions and the liability of the business and individual Board members, again demonstrating a degree of caution and oversight.

2014

46. By the time the POL Board met on 21 January 2014³², POL had resolved not to start any new criminal prosecutions (as explained in the 'significant litigation' paper) and was planning to discuss its future approach to criminal prosecutions at its Board meeting in February, with the issues first being considered by the ARC sub-committee in advance of that meeting.
47. On 11 February 2014, the evidence indicates that the ARC sub-committee received a paper setting out options concerning future prosecutions³³. The report referred to the existing charging policy of prosecuting subpostmasters for false accounting combined with theft and/or fraud, noting that defendants typically pleaded guilty to a charge of false accounting, with the charge of theft then being dropped. The report also examined the financial implications of a change in policy, whilst highlighting in paragraph 3.3 that recovery rates should be *'treated with a degree of caution'* as it was *'well established that the purpose of criminal prosecutions is to punish and deter wrongdoing, not to recover financial loss: this must be our guiding principle. Should we bring a prosecution for any other reason, Post Office and its Board run the risk of being accused of abusing the Criminal Justice System, with attendant reputational damage'*.
48. Having considered the three options identified in the report, the minutes³⁴ indicate that the ARC sub-committee endorsed 'Option B' - pursuing a prosecutions policy more focussed on more egregious misconduct - e.g. higher-value cases/cases involving vulnerable members of society/cases involving particularly wilful wrongdoing – and engaging with the police in relation to other

³² Document 22

³³ Document 23

³⁴ Document 24

matters. This decision was made on the clear understanding that the policy would be regularly reviewed (at least once a year), with a view to considering whether, in light of the experience that had then been gained, any further changes would be appropriate.

49. On 13 February 2014, the evidence indicates that POL's Executive Committee (ExCo) also met and endorsed 'Option B', subject to Board approval. Although we have not seen any minutes of the ExCo meeting, it is understood from a summary of their discussions contained within a report to the POL Board on 18 February 2014³⁵, that it discussed the civil recovery process as an alternative to recovery through the criminal courts and how the proposed changes to the Prosecutions Policy would require an individual re-assessment of so called '*stacked cases*' (i.e. those cases where an investigation into a loss or an alleged loss had taken place and the subpostmaster was waiting to hear the outcome of that investigation), with many cases expected not to be taken forward.

50. On 26 February 2014, the POL Board met and considered (amongst other items) a review of POL's current prosecution policy³⁶. The Shareholder NED (Susannah Storey) attended the meeting, along with Richard Callard as the Shareholder NED Designate (who attended as an observer in light of Ms Storey's impending departure). A report prepared by the interim General Counsel (Chris Aujard)³⁷ was presented to the Board, summarising the discussions that had taken place at the recent ARC sub-committee and ExCo meetings and seeking approval to implement 'Option B', with the policy to be subject to review at least once per year. Attached to his report was the report submitted to the ARC sub-committee on 11 February³⁸ and a reactive communications briefing³⁹, provided in recognition of the fact that changes to the current policy would be likely to attract stakeholder interest. Having noted the summary of discussions that had taken place at the ARC sub-committee and ExCo meetings, the Board approved the implementation of Option B, as a new Prosecutions Policy.

³⁵ Document 25

³⁶ Document 26

³⁷ Ibid, Document 25

³⁸ Ibid, Document 23

³⁹ Document 27

51. From ShEx's perspective, POL's decision to review its prosecutions policy, supported by advice from Brian Altman QC, appeared to be a sensible and constructive response. The POL Board was still in its relative infancy, having only been established less than two years earlier, and the prosecutions issue had been ongoing for many years prior to its establishment. In those circumstances, commissioning a review of the prosecutions policy, informed by independent expert advice, was a proactive way of seeking to get to grips with the issue. The fact that several hundred historic cases had been reviewed by a firm of solicitors and only a very limited number of those had required disclosure of Second Sight's interim report, also contributed to a picture that was broadly reassuring, suggesting that, in the vast majority of cases, there was no cause for concern.
52. Throughout the summer of 2014, the POL Board continued to meet, but nothing of relevance to prosecutions appears to have been discussed. On 9 September 2014, Cartwright King completed Phase Two of its review of historic criminal prosecutions (237 additional cases), but again there is nothing in the Board's minutes of 25 September 2014⁴⁰ to indicate that the review was discussed at the Board. In a report for that meeting concerning the Scheme⁴¹, POL's interim General Counsel (Chris Aujard) did indicate, however, that POL had found nothing in any of the 73 cases which had been investigated within the Scheme that raised concerns about faults with the Horizon system, the safety of convictions, or POL's liability for the losses being claimed by applicants. Once again, the message to the Board was a generally reassuring one, which the Board would not appear to have challenged.
53. During the autumn of 2014, a draft of POL's new prosecutions policy prepared by Brian Altman QC was presented to POL and is understood to have been being considered internally. A copy of the draft was not provided to the POL Board however and it took over a year before a final copy was eventually presented to the Board for noting (in January 2016)⁴².

⁴⁰ Document 28

⁴¹ Document 29, page 135

⁴² Document 30

2015

54. When the POL Board met on 28 January 2015, the CEO provided a paper updating the Board on a number of matters, including Project Sparrow⁴³. She informed the Board that the investigation of all cases within the Scheme was now complete and, significantly, stated that: *“To date, we have found no evidence, nor has any been provided by either an Applicant or Second Sight, of either faults with the Horizon system or unsafe convictions, and we are not aware that any convictions have been appealed.”* It is not clear whether the CEO was aware of Simon Clarke’s advice in July and August of 2013⁴⁴, but once again, her report provided significant reassurance to the Board and Shareholder NED (Richard Callard), that there were no concerns with POL’s previous prosecutions. The minutes of the meeting record that this aspect of the CEO’s paper was not discussed⁴⁵, which may indicate that it was not considered to be controversial.
55. In or around February 2015, the CCRC contacted POL asking for information about Brian Altman QC’s review of POL’s prosecutions policy. The CCRC’s request was discussed at the next meeting of the Sparrow sub-committee on the 18 February 2015⁴⁶. A report prepared for the meeting⁴⁷, explained that POL had been contacted by the *“Criminal Cases Review Commission with a broad request for information based on Sir [sic.] Brian Altman QC’s review of our procedures in relation to prosecutions”* and that Second Sight had *“...started to openly criticise Post Office’s approach to prosecution in their case review reports”*. The report nevertheless stated that POL had completed *“...investigations into all cases in the Scheme and secured confirmation that the Horizon platform works as it should”*. Whilst the referral of cases to the CCRC will have given pause for thought, the impression given by this report concerning Horizon, and in particular the comfort provided by Brian Altman QC’s conclusion that prosecutions had been handled appropriately, was once again reassuring. At the very least, as a new member of the POL Board and Sparrow sub-committee, UKGI would suggest that it was not unreasonable for the Shareholder NED to view it in this way, and to regard the CCRC as the

⁴³ Document 31, page 7

⁴⁴ Ibid, Document 16

⁴⁵ Document 32

⁴⁶ Document 33

⁴⁷ Document 34

appropriate body to review POL's implementation of its prosecution procedures, at least in the first instance. The minutes of the meeting state that the sub-committee asked POL to consider how it could engage constructively with the CCRC and under what circumstances it might share the report written by Mr Altman QC with them⁴⁸. From ShEx's perspective, the committee's direction for the business to engage constructively with the CCRC was plainly appropriate.

56. On the 9 April 2015, Second Sight presented its final report⁴⁹ to POL (see §§118-140 below). Within the report, Second Sight stated the following relating to prosecutions:

"25.21 We are aware of cases where criminal charges have been brought which appear to have been motivated primarily by Post office's desire to recover losses. In some cases, those criminal charges do not seem to have been supported by the necessary degree of evidence and have been dropped prior to trial, often as part of an agreement to accept a guilty plea to a lesser charge of false accounting, so long as the defendant agreed to repay all the missing funds".

"25.22 We have also been told of agreement whereby no mention was to be made in court, by the defendant, of any criticism of the Horizon system"

"25.23 We remain concerned that some of these decisions to prosecute may have been contrary to the Code of Crown Prosecutors with which Post office, a private prosecutor, is required to comply"

57. On 15 April 2015, POL issued a detailed response⁵⁰, in which it suggested that the issues raised by Second Sight concerning prosecutions were outside the scope of the Scheme, which was to consider Horizon and associated issues, and also outside of Second Sight's expertise as forensic accountants. POL therefore disputed Second Sight's findings in section 25 of its report, as being '*...based on generalised and anecdotal assertion which is unsubstantiated*'.

⁴⁸ Ibid, Document 33

⁴⁹ Document 35

⁵⁰ Document 36

58. A copy of Second Sight's final report and POL's response was provided to the Department upon ShEx's request⁵¹, but does not appear to have been circulated to the full Board. With the benefit of hindsight, the decision not to circulate the final report to the Board is a difficult one to justify. That said, the causative effect of the omission is more difficult to assess and it might fairly be observed that, even if the documents had been presented, and the Board had the opportunity to further interrogate the respective merits of the two competing and very detailed accounts that were being presented by Second Sight and POL, it is very difficult confidently to conclude whether this would have enabled the Board to have come to a clear conclusion on the Horizon issue.

Reflection

59. UKGI has reflected carefully on how the issue of prosecutions arose at a Board and shareholder level during the relevant period, having particular regard to the information that was provided to the Shareholder NEDs (Susannah Storey and Richard Callard) at various stages.
60. UKGI would suggest that it is important to recognise that the significant majority of criminal prosecutions took place prior to the transfer of authority to bring such prosecutions from RMG to POL in April 2012 and that many of the failings, particularly relating to disclosure, concern cases that occurred prior to this point⁵².
61. After the transfer of authority occurred, UKGI would also suggest that the issue of prosecutions was generally given limited prominence within the issues considered by the Board, with details often only appearing relatively late in the Board pack and in statistical form, simply to be noted. Given that the prosecution of a subpostmaster by POL is always to be regarded as a significant step which has profound implications for the individual concerned, and that the prosecutions were ongoing (albeit much fewer than the pre-2012 period) the level of attention given by the Board to the prosecutions issue appears incongruous. That said, even when the issue was discussed in greater detail, the clear impression given by the

⁵¹ Document 37

⁵² See, for example, the findings of the Court of Appeal in *Hamilton v Post Office* in relation to the case of Seema Misra, that occurred during 2009 and 2010

POL executive management to the Board was reassuring: that experts in criminal law had been appointed to review past criminal cases and POL's approach to prosecutions and that, in the significant majority of those cases, no concerning issues had been identified.

62. Even when more explicit criticisms came to the fore following receipt of Second Sight's Part 2 report⁵³, POL's response was to issue a detailed rebuttal⁵⁴. UKGI has considered whether the Shareholder Team should have pushed for a copy of the Second Sight Report and POL's response to be provided to the full Board for consideration, and acknowledges that this would have at least provided an opportunity for the Board to challenge the account provided by POL's executive management. However, and for the reasons discussed below (§127), it is difficult to envisage how the Board might have been in a position to adjudicate between the two competing narratives in light of the information available to it at the time.
63. UKGI acknowledges that the involvement of the CCRC naturally highlighted the fact that there might be an issue which required consideration and remedying, and that – with the benefit of hindsight – more might have been done by the POL Board to fully explore the basis for this involvement. However, there can be no doubt that, in directing the business to cooperate with the CCRC, the Shareholder NED, as a member of the Sparrow sub-committee and POL Board, acted appropriately. ShEx also provided the CCRC with practical assistance in accessing the relevant files it had, and informed the Department of the CCRC's involvement. Furthermore, once the CCRC were engaged, it is suggested that it was also correct for the Shareholder Department not to involve itself in that process and to allow the CCRC to fulfil its function independently, in accordance with the law.
64. Finally, whilst it is recognised that there were significant delays in POL's executive management presenting a copy of its new prosecution policy to the Board, UKGI would suggest that the delay is unlikely to have been of any material consequence as no new prosecutions were being carried out by POL during this period.

⁵³ Ibid, Document 35

⁵⁴ Ibid, Document 36

III. THE MEDIATION SCHEME

65. At a Board meeting on 23 May 2012, POL's Chief Executive updated the Board on a recent meeting she had held with James Arbuthnot MP and Oliver Letwin MP to discuss the cases of a number of their constituents⁵⁵. In paragraph (b) of the Any Other Business section, the Board was informed that the meeting had been '*a success*' and that POL had undertaken to engage forensic accountants '*to investigate the system and give further comfort to those concerned about these cases.*' Second Sight were engaged to undertake this work, but from the review UKGI has been able to conduct to date it does not appear as though the Board were involved in the selection of Second Sight or informed as to the terms of their instruction.
66. Shortly after this Board meeting, a meeting was held between the Minister, Norman Lamb MP, and Mr Bates of the Justice for Subpostmasters Alliance (JFSA), that was also attended by two members of the Shareholder Team⁵⁶. The meeting was convened following a request sent by Mr Bates in February 2012 in which he outlined the JFSA's concerns regarding the integrity of the Horizon system and enclosed a subpostmaster survey undertaken by 100 subpostmasters indicating how extensive the losses caused by Horizon were considered to be⁵⁷. As a result of this meeting, and the associated correspondence, ShEx was informed of the nature and extent of the JFSA's concerns regarding Horizon; but it was also aware, and supportive, of the fact that POL had recently agreed to commission independent forensic accountants to conduct an investigation into the system.
67. On 8 July 2013, Second Sight issued an interim report setting out the findings of its investigation thus far entitled '*interim report into alleged problems with the Horizon system*'⁵⁸. The POL executive's response to the interim report⁵⁹, which was reflected in the statement made by the Minister in the course of a Parliamentary debate on 9 July 2013⁶⁰, was to establish an independently chaired

⁵⁵ Ibid, Document 12

⁵⁶ Document 38

⁵⁷ Ibid, Document 38, page 7

⁵⁸ Ibid, Document 14

⁵⁹ Document 39

⁶⁰ Document 40

working group (the Working Group) to complete the review of cases raised with Second Sight and to consider how best to adjudicate disputed cases in the future. The following month, on 27 August 2013, POL announced an independent mediation scheme (the Scheme)⁶¹, operated by the independent Centre for Effective Dispute Resolution (CEDR), to which the Working Group could refer appropriate cases for resolution. The Working Group was independent of both ShEx and BEIS, in a conscious decision for the Scheme to remain independent.

68. ShEx was supportive of this approach on the part of POL. From ShEx's perspective, these were reasonable measures which were understood by ShEx to have been greeted positively by James Arbuthnot MP (who had publicly supported the subpostmasters), when he had met with the Minister on 8 July 2013⁶². POL's commitment to the mediation process and apparent willingness to address the issues that it identified was reflected in the update provided by the Chief Executive to the Board on 16 July 2013⁶³, which was recorded in the following terms:

"The CEO explained that although the Second Sight report had been challenging it had highlighted some positive things as well as improvement opportunities. The Business had been praised in Parliament for setting up the independent review; the proportionality of the tiny number of cases had been emphasised; and no systemic issues had been found with the Horizon computer system. However there were cultural issues which had to be addressed to improve the support we gave to sub-postmasters. The CEO stressed that this was now a catalyst to make changes in the Business."

69. The draft terms of reference for the operation of the Working Group⁶⁴ and the Scheme were shared with ShEx⁶⁵ and appeared, from ShEx's perspective, to provide a promising opportunity to resolve the long-running dispute between POL and a number of subpostmasters concerning the operation of the Horizon system. The overall objective of the Scheme was identified as 'to try to achieve the mutual and final resolution of a Subpostmaster's concerns about Horizon and any

⁶¹ Document 41

⁶² Document 42

⁶³ Ibid, Document 15

⁶⁴ Document 43

⁶⁵ Document 44

associated concerns', and it was made clear that the Scheme should be operated in a timely and effective manner. The role of the Working Group included identifying cases that were suitable for inclusion in the Scheme and monitoring its operation to ensure that it remained effective. Sir Anthony Hooper, a retired Court of Appeal judge, was appointed as Independent Chair of the Working Group which gave ShEx confidence that its oversight of the Mediation Scheme would be both independent and rigorous.

70. From ShEx's perspective, the most important aspect of the Scheme was its independence. The purpose of the Scheme was to reach a mutually satisfactory resolution of disputes between individual subpostmasters and POL through independent scrutiny of the relevant evidence. The operation of the Scheme was to be overseen by Sir Anthony's Working Group, and ShEx considered that this work should be undertaken without interference. The importance of independence in the operation of the Scheme was also emphasised by Mr Arbuthnot in the public statement he made on 27 August 2013⁶⁶:

"I am very pleased indeed with the WG's proposed processes. To my mind it represents the very best chance to all parties – individual Subpostmasters and mistresses and the PO have of ensuring the best outcome for everyone. It is fair, thorough and independent."

71. By late 2013, the Scheme had received 150 applications, of which 136 entered the mediation process (ten were resolved beforehand and four were found to be ineligible). Updates as to the operation of the Scheme were provided to the POL Board by the Chief Executive at meetings both of the full Board and the ARC sub-committee. The updates were generally high-level, providing details as to the number of claims and general progress. The report to the POL Board in January 2014 contains a representative example⁶⁷:

"The scheme received 147 applications before applications closed on 18.11.13. The applications are now being progressed through the Scheme under the direction of a working group chaired by retired Court of Appeal Judge Sir Anthony Hooper, and comprising representatives from POL, Second Sight, and JFSA."

⁶⁶ Ibid, Document 41

⁶⁷ Document 45

72. As the Scheme progressed, ShEx was made aware of concerns on the part of POL (including via the Project Sparrow sub-committee following its inception in April 2014) that the process was being delayed by what it considered to be the failure on the part of Second Sight to produce reports relating to the individual cases of sufficient quality and within an acceptable timescale. At the Board meeting on 21 January 2014⁶⁸, POL's CEO informed the Board that the process was taking longer than expected and, in a paper prepared for the Board by POL's executive management on 20 February 2014⁶⁹, a number of concerns were expressed including the time taken to prepare reports, delays in agreeing terms of engagement and the extent to which Second Sight's reports would be '*evidenced*'. On 25 March 2014 Richard Callard updated other members of the Shareholder Team on a meeting held with POL's CEO the previous day during which she had informed him that Sir Anthony Hooper had sent a number of Second Sight's reports back to them to be re-written as '*he considered them to be substandard and unsubstantiated*'⁷⁰. By April 2014, concerns had also been expressed by the JFSA, including in a letter from Alan Bates to the Minister dated 16 April 2014⁷¹, although the JFSA's view was that the delay in completion of the Second Sight reports was the fault of POL in failing properly to co-operate with Second Sight.
73. Whilst ShEx was also concerned at the apparent failure of the Scheme to deliver timely resolution of the large number of individual applications, its position remained that the Scheme was independent, subject to oversight by the Working Group, and concerned with commercial disputes between POL and individual subpostmasters. In those circumstances, it was neither necessary nor appropriate for the Government to interfere in its operation. This position is reflected in the letters drafted by ShEx for the Minister in April 2014⁷² responding to Mr Bates and forwarding the correspondence from Mr Bates to Sir Anthony⁷³. The latter included the following:

⁶⁸ Ibid, Document 22

⁶⁹ Document 46

⁷⁰ Document 47

⁷¹ Document 48

⁷² Document 49, pages 5 - 6

⁷³ Ibid, Document 49, page 7

"The Government, as shareholder in Post Office Ltd, does not play a role in the operation of the Working Group, and is keenly aware that you must be allowed to perform your duties independently and free from influence."

74. The fact that the Scheme appeared to be running into trouble in early 2014 was noted by, and of concern to, the POL Board. It responded by approving the creation of a new Board sub-committee to monitor the progress of the Scheme and to consider whether any alternative arrangements might be necessary in order to bring matters to a resolution. The sub-committee was named after 'Project Sparrow' (Sparrow sub-committee)⁷⁴.
75. During the course of 2014, POL's executive management continued to express concerns to the Sparrow sub-committee about the operation of the Scheme. Those concerns focussed on what they considered to be the failure of Second Sight to assess the individual cases in an objective and timely manner. From the perspective of ShEx, and the Shareholder NED who attended the Sparrow sub-committee, the Scheme was proving to be protracted, expensive and ineffective in addressing the concerns of the respective parties. On 25 March 2014, the Shareholder NED informed colleagues within ShEx that Sir Anthony Hooper's '*faith in SS [Second Sight] is waning*', indicating that the concerns were not only held by POL's executive management but were shared (to some extent at least) by the independent Chair of the Working Group⁷⁵. This sentiment was shared with the Minister as part of an update on 25 April 2014⁷⁶. POL also indicated that it was considering a number of options including closing down the Scheme and seeking to resolve outstanding cases in a different way, and replacing Second Sight. A 'summary paper' was prepared for the Board in June 2014 in which a number of alternative options were identified⁷⁷.
76. Following receipt of further legal advice, an alternative approach was identified in which the processes of the Scheme and the role of the Working Group would be refined⁷⁸. Again, the documents, which have been disclosed to the Inquiry,

⁷⁴ Document 50

⁷⁵ Ibid, Document 47

⁷⁶ Document 49, pages 1 - 2

⁷⁷ Document 51

⁷⁸ Document 52

indicate that ShEx took a proactive approach in suggesting how refinements to the Scheme might be made, for example, by retaining Second Sight as an expert within the Working Group, whilst instructing one or more of the larger accountancy firms with a greater capacity to review and process cases more quickly within the Scheme. In advancing these proposals, ShEx sought to balance the desire on the part of subpostmasters (and the JFSA in particular) to retain the involvement of Second Sight with the concerns that had been raised regarding Second Sight's capacity. In the event, however, POL (through the Sparrow sub-committee) ultimately considered these refinements to be impractical⁷⁹.

77. The Scheme continued to operate in its existing form over the course of the next several months. In September 2014, POL's General Counsel prepared an update paper for the Board⁸⁰ which presented a relatively optimistic assessment of future progress. There had been a meeting between POL and the Working Group which, it was said, was '*significant*' in a number of respects. There had been '*progress*' in dealing with the cases under the Scheme which put POL in '*a strong position to be more directive and assertive in our approach with Second Sight, JFSA and at Working Group more generally.*' Of particular significance was this assertion by the General Counsel:

"This has been helped by the fact that we have found nothing in the 73 cases investigated which has raised concerns about faults with the Horizon system, the safety of convictions or Post Office's liability for the losses being claimed by applicants."

78. At the Board meeting on 25 September 2014⁸¹, the Board noted that it was encouraged by the update on recent progress provided by the POL General Counsel, which would also appear to have included the prediction that '*all the Post Office investigations should be finished by December.*' An update was provided by the Chief Executive at the next POL Board meeting on 29 October 2014⁸², which indicated that progress was being made and was minuted, under CEO's Report section (b), in the following terms:

⁷⁹ Ibid, Document 52

⁸⁰ Ibid, Document 29, pages 135 - 137

⁸¹ Ibid, Document 28

⁸² Document 53

“The CEO updated the Board on Sparrow and an antagonistic conversation with James Arbuthnot MP about the Business’s approach to the Mediation Scheme. She reiterated that the investigations were progressing well. The Business was refusing to progress all cases into mediation, although it was offering to meet and go through each case with the applicant.”

79. It was difficult, during this period, for ShEx to obtain a clear understanding of precisely why the independent Scheme was not delivering on its objectives. POL’s executive management was blaming (primarily) Second Sight and also reporting that individual subpostmasters were approaching the process with unrealistic expectations as to the level of compensation to which they might be entitled. The position of the JFSA appeared to be that the problem was a lack of constructive co-operation on the part of POL⁸³. For the reasons already explained, ShEx took the view that it was important to keep the independent process at arm’s-length and it did not receive direct reports from Sir Anthony as to his perception of the Scheme and its operation.
80. It was also difficult to obtain a clear understanding of how serious the problems with the Scheme really were. The Scheme was being independently run and both CEDR and Sir Anthony Hooper were rightly concerned to maintain appropriate levels of both independence and confidentiality⁸⁴. In June 2014, the position taken by POL’s executive management appeared to be that the Scheme was no longer viable, and some form of alternative would have to be found, excluding Second Sight⁸⁵. By the Autumn, the updates were to the effect that progress was being made and that the investigations were proceeding in a satisfactory manner. That said, James Arbuthnot MP, a strong initial supporter of the Scheme, appeared to have profound concerns and there was no evidence that the issues raised by the JFSA earlier in the year had been addressed⁸⁶.
81. By the end of 2014, the seriousness of the problems with the operation of the Scheme was underlined by a number of letters written during the course of

⁸³ Ibid, Document 48

⁸⁴ Ibid, Document 51

⁸⁵ Ibid, Document 51

⁸⁶ Ibid, Document 53

November and December. On 10 November 2014, the JFSA wrote to Sir Anthony criticising the actions of POL and asking whether there is ‘any point in continuing with the Scheme which is just being turned into a sham by the actions of the Post Office.’⁸⁷ Early December 2014 saw the publication of a letter on behalf of a large group of MPs, led by James Arbuthnot MP in which it was stated that, following a meeting with the Chief Executive to discuss the Scheme, they had lost faith in it. Mr Arbuthnot’s position was expressed in the following terms:

“The scheme was set up to help our constituents seek redress and to maintain the Post Office’s good reputation. It is doing neither. It has ended up mired in legal wrangling, with the Post Office objecting to most of the cases even going into the mediation that the scheme was designed to provide. I can no longer give it my support. I shall now be pursuing justice for SubPostmasters in other ways.”⁸⁸

82. On 13 December 2014, Sir Anthony Hooper wrote to the Minister in response to a request for an update on progress⁸⁹. He said that he was limited in the information he could give due to the confidential nature of the Scheme (including the number of cases that had been resolved at mediation) but matters had taken longer to progress than he would have wanted. He explained, in general terms, some of the reasons for the delay and indicated that a number of cases would be (in effect) stayed pending completion of Second Sight’s thematic report. The cases had proved more complex than anticipated and he was continuing to make it a priority to push the Scheme ahead as quickly as possible.
83. The evidence session on the ‘Post Office Mediation Scheme’ before the Parliamentary Select Committee (the Committee) on 3 February 2015⁹⁰ indicated that, at least as far as the witnesses were concerned, the disputes that had arisen in relation to the Scheme were fundamental and intractable. The Committee heard evidence from POL, Second Sight and the JFSA (amongst others) and the clear impression formed by ShEx in light of the evidence given was that the Scheme was unlikely to be sustainable in anything like its existing form.

⁸⁷ Document 54

⁸⁸ Document 55

⁸⁹ Document 56

⁹⁰ Document 57

84. This was plainly a disappointing position to have reached. In July 2013 the Scheme, operated under the oversight of the Working Group, had appeared to offer a fair, realistic and efficient means of resolving the outstanding disputes relating to Horizon which had the support of all relevant parties. By the end of 2014, it was apparent that a number of key stakeholders had lost confidence in the process and there was no end in sight. The recognition that the Scheme, in its existing form, was unlikely to achieve a successful resolution of the dispute was reflected in the direction given to the POL executive management by the Sparrow sub-committee on 12 January 2015 to *'produce an options paper to analyse the most effective ways to bring the Scheme to a sensible conclusion.'*⁹¹
85. In a paper prepared for the Sparrow sub-committee dated 11 February 2015 authored by POL's legal team and communications director⁹², POL set out a proposal for the further conduct of the Scheme. In particular, it proposed a *'fundamental change'* whereby there would be a presumption of mediation in all non-criminal cases save in *'exceptional circumstances'*. This, it was said, would *'meet our commitment made to applicants at the outset of the Scheme; providing them with a thorough re-investigation of their case.'* As a means to speed up the timeline, the new process sent all cases straight to mediation, removing the requirement for the Working Group to assess whether each individual case was suitable (including Second Sight's report), however applicants retained the right to request a review of their cases by Second Sight should they wish to do so.
86. The Sparrow sub-committee considered the proposal at its meeting on 18 February 2015⁹³ and supported it in principle, subject to some further actions which it asked the POL executive management to progress *'at speed'*. The Minister was updated in respect of the proposed redesign of the Scheme in a submission dated 4 March 2015⁹⁴. The rationale for the proposed redesign, as identified by POL, was explained to the Minister, who was also warned that the proposals were unlikely to find favour with the JFSA (a prediction that was borne out by the

⁹¹ Document 58, pages 179 - 180

⁹² Ibid, Document 34

⁹³ Ibid, Document 33

⁹⁴ Document 59

JFSA's response to what it regarded as the 'sacking' of Second Sight). It was recommended that, in light of the independent nature of the process, it would be appropriate for Government to maintain its 'arms-length' approach.

87. POL announced its new approach to the Scheme on 10 March 2015⁹⁵. As predicted by ShEx, it received a negative response from the JFSA and James Arbuthnot MP who interpreted it as the 'sacking' of Second Sight⁹⁶. ShEx assisted in the drafting of a response to Mr Arbuthnot on behalf of the Minister reflecting its understanding of the nature and purpose of the new procedure, which was sent on 17 March 2015⁹⁷:

"These changes do not equate to Post Office closing the scheme. Cases which remain in the scheme will progress to mediation as set out above, and more swiftly than under the previous situation where cases would be discussed by the Working Group before proceeding to mediation.... As a result of Post Office's decision to mediate remaining cases, I understand that they have indeed given notice of termination of contract to Second Sight. However, Post Office remain committed to working with Second Sight through the remaining period of their contract and have stated that they will seek to continue to make available to scheme applicants an independent review by Second Sight (where one has not already been provided), and provide funding accordingly."

88. From ShEx's perspective, the new procedure proposed by POL appeared to represent a genuine attempt to address some of the concerns that had arisen in relation to the original Scheme. The adoption of a presumption that all cases not involving a criminal conviction would proceed to mediation represented a significant streamlining of the process, and appeared to reflect the perceived desire on the part of the JFSA that all cases proceed to mediation. The offer of a (funded) review by Second Sight of the case of any applicant who wanted one did not seem to be an inherently unreasonable approach. Furthermore, ShEx was keen to ensure that the possibility of resolving disputed cases by way of mediation was not abandoned before all the realistic options had been exhausted.

⁹⁵ Document 60

⁹⁶ Document 61, page 4

⁹⁷ Document 62

89. In a submission to the Secretary of State and the Minister on 11 March 2015⁹⁸, ShEx provided an update on the current position relating to the Scheme and the announcement made the previous day. It was explained that Second Sight had not been 'sacked' and that POL intended to make an independent report by Second Sight available to all applicants remaining in the Scheme, should they choose to have one. It was further explained that POL had given a commitment to support Second Sight in the completion of its thematic report, which would then be available for all future mediations.

90. In the event, the redesigned Scheme proved to be unacceptable to the JFSA (in particular) who set out its position in a letter to the Minister dated 19 May 2015⁹⁹:

"The Scheme has been so badly abused by Post Office that it is no longer fit for purpose, and last week JFSA had to write to its members in the Scheme to suggest that they now withdraw until such time as an independently run, transparent and honest scheme is in operation."

91. Looking back at the operation of the Scheme, with the benefit of hindsight, it seems as though relations between the JFSA and POL had broken down to such an extent by early 2015 that the Scheme was destined to fail regardless of the merits of POL's proposed re-design. A mediation scheme of this nature can only succeed if the participants have confidence in the scheme itself, and are willing to engage constructively. With the benefit of hindsight, one key flaw was that the parties to the Scheme did not at that time fully understand the workings, and failings, of the Horizon system as a whole (as opposed to its being applied to specific cases). Had a piece of work clarifying this been commissioned at the commencement of the Scheme (as opposed to emerging in the course of Second Sight's final report and the GLO litigation) it is possible the Scheme might have gained greater traction. In any event, it was apparent by June 2015 that the Scheme, whether in its redesigned form or otherwise, would not deliver a resolution of the disputed issues relating to Horizon.

⁹⁸ Ibid, Document 61

⁹⁹ Document 63

92. It is clearly unfortunate that so much time and resources were expended on a mediation scheme which achieved so little, and UKGI has reflected carefully on the question of whether more might have been done, from a corporate governance perspective, to keep the process on track and focussed on its original objectives. However, even with the benefit of hindsight, it is difficult to see how it could have been either possible or appropriate for ShEx (and/or the POL Board) to exercise a greater degree of effective control over the operation of the Scheme.
93. For good reason, the Scheme was designed to be independent and, at least as far as the mediation aspect was concerned, confidential. That independence was fundamental to the Scheme receiving the support of stakeholders such as the JFSA at the outset and its importance was repeatedly emphasised by Sir Anthony Hooper. The POL Board was clearly concerned when it began to become clear that difficulties were being encountered in operating the Scheme effectively, as is illustrated by the establishment of the Sparrow sub-committee and the demand for regular updates on progress. But it would not have been appropriate for the Board, or ShEx, to insert itself into the mediation process or seek to direct the operation of the Working Group. Nor would the Board or ShEx have had any particular expertise to draw upon in directing how the Scheme should be conducted. Sir Anthony had been engaged to provide expert oversight of the process (along with the rest of the Working Group) and CEDR had been engaged to facilitate the mediations.
94. Given the arm's-length approach adopted by ShEx and the Board's exercise of restraint with regard to the involvement with the operation of the Scheme (in each case appropriately), it was inevitable that they lacked a precise understanding of the problems being encountered in the operation of the Scheme and the passages from the contemporaneous documents set out above make it clear that different views were being expressed by different stakeholders at different times. However, when it became apparent, in late 2014/early 2015, that the Scheme was not working, the Sparrow sub-committee was proactive in directing POL to explore alternatives. Whilst it might have been beneficial to have taken this action earlier

the reports being made to the Board in September¹⁰⁰ and October 2014¹⁰¹ were to the effect that progress was being made, notwithstanding the difficulties that had been encountered and even in December 2014, the update to the Minister from Sir Anthony was to the effect that the process was proving more complex and protracted than anticipated, not that it was doomed to fail¹⁰².

95. On reflection, UKGI considers that it was appropriate to adopt an arm's-length approach to the independent mediation process and to let the process run without direct interference or oversight until it became increasingly apparent, in early 2015, that it would not achieve its objectives in its current form. At that stage the POL Board, through the Sparrow sub-committee acted reasonably in requiring POL to re-design the Scheme and in giving the re-designed scheme – which appeared, on the face of it, to address at least some of the difficulties that had been encountered with the original scheme – at least the chance to succeed. However, whilst an arm's-length approach to an independent mediation process may well have been appropriate, the Board had a role to play in ensuring that the process was properly informed by a clear and objective analysis of how the Horizon system operated (including any deficiencies in the system). As observed above (at §91) the lack of an overarching analysis of Horizon to inform the mediation process was an impediment to its success and there could have been real benefit to the process had the Board identified, and remedied, this deficiency.
96. Moreover, once it became clear, during the Summer of 2015, that the Scheme was unlikely to present a viable means of resolving what was becoming an increasing acrimonious and intractable dispute it was necessary to revisit the question of how such resolution might be achieved by different means and, in particular, what model of investigation might prove capable to getting to the bottom of the issues once and for all.
97. There was nothing even approaching consensus as to what form an effective process of resolution might take. In his 19 May 2015 letter to the Minister, Mr

¹⁰⁰ Ibid, Document 29

¹⁰¹ Ibid, Document 53

¹⁰² Ibid, Document 56

Bates, on behalf of the JFSA, had called for an *'independently run, transparent and honest scheme'* but no further details were given as to what such a scheme might entail¹⁰³. There had also been a number of indications that subpostmasters would seek to commence litigation in order to achieve a resolution of the dispute, including in a press release issued by Edwin Coe LLP on 9 December 2014 entitled *'Subpostmasters go to law'*, which contained the assertion that the JFSA had *'turned to David Greene of Edwin Coe LLP, the UK's leading class action firm, to pursue their rights against the Post Office.'*¹⁰⁴

98. On 29 June 2015, Andrew Bridgen MP led an adjournment debate in which he identified the establishment of a judicial inquiry by the Government as his preferred option for further investigation¹⁰⁵. At a subsequent meeting on 15 July 2015, called by the Minister and attended by (amongst others) Mr Bridgen, ShEx and POL's Communications Director, Mr Bridgen stated that he was asking the BIS Select Committee to conduct a further investigation into Horizon issues¹⁰⁶.

99. On 10 July 2015, the Chief Executive of POL wrote to the Minister¹⁰⁷ indicating that, as far as POL was concerned, the Scheme remained a viable means of resolution at that stage:

"We are offering mediation in all cases in the Scheme that do not involve a previous court ruling (such as a conviction). The mediations, independently administered by the Centre for Effective Dispute Resolution, are focussed on trying to find a consensual resolution to the issues between the parties on the basis of evidence of what actually happened in a particular case."

100. That position was reflected in a detailed PowerPoint presentation prepared by POL's CEO and General Counsel at a face-to-face meeting in early August 2015 and presented to the Minister, which contained a robust defence of its position and indicated a continued willingness to engage in mediation, as reflected in the Executive Summary¹⁰⁸:

¹⁰³ Ibid, Document 63

¹⁰⁴ Document 64, page 29

¹⁰⁵ Document 65

¹⁰⁶ Document 66

¹⁰⁷ Document 67

¹⁰⁸ Ibid, Document 64, pages 2 and 3

“The Post Office has taken a series of significant and substantial steps over the last three years, with integrity at all times, on this issue – including an inquiry, mediation scheme and funding for applicants – and gone beyond what any organisation in a similar position would do.

We have spent almost £8m to get to the position we are now – and that has been money well spent to get to where we are today: a position of confidence in our systems and processes in the face of complaints which we have taken very seriously.

PO has established processes for investigating accounting anomalies.... PO continues to offer to mediate with applicants and engage with MPs.”

101. The view taken by ShEx, in response to this complex picture of a variety of different stakeholders proposing a variety of different ways forward was that a Government-ordered judicial inquiry would not represent an appropriate or proportionate means of resolution. The fundamental reason for that view was that the dispute was, in essence, a commercial one between POL and a number of subpostmasters. There were plainly overarching themes applicable to a significant proportion of cases, including the 19 ‘thematic issues’ addressed in Second Sight’s final report¹⁰⁹ (considered below at §§ 118-140) and, most particularly, the operation of the Horizon software; but each individual subpostmaster was seeking resolution of his or her commercial dispute with POL and a judicial inquiry did not seem to ShEx to represent an appropriate or effective means of achieving that objective. It also had the potential to cut across other routes of redress that subpostmasters might wish to pursue, including civil claims and criminal appeals.
102. This view was expressed consistently in a series of submissions to the Minister during the summer of 2015. On 2 June 2015, ShEx advised the Minister that the resolution of the dispute between POL and subpostmasters was not a matter for Government, which should resist any calls to become more involved¹¹⁰. That advice was repeated in a further submission dated 24 June 2015¹¹¹ in which ShEx recommended that Government maintain the position that the issues raised in the

¹⁰⁹ Ibid, Document 35

¹¹⁰ Document 68

¹¹¹ Document 69

course of the mediation process related to contractual disputes between two independent businesses and that Government should *'resist calls to 'take over' the Mediation Scheme'*. Advice to similar effect was set out in an update for the Secretary of State dated 7 July 2015¹¹², to which he replied in the affirmative on 16 July 2015¹¹³. The essential rationale, in each case, was that the mediation process had been set up to be independently administered and oversee the subject matter of the disputes which was the contractual relationship between two independent businesses (POL and subpostmasters), and Government should be mindful of the need to avoid compromising other avenues of dispute resolution the parties might wish to pursue, including litigation.

103. On 15 July 2015, a meeting was held between the Minister, members of POL's executive management and a number of MPs¹¹⁴. The meeting was attended by ShEx which provided the Minister with a summary of *'next steps'* on 17 July 2015¹¹⁵. The summary emphasised the intractable nature of the dispute and the fact that despite *'frank discussion'* no side changed their position. ShEx advised that the continued *'uncertainty and allegation'* was damaging to POL's business and was preventing individuals with cases against POL from reaching a resolution.

104. On 31 July 2015, ShEx provided an update to the Minister following a meeting held earlier that week¹¹⁶. ShEx confirmed that it was exploring options to address the concerns the Minister had raised as to how to progress the resolution of the Horizon issues given the apparent failure of the Scheme. ShEx explained that it was in the process of working up, *'options you can consider to ensure that there is independent oversight of this matter, rather than Government having simply to take the side of one party or another.'* The options under consideration included establishing a more proactive system of oversight of the mediation process (either through CEDR or the appointment of an independent person to *'spot check'* individual mediations), the provision of guidance to individual participants in the mediation

¹¹² Document 70

¹¹³ Document 71

¹¹⁴ Ibid, Document 66

¹¹⁵ Document 72

¹¹⁶ Document 73

process explaining the options available to them (including bringing a civil claim), and establishing some means of scrutinising individual cases¹¹⁷.

105. On 4 August 2015, the Minister chaired a meeting of BIS and ShEx officials, including the Shareholder NED¹¹⁸. It was noted that the mediation process had '*stalled*' and that there was a need to consider how matters might now be '*moved forward*'. Consideration was given to a list of options drawn up by ShEx as to how Government might be able to intervene in a constructive manner so as to assist in achieving a resolution of what was clearly becoming an ever more intractable dispute. The options, which were set out in a PowerPoint presentation identified five options for '*review/oversight*' and four options for the provision of additional '*guidance/advice*', with an analysis of the advantages and disadvantages of each option¹¹⁹. The analysis provided by ShEx made clear that the status quo did not '*provide reassurance for Ministers or individuals*' and that more was required in order to provide that reassurance.
106. The options were considered at the meeting by the Minister and one of the agreed actions was that the Minister would speak to Tim Parker, the incoming Chair of the POL Board, to encourage him to take a '*fresh look*' at the Horizon issues and engage with those who were raising concerns¹²⁰. That conversation took place later the same month and led to the commissioning of the '*Parker Review*', which is dealt with at §§175-193 below.

Reflection

107. UKGI has reflected on its involvement in the chronology of events surrounding the establishment of the Scheme, its demise, and the subsequent search for some alternative means of getting to the bottom of the issues relating to Horizon.
108. As explained above, the decision to establish the Scheme and the Working Group was sound in principle and was supported by all parties at the time. Once that

¹¹⁷ Document 74

¹¹⁸ Document 775

¹¹⁹ *Ibid*, Document 64

¹²⁰ *Ibid*, Document 75

process had been commenced then it was plainly appropriate to let it run independently, and without direct interference from either the POL Board or Government. Although the difficulties faced by the Scheme became increasingly apparent during the course of 2014 it was clearly necessary to ensure that it was given every chance to succeed and the redesign proposed in early 2015, adopting the presumption that all cases would proceed to mediation, appeared to be a constructive one which addressed at least some of the subpostmasters' concerns.

109. Whilst it became apparent as 2015 progressed that the Scheme, even in its redesigned form, was unlikely to achieve resolution, there was nothing even approaching consensus as to how that might be achieved. Although one of the proposals suggested that Government should intervene to establish some form of judicial inquiry, ShEx's view – that this would not be an appropriate means of resolving what were, in effect, a series of commercial disputes between POL and a large number of individual subpostmasters – appears reasonable, even with the benefit of hindsight, although it might fairly be observed by the Inquiry that the characterisation of the long-running and intractable dispute between POL and subpostmasters as purely '*commercial*' in nature represented something of an oversimplification. It is also far from clear that a judicial inquiry would have found favour with the key parties, or would have been capable of providing an acceptable resolution in individual cases.
110. However, although the advice that Government should remain at arm's-length from what was, in essence, a commercial dispute, and should not seek to intervene in an independently administered mediation process, was correct in principle, it was appropriate to consider, given the impasse that had clearly been reached by mid-2015, whether there were any levers that Government and/or the POL Board could pull to try and achieve some progress. Options were worked up by ShEx with an accompanying analysis of the advantages and disadvantages of those options and, following discussion at a Ministerial meeting, a decision was taken to commission the new Chair of the POL Board to undertake a fresh investigation with a view to getting to the bottom of the matter. The nature of that investigation, and the response to its findings, is addressed below but, in UKGI's assessment, commissioning Mr Parker to take a '*fresh look*' at the Horizon issues was a

reasonable and appropriate response to the situation as it stood in mid-2015. This was an approach that struck a balance between attaining visibility on POL's handling of the matter without seeking to take on the role of arbiter in the disputes, and drew on the unique position of the new Chair as being able to 'access all areas' within POL while also not being bound to the history of the matter and able to consider the issue with fresh eyes.

111. That said, UKGI does consider that the submissions and advice drafted for Ministers during this period reveal a degree of confidence in the POL executive's repeated assurances as to the integrity of the Horizon system, and the extent to which exhaustive investigation had revealed no evidence of any problems which might account for subpostmaster losses, which sits uncomfortably with what is now known.

112. There is no doubt that the message that the POL executive management consistently delivered to ShEx and the POL Board throughout this period was that it had acted responsibly and ethically in conducting a thorough investigation into Horizon and there was no evidence of any problems with this system. Numerous examples of that messaging have been given above and there are many more in the sections which follow. In this regard it is important to note that the reassurance provided to ShEx and the Board by POL's executive management was not limited to bare assertions, it was often supported by very detailed analysis (such as the August 2015 PowerPoint presentation¹²¹ addressed above, and the response to the Second Sight final report¹²² addressed below). The range of options available to a shareholder, or a POL Board, when presented with assurances of this nature by the executive team are necessarily limited, particularly when the issues relate to matters of specialist expertise such as the operation of a complex computer system. In those circumstances, the fact that ShEx's submissions passed on to Ministers the assurances that ShEx and the Board had received from POL executive management is not inherently surprising - this was the information being presented to the Board by POL's executive management on matters falling

¹²¹ Ibid, Document 64

¹²² Ibid, Document 35

within its remit, to which it had apparently given detailed and careful consideration.

113. UKGI would acknowledge, however, that with the benefit of hindsight there were other sources of information available during this period as to the operation of the Horizon system, besides POL, and that these merit careful consideration in the analysis of whether the Board and/or ShEx should have had cause to doubt whether the assurances being given by POL's executive management regarding Horizon were reliable. In particular, the period 2013-2015 saw the production of: (i) the Deloitte assurance review ('Project Zebra'); (ii) a number of reports by Second Sight; and (iii) a Panorama investigation. Each of these sources of information was significant and merits individual consideration, to which we now turn.

IV. THE SECOND SIGHT REPORTS

Second Sight Interim Report

114. On 8 July 2013, Second Sight issued an interim report¹²³ setting out the findings of its investigation thus far entitled '*Interim report into alleged problems with the Horizon system.*' The POL Board was briefed on the draft report, prior to its publication, during the course of a conference call on 1 July 2013¹²⁴. The briefing provided by the Chief Executive was minuted in the following terms:

"She gave an update on the Horizon review which was being undertaken by Second Sight and their interim report which was to be presented at a meeting on 8th July. The investigation to date had found no systemic issues with the Horizon computer system but had highlighted areas for improvement in support areas such as training."

115. The correspondence indicates that a copy of Second Sight's interim report was not shared with the POL Board in advance of this meeting. The Shareholder NED, Susannah Storey, who attended the Board's conference call, was therefore dependent upon the summary provided by the CEO, which, at least at a systemic level, was reassuring. That same reassurance was also reflected in a briefing note

¹²³ Ibid, Document 14

¹²⁴ Document 76

prepared by POL employees for a meeting between the CEO and James Arbuthnot MP on 3 July 2013, which was shared with ShEx on the morning of the meeting¹²⁵.

116. On 5 July 2013, a draft copy of Second Sight's interim report was shared with the Shareholder Team, on an understanding that Second Sight were continuing to refine the drafting over the weekend of 6-7 July 2013¹²⁶. This draft enabled ShEx to prepare a briefing to the Minister, Jo Swinson MP, which reiterated Second Sight's conclusion that they had not identified problems of a systemic nature, although two '*anomalies*' had been investigated in which defects or bugs in Horizon (which were presented as having been remedied) had affected the balances or transactions within 77 branches¹²⁷.
117. Following the completion of the interim report, focus shifted to the Scheme set up in response to its findings. It would appear however that, in the course of preparing their reports into individual cases considered under the Scheme, Second Sight identified a number of thematic issues of general application and so proposed that they prepare a report addressing these thematic issues for circulation to those participating in the Scheme.

Second Sight Thematic Report

118. ShEx received an update from POL's General Counsel on this issue by way of an email sent on 29 August 2014¹²⁸. He explained that a thematic report had been prepared dealing with issues of wider application as a '*streamlining measure*' and that the report had recently been circulated to applicants. He said that the POL project team considered the report to be '*inaccurate in many areas*', that it contained '*no clear statement of the evidence*' on which its conclusions had been reached, and that the POL project team had written to recipients of the report making this clear. He stated that a '*detailed note*' identifying the inaccuracies in the report was being prepared and would be circulated shortly. A number of adverse observations were made as to the general quality of Second Sight's work and their failure to

¹²⁵ Document 77

¹²⁶ Document 78

¹²⁷ Document 79

¹²⁸ Document 80

meet the obligations of a supplier. On 24 September 2014, ShEx were forwarded a letter from POL's Communications Director confirming that its detailed response to Second Sight's thematic report had been completed and circulated to participants in the Scheme¹²⁹. It was made clear that both documents were 'confidential' and had been prepared 'for the purpose' of the mediation.

119. There was a POL Board meeting on 25 September 2014¹³⁰. The Board received an update on the progress of the Scheme but it would appear that neither the Second Sight thematic report nor the POL response were provided to the Board, or their contents discussed. It seems likely that this reflects the fact that the documents had been prepared for the purposes of an independently administered mediation scheme that was currently in operation. ShEx's view of the position at the time is conveniently summarised in an email from a member of the Shareholder Team dated 30 September 2014¹³¹:

"Given the high number of objections that POL has flagged about Second Sight's thematic report (and indeed the JFSA was critical of aspects of the thematic report too), it is perhaps unlikely that any report would satisfy all parties. Instead POL is producing its own report to inform the mediation process that will sit alongside the Second Sight report. It is our understanding that the JFSA are also producing a briefing note as they too disagreed with elements of the Second Sight report. It is the role of the independent monitor to use the available information to inform the mediation process."

120. It is apparent from the Chief Executive's March 2015 report to the Board¹³² that Second Sight continued to work on their thematic report: *"The priorities now are to progress as many cases to mediation as quickly as possible. Second Sight have also given us their updated draft of their 'Part Two' Report which is intended to assist in the mediation process. It is inaccurate and inflammatory; we will respond shortly"*. Second Sight's draft report was not provided to the POL Board at that stage.
121. On 8 April 2015, ShEx informed (amongst others) the BEIS Permanent Secretary that the final report was expected imminently, and that ShEx had been informed

¹²⁹ Document 81

¹³⁰ Ibid, Document 28

¹³¹ Document 82

¹³² Document 83, page 4

that it was intended specifically to support Scheme applicants in mediation and would not be released to the general public¹³³. On 14 April 2015, POL's Communications Director was chased by the Shareholder NED for a copy of the report, which was provided later the same day, accompanied by POL's draft response¹³⁴.

122. Dealing first with the Second Sight final report, it plainly lacked a clear focus on the specific issue of whether there were systemic problems with the Horizon system. It was marked as 'confidential' and 'not to be disclosed to any person other than a person involved in the processing of Applicants' claims through the scheme' and its scope was described, at §1.10 in the following terms:

*"As a result of analysing the 150 applications to the Scheme, we identified 19 commonly mentioned issues (often described as 'Thematic Issues') that were raised by multiple Applicants. In the interests of efficiency we agreed with Post Office that, rather than deal with these commonly mentioned issues within individual Case Review Reports ('CRRs'), we would prepare a Briefing Report – Part Two, that would deal with them in a single document that would be sent to all Applicants."*¹³⁵

123. From ShEx's perspective it was not immediately apparent from the report whether the conclusion expressed in Second Sight's interim report concerning the lack of any evidence of systemic problems with the Horizon software required amendment and, if so, to what extent. The final report contained numerous criticisms of POL's failure to provide Second Sight with access to relevant materials but the extent to which this lack of access bore on the analysis of whether losses might be attributable to defects in the Horizon system was uncertain and there did not appear to be any clear identification of an IT problem which might account for the losses being reported by subpostmasters. Second Sight's overall conclusion was expressed in the following terms, at §26.8:

"We have described in this report the results of our investigations (some of which are incomplete) into the issues and concerns raised by multiple Applicants. As we have previously stated, when looking at the totality of the 'Horizon experience' we remained concerned that in some circumstances Horizon can be systemically flawed from a user's

¹³³ Document 84

¹³⁴ Document 85

¹³⁵ Ibid, Document 35

perspective and Post Office has not necessarily provided an appropriate level of support."¹³⁶

124. With the benefit of hindsight, the reference to Horizon being '*systematically flawed*' in §26.8 of the report¹³⁷ appears both highly relevant and concerning. However, it was not readily apparent from this single subparagraph in a very lengthy and detailed report that the authors were seeking to identify the discovery of a specific IT flaw in the Horizon system capable of explaining the reported issues. The preceding sentence refers to the '*totality of the Horizon experience*' and the observation that the Post Office has '*not necessarily provided an appropriate level of support*' does not obviously indicate the identification of an IT software flaw responsible for accounting discrepancies¹³⁸.
125. As for POL's draft response to the final Second Sight report, which was attached to the same email and which ran to 83 pages and dealt with each of the thematic issues identified by Second Sight in turn, it made very clear that POL did not accept many of the report's conclusions¹³⁹. In the introduction (at §(v)) it was said that, despite extensive and constructive engagement by POL, the Second Sight report '*lacks clear and substantiated conclusions of general application that would have assisted applicants*' and that, accordingly (§(vi)), '*Post Office remains unable to endorse the final version of the Report and has therefore produced this updated Reply in order to correct the Report's errors and provide additional, relevant information that the Report omits.*' On the specific issue of whether there were systemic issues with the Horizon system, the draft POL response concluded, at §26.1:

*"Having investigated each Reported Issue, and responded to the challenges put to Post Office by Second Sight, this has reinforced Post Office's confidence that there are no systemic failures in Horizon."*¹⁴⁰

126. Whilst criticism of Second Sight by POL was not a new development, from ShEx's perspective this was clearly a disappointing situation to have reached. It was

¹³⁶ Ibid, Document 35

¹³⁷ Ibid, Document 35

¹³⁸ Ibid, Document 35

¹³⁹ Ibid, Document 36

¹⁴⁰ Ibid, Document 36

hoped and expected that the Second Sight investigation, which had been both lengthy and resource-intensive, would provide a clear, independent answer to the question of whether there were systemic problems with the Horizon system capable of causing the losses that had been identified. Not only did the Second Sight report fail to provide a clear and unequivocal answer to that question, the conclusions it did reach (which related to 19 different 'themes' many of which were unrelated to Horizon) were almost entirely disputed by POL in its detailed response.

127. The final version of the POL response to the final Second Sight report was produced on 16 April 2015 and was materially identical to the draft provided to ShEx. The position as it stood at that point, therefore, was that POL and Second Sight had produced two competing analyses of the same issues, supported by detailed reasoning and in which they had criticised each other for a failing of methodology and/or constructive engagement. On the information in its possession at the time, ShEx was plainly in no position to adjudicate between the two different analyses, or to determine the merits of the criticisms made by each party of the other's approach. Further investigation would have been required, and, UKGI's expectation in today's context would be that a Board in such a scenario would be considering and implementing appropriate next steps to allow it to form a view on the relevant issue.
128. The intractable nature of the dispute as between Second Sight and POL was reflected in the Chief Executive's May 2015 report to the Board in which she summarised the position in the following terms:

*"As we trailed at the March Board, Second Sight's "Part Two Briefing" Report was issued to applicants on 16th April. The report contained a number of inaccurate, misleading and inexpert comments. As a result, the Post Office issued its own report alongside Second Sight's addressing all of the points made so that applicants may understand the position in full."*¹⁴¹

129. The spectacle of POL commissioning, at very considerable expense, an independent review into an important and sensitive issue, describing the resulting

¹⁴¹ Document 86, page 4

report in these terms and then issuing its own parallel report in response was plainly an unedifying one. The POL response was not simply a dismissal of Second Sight's conclusions, it consisted of an 83-page point-by-point analysis of each section of the report¹⁴². On the central issue of the integrity of the Horizon system it was difficult to identify a clear set of conclusions in the final Second Sight report against which to test the adequacy of the POL response.

Reflection

130. Having reflected on the events surrounding the production of the final Second Sight report and POL's response, UKGI considers that three points emerge as being important for the purposes of learning lessons as to how a difficult situation of this nature might be managed more successfully in the future.
131. *First*, UKGI would wish to ensure that, from a corporate governance perspective, the POL Board exercised a greater degree of oversight in relation to the conduct of an independent review of the type undertaken by Second Sight. In practical terms, and assuming that the Board did not act under its own initiative, this would involve the Shareholder NED liaising with the Board to encourage a more direct and interventionist role in the conduct of an independent review into an important issue of this nature, with escalation to Ministers if necessary. As outlined above, the report, when it was finally produced, did not deal clearly and expressly with the central question and appeared to have been produced for a different purpose – identifying '*thematic issues*' for the benefit of those participating in the Scheme – than the one anticipated by ShEx given the subject-matter of the interim report. If a review of this nature is to be undertaken, then it is important that the Board satisfies itself that the scope and nature of the review will address directly the key issues of concern to the Board, and, indeed, on occasion and at appropriate times, the Shareholder (in practice, through UKGI as the shareholder representative).
132. This raises the linked issue of whether active consideration should have been given by the Board as to whether the appointment of Second Sight, a relatively small and inexperienced team of forensic accountants, was appropriate in the first

¹⁴² Ibid, Document 36

place. Looking back over the documentation, it is apparent that concerns were expressed by POL's executive management as to the quality of Second Sight's work from an early stage, although it is difficult to judge, from ShEx's external perspective, to what extent those concerns were generated by POL's lack of enthusiasm for Second Sight's conclusions, rather than the quality of the analysis which generated them. However, whilst POL might not have been regarded as an entirely objective commentator on the quality of reports which were critical of certain aspects of its handling of the issue, the Linklaters report dated 20 March 2014 also expressed concerns regarding the work being undertaken by Second Sight and there is little evidence of the Board actively addressing the question of whether it was satisfied that the independent review was being adequately conducted¹⁴³.

133. Ultimately, the decision as to who to engage as professional advisers was for POL to take, and by the time the Board became aware of the appointment in July 2012 Second Sight had already been instructed. It is also relevant to note that Second Sight's instruction was endorsed by James Arbuthnot MP, a significant interlocutor in these disputes. It is plainly unsatisfactory that a situation arose in which POL engaged independent specialist advice in which it subsequently lost confidence and sought actively to refute, however, even if the Board had been minded to intervene, it is difficult to identify, even with the benefit of hindsight, what actions it might realistically have taken in the context. For example, insistence by the Board that new advisers should be instructed would inevitably have been met with opposition from (at least) the JFSA and would have been perceived as a face-value acceptance of POL's criticisms of Second Sight.

134. *Second*, UKGI is concerned that the final Second Sight report and the POL response do not appear to have been analysed by the Board in April/May 2015 in an effort to understand how and why such divergent positions had been reached, and what might be done to clarify matters. The Board were clearly made aware that the report had been commissioned, as reference was made to it in the Chief

¹⁴³ Document 155

Executive's reports to the Board in March 2015¹⁴⁴ and May 2015¹⁴⁵. On the latter occasion the report had been finalised (along with POL's response) and so it is unclear why these documents were not provided to the Board for its consideration at that point. But, given that they were not, the Board should have required that they be provided and ShEx should have played its part in ensuring that this was done. As explained above, the Board would have been presented with two fundamentally different analyses of the same issues in two (apparently) detailed and thorough reports and is unlikely to have been in a position to resolve the disputes that had arisen between Second Sight and POL, but in UKGI's assessment it should have been given the opportunity to consider the documents and take such further action as it deemed appropriate. That may well have included taking steps to address the wider concerns expressed in the Second Sight report, in addition to the narrow issue of the technical integrity of the Horizon system, and/or challenging POL's executive management as to the basis upon which they felt able to refute the conclusions reached by Second Sight.

135. *Third*, a review of the documents produced by ShEx following the final Second Sight report reveals what now appears to be a rather simplistic summary of the position that had been reached on the question of whether there were systemic flaws in the Horizon system. This was clearly not the central focus of the Second Sight thematic report, although with hindsight it was the most important aspect of the work it had undertaken. In a submission to the Minister dated 2 June 2015¹⁴⁶, ShEx sought to summarise the current position. It was noted that the Second Sight interim report had found no evidence of systemic flaws in the Horizon system, and it was asserted that this remained the position now that the final report had been completed. Whilst this was an accurate reflection of POL's position (as reflected, for example, in the letter from the Chief Executive to George Freeman MP on 26 June 2015¹⁴⁷) it did not do justice to the detail of the conclusions contained in the Second Sight final report.

¹⁴⁴ Ibid, Document 83

¹⁴⁵ Ibid, Document 86

¹⁴⁶ Ibid, Document 68

¹⁴⁷ Document 87

136. The fact that Second Sight had produced two reports, both of which demonstrated that there was no evidence of systemic flaws in the Horizon system, was reflected in the statement made to the House of Commons by George Freeman MP during the course of an adjournment debate on 29 June 2015¹⁴⁸, and prompted correspondence from one of the authors of the report, Ron Warmington, in which he took issue with that characterisation of the position and drew attention to a number of specific paragraphs of the final report. Mr Warmington explained that, in his view, POL had continually sought to focus attention on the Horizon software, whereas his report had sought to address the '*operational platform as a whole*.'¹⁴⁹
137. Distilling the essence of the dispute that had arisen between POL and Second Sight, as reflected in their two competing reports, and working out precisely how the final report affected the conclusion in the interim report that there was no evidence of systemic problems with the Horizon software, was plainly a challenging task. As illustrated by Mr Warmington's email¹⁵⁰, it was made more difficult by the fact that POL and Second Sight were not even able to agree on how the issues should be framed. That said, the contemporaneous documents indicate that the POL Board (and subsequently ShEx) took POL's analysis, that the Second Sight investigation had not revealed any evidence of systemic flaws in the Horizon system, at face value, and did not adequately reflect the concerns that Second Sight had expressed in its final report.
138. In the event, any lack of understanding on the part of Ministers as to the detail of Second Sight's conclusions, as expressed in their final report, was short-lived. On 14 August 2015, Baroness Neville-Rolfe wrote to Mr Warmington confirming that she had now read both the Second Sight report and POL's response¹⁵¹. A meeting then took place between the Minister and James Arbuthnot MP on 17 September 2015¹⁵² in which Mr Arbuthnot requested that the Minister hold a meeting with Second Sight so that the Minister could hear and assess their side of their story.

¹⁴⁸ Ibid, Document 65

¹⁴⁹ Document 88

¹⁵⁰ Ibid, Document 88

¹⁵¹ Ibid, Document 88

¹⁵² Document 89

On 1 October 2015, ShEx submitted advice to the Minister¹⁵³ setting out the advantages and disadvantages of a meeting with Second Sight and recommending that a meeting should be offered, notwithstanding the 'very strong concerns' expressed by POL at the prospect of such a meeting.

139. The meeting took place on 19 October 2015¹⁵⁴. By that stage Tim Parker had taken up post as the new Chair of the POL Board and had been asked by the Minister to undertake a thorough review of the Horizon issue, in circumstances addressed in further detail below. The outcome of the meeting was summarised by the Minister in a letter to Oliver Letwin MP, dated 29 November 2015:

"I met with Ron Warmington and Ian Henderson from Second Sight on 19 October. It was a helpful meeting and they raised a number of important points. I suggested that they contact Tim Parker, the new Chair of Post Office Limited, to follow these points up.

*Tim is currently conducting a review into this issue and has appointed a QC to advise him. I understand that he is currently setting up meetings with the key parties and I am expecting him to update me on his findings in the New Year."*¹⁵⁵

140. In short, therefore, while the initial summaries of the Horizon position following provision of the Second Sight final report may not have conveyed, fully and/or effectively, the true extent of Second Sight's concerns, within a few months of the completion of the report, it had been read in full by the Minister and a meeting with the authors had taken place, at the recommendation of ShEx. That process fed into the decision-making relating to the commissioning of Tim Parker to conduct a fresh investigation of the issue and the expectation that this would take into account Second Sight's findings.

V. THE DELOITTE REVIEW

141. When concerns about the Scheme first started to emerge in early 2014, the POL Board directed the executive team to obtain advice about any alternative

¹⁵³ Document 90

¹⁵⁴ Document 91

¹⁵⁵ Document 92

mechanisms that could be used to deal with the cases in the Scheme, as well as the quantification of POL's potential legal and financial exposure to those claims. On 11 March 2014, POL's interim General Counsel (Chris Aujard) emailed the POL Board, explaining that Linklaters had been commissioned to carry out this work¹⁵⁶.

142. Linklaters' written advice was provided to POL on 20 March 2014 and circulated to the Board, attached to a report from the interim General Counsel¹⁵⁷. At the Board's meeting on 26 March 2014, a Partner from Linklaters also attended to present the advice and answer any questions. ShEx was represented at that meeting by both Susannah Storey, as the Shareholder NED, and by Richard Callard, as the Shareholder NED Designate, whose appointment would be confirmed at that meeting.
143. As well as analysing the merits of subpostmasters' claims, Linklaters were highly critical of Second Sight's work, describing it as '*idiosyncratic*' and questioning whether they had the necessary expertise to complete the work to a satisfactory standard. Linklaters also suggested that Second Sight had not done what Linklaters would have expected them to do; namely, to review Horizon and how it was supposed to work, before identifying any weaknesses and likely points of malfunction.
144. When Linklaters advice was provided to the Board, highlighting that an objective report on the use and reliability of Horizon had never previously been obtained, the Board determined that it would commission a further piece of work, to complement the work undertaken by Linklaters, "*to give them and those concerned outside the business, comfort about the Horizon system*"¹⁵⁸.
145. By the time the Sparrow sub-committee met on the 9 April 2014¹⁵⁹, Deloitte had been commissioned to complete this assurance work, which was described to the sub-committee as initially a '*...a largely desk-based exercise*' referred to as 'Part 1', with 'Part 2' being a more extensive piece of work that could be completed, if

¹⁵⁶ Document 93

¹⁵⁷ Ibid, Document 155

¹⁵⁸ Ibid, Document 50

¹⁵⁹ Document 94

necessary, based on the results of Part 1. As a member of the sub-committee, the Shareholder NED was aware of the scope of Deloitte's instruction and was also aware of the context in which it was being obtained, having received Linklaters' advice at the Board's meeting on 26 March 2014. However, he had not been personally involved in the decision to instruct Deloitte in the first place, or in any discussions as to the terms of the engagement.

146. Prior to the POL Board meeting on 30 April 2014, Board members were told that Deloitte's report would be circulated in advance¹⁶⁰. In fact, the minutes indicate that a draft of the executive summary of the report (Executive Summary) was only available at the meeting and that Board members were told that the language in the report would need to be revised before it could be finalised and deployed to a wider audience. A Partner from Deloitte attended the Board meeting and conveyed the following reassuring message about the Part 1 exercise:

"...all the work to date showed that the system had strong areas of control and that its testing and implementation were in line with best practice. Work was still needed to assure the controls and access at the Finance Service Centre."¹⁶¹

147. By the time of the next POL Board meeting on 21 May 2014¹⁶², Deloitte's full report was still not available and was said to be expected imminently. The minutes of the Board meeting record that the Chair (Alice Perkins) stressed the importance of Deloitte's Review and the need for it to 'give the Board assurance that there were (if that be the case) no issues with the system'. The minutes also state that the review would be considered at the next meeting of the Sparrow sub-committee¹⁶³.
148. Despite a copy of Deloitte's full report seemingly having been provided to POL on 23 May 2014, the minutes of the next Sparrow sub-committee held on 6 June 2014, make no reference to Deloitte's full report having been circulated or even discussed. When a summary of the sub-committee's recommendation concerning

¹⁶⁰ Document 95

¹⁶¹ Ibid, Document 95

¹⁶² Document 96

¹⁶³ Ibid, Document 96

the Scheme was then prepared for the full Board, again no reference was made to the full report having been circulated to the sub-committee, but instead the following summary was provided by the General Counsel:

"5.1 The Deloitte report raises two types of issues: the first relates to Sparrow, the second to wider business learnings. This second set of issues will be dealt with through the Risk and Compliance Committee and the business assurance functions.

5.2 As regards the Sparrow-related issues it is believed that given the limited scope of the work Deloitte were able to undertake it is highly unlikely that we will be able to extract any further comfort or assurance without their doing substantially more work. Furthermore, it is also clear that Deloitte will not consent to the publication of their report or the use of their name to publicly assert that the system is working with integrity unless they undertake specific testing. That said, the report does give some comfort for the Board on the design for processing and storing transaction data with integrity.

*5.4 For the avoidance of doubt Deloitte are not recommending that any further backward looking review of the Horizon system would be appropriate."*¹⁶⁴

149. A footnote to the final sentence of §5.2 then summarised the basis for that conclusion:

*"Subject to the limitations and assumptions expressed in their report, Deloitte 'have not become aware of anything to suggest that the system as designed would not deliver the objectives of processing of baskets of transactions and keeping copies of them in the Audit Store with integrity.'"*¹⁶⁵

150. Whilst that summary and citation may have reflected a conclusion reached by Deloitte - which was not in fact quoted from Deloitte's full report but from a 'Board Briefing' document produced later as discussed below - it did not and could not convey the detail of Deloitte's full report, or its findings on important issues such as remote access to Horizon. Instead, it gave a broadly reassuring impression that the findings of Deloitte's review were that there were no systemic issues with Horizon.

¹⁶⁴ Ibid, Document 51

¹⁶⁵ Ibid, Document 51

151. From the documents we have seen, there is no evidence that the full report was ever shared with the Sparrow sub-committee, the POL Board or ShEx, whether by email, or as part of a document pack for a meeting. It is also Richard Callard's clear recollection that a copy of the full report was never shared with him. Whether it was requested and/or seen by the Chair, or any other member of the Board is not apparent from the contemporaneous documentation. From Mr Callard's particular perspective, however, and despite him having been a member of both the Sparrow sub-committee and POL Board, his awareness of Deloitte's findings (and consequently the awareness of the Shareholder Department) was therefore significantly curtailed.
152. In reviewing documents relevant to this issue, UKGI has become aware of a further Deloitte document, described as a draft 'Board Briefing' dated 4 June 2014¹⁶⁶, which appears to have been produced for POL's General Counsel to brief the Board. Again, Richard Callard does not recall ever receiving such a briefing and there is no indication in the minutes or other documents from this period, that this briefing document was ever shared with the POL Board or Sparrow sub-committee.
153. The Inquiry will undoubtedly wish to review each of these documents in full. It may be relevant to note, however, that the Executive Summary which was seen by the POL Board was focussed on Deloitte's approach to the review and, importantly, did not set out its findings. Furthermore, although there was a passing reference to one of the remote access functionalities in the Executive Summary - the Balancing Transaction function - this was described as an isolated one-off event and did not include Deloitte's finding that it could be deployed without subpostmaster acceptance (as explained at §.31(g) of the full report). In addition, the Executive Summary made no reference at all to the '*Privileged User*' functionality identified by Deloitte, which Deloitte had found could be performed by Fujitsu in an '*undetectable manner*' (as explained at §.31(f) of the full report). Indeed, there was very little, if anything, in the Executive Summary that would have undermined the positive impression conveyed by Deloitte about its findings

¹⁶⁶ Ibid, Document 51

at the Board's meeting on 30 April 2014. When coupled with the interim General Counsel's summary and quotation presented to the Board following the meeting of the Sparrow sub-committee on 6 June 2014, the overall impression created was that there were no reason for the Board to be concerned about the integrity of Horizon.

Reflection

154. Given ShEx's awareness of Deloitte's instruction and having now seen the contents of Deloitte's full report, UKGI has reflected carefully on whether it should have requested a copy of Deloitte's full report in late May/early June 2014, following receipt of the Executive Summary.
155. UKGI accepts that there may well have been a sound justification for making such a request. However, given (i) the positive briefing that Deloitte had provided to the Board on 30 April 2014¹⁶⁷; (ii) the fact that the Executive Summary did not significantly undermine that positive assessment; and (iii) the summary and quotation provided to the Board following POL's receipt of Deloitte's full report, the strong impression that was being conveyed at the time was that Deloitte's review had not raised any issues of concern.
156. In that context, the view taken by the Shareholder NED (and the Shareholder Team) that there was no need to request Deloitte's full report does not appear to be an unreasonable one at the time. UKGI considers that it was also not unreasonable for the Shareholder NED to have placed a degree of trust in the POL executive management to furnish him with adequate and accurate information concerning Deloitte's work, particularly if it had identified any issues of concern. As the POL executive team did not do so, and POL then continued to assert publicly its confidence in the integrity of Horizon, there was every reason for the Shareholder NED to be confident in the impression that had been conveyed to him and his sub-committee colleagues (and via him to the Shareholder Team) concerning Deloitte's work.

¹⁶⁷ Ibid, Document 95

157. UKGI nevertheless acknowledges that if a copy of Deloitte's full report or 'Board Briefing' had been provided to the Board and/or ShEx, some of POL's subsequent statements concerning remote access to Horizon, might more easily have been identified as inaccurate. In those circumstances, it is certainly regrettable that a copy of those documents does not appear to have ever been provided.

VI. PANORAMA

158. ShEx was first notified that there was to be a Panorama programme concerned with the Horizon system on 19 May 2015, by way of an email from POL's Communications and Corporate Affairs Director¹⁶⁸. No further details were provided at that stage, although by the time a submission to Baroness Neville-Rolfe was drafted on 2 June 2015¹⁶⁹, ShEx had been informed that the programme was likely to air on 22 June 2015 and would feature around five cases of former subpostmasters who had been subject to criminal convictions and whose cases had already been made public. ShEx had also been informed that POL would be providing an interviewee for the programme, likely to be Angela van den Bogerd (Head of Partnerships), and that POL was seeking legal advice on the question of how robustly it could respond to the allegations likely to be included in the programme. All this further information was included in the submission¹⁷⁰. At this stage, ShEx was unaware of either the detail of the programme contents, or of the substance of POL's response.
159. POL's executive management's position, from the outset, was that it intended to maintain a robust defence to the allegations advanced in the Panorama programme. On 2 June 2015, POL's Communications and Corporate Affairs Director sent ShEx a draft letter to the BBC which asserted, first, that the issues raised by the BBC did not raise any new lines of inquiry and, second, that the '*common thread*' linking all of the 150 cases investigated to date was '*the absence of any evidence of a systemic problem with the Horizon system capable of giving rise to the*

¹⁶⁸ Document 197

¹⁶⁹ Ibid, Document 68

¹⁷⁰ Ibid, Document 68

matters complained of. It was further asserted that there was *'simply no evidence'* that any software or hardware problems, or any *'remote tinkering'* by third parties had caused any of the losses in question¹⁷¹.

160. These essential elements of POL's response to the Panorama programme, as communicated to ShEx, remained consistent throughout. It was repeatedly asserted that the Panorama investigation had not identified any new lines of inquiry and did nothing to undermine the conclusion that there was no systemic problem with the Horizon system which might account for the alleged losses. In an update provided on 16 June 2015, POL's Corporate Affairs Director, Mark Davies, informed ShEx that there had been extensive engagement with Panorama's producers and reporters during which no *'new allegations'* had been put¹⁷². ShEx were further informed that legal advice had been obtained on a *'robust approach highlighting the BBC's lack of evidence'*¹⁷³. There is no indication that the Board questioned the POL executive management's narrative that the Panorama investigation had uncovered nothing new, and that the investigation provided no additional support for the assertion that there was a systemic problem with Horizon. The issue of whether, on reflection, the Board should have sought to interrogate that narrative is addressed below but in relation to the chronology, it may be relevant to note that the Board had not seen the Deloitte report, and so was not in a position to test what it was being told by POL's executive management against the Deloitte findings.
161. In his email of 16 June 2015, Mr Davies offered to provide ShEx with a further update¹⁷⁴ and it would appear that his offer was taken up as the submission sent to Baroness Neville-Rolfe on 24 June 2015 contained some further detail as to the likely contents of the programme and POL's response¹⁷⁵. The submission reflected the robust line on the part of POL set out in the previous correspondence. In particular, it reflected POL's position that allegations of remote access to alter branch accounts, and thereby creating discrepancies, were untrue. The Minister

¹⁷¹ Document 98

¹⁷² Document 99

¹⁷³ Ibid, Document 99

¹⁷⁴ Ibid, Document 99

¹⁷⁵ Ibid, Document 69

was also informed that POL's executive management had informed ShEx in confidence that they did not expect the programme to present a balanced view and had thus decided not to provide an interviewee.

162. In the event, the Panorama programme did not air on 22 June 2015, or on 29 June 2015 as apparently anticipated at the time. In a report prepared for the POL Board meeting on 15 July 2015, the Chief Executive told the Board (at p.3):

*"The Adjournment debate was timed to coincide with a Panorama programme on the same issue. However, after extensive work by Mark Davies and his team they decided to postpone the broadcast. Panorama is currently considering the issue in more detail. While the initial planned broadcast was postponed, the programme team is still working on the issue and it could return at any point in the next few weeks."*¹⁷⁶

Accordingly, although the possibility of a Panorama programme dealing with Horizon had been flagged to the Board in mid-July 2015, this was done on the basis that the contents of the programme had yet to be determined, and it was uncertain when (and if) it would be broadcast. There does not appear to have been any further discussion of the Panorama programme at this meeting. In light of the limited information contained in the Chief Executive's report and the uncertainty as to what, if anything, would be broadcast that might be thought unsurprising, although it might also be fairly observed that it was at least apparent that the programme would include reference to remote access and, in those circumstances, the Board ought to have been interested in understanding the detail of the 'extensive work' undertaken by POL's executive management in response.

163. This uncertainty persisted into late July and, on 23 July 2015, following a further update from POL, ShEx informed Ministers that, although a provisional broadcast date had been set for 10 August 2015, 'there is still quite some uncertainty on whether this will go ahead or not.'¹⁷⁷ ShEx had also been informed by POL that it was concerned the programme would contain unfounded (and potentially libellous) allegations which, if broadcast, POL intended to 'follow up' with the programme

¹⁷⁶ Document 100, page 4

¹⁷⁷ Document 101

makers. A note sent to Baroness Neville-Rolfe by ShEx on 31 July 2015 reflected the continued uncertainty about whether the programme would be broadcast, but reminded her of what ShEx had previously been told by POL's executive management as to the likely contents of the programme, the broad nature of the criticisms expected to be made of POL, and POL's intention to mount a robust defence of its position¹⁷⁸.

164. On 6 August 2015, ShEx were informed (via POL's Company Secretary) that the Panorama programme was now due to be broadcast on 17 August 2015¹⁷⁹. The following day, Mark Davies sent ShEx a copy of a letter he had sent to Panorama addressing the allegations that had been highlighted to POL in advance of the broadcast. The letter, and statement made by POL attached to it¹⁸⁰, maintained a robust denial of the central allegations. POL's position was to '*wholly reject the unsubstantiated allegations*' being made. The statement, which was intended for publication, expressed POL's position in the following terms:

*"The Post Office wholly rejects the serious but unsubstantiated allegations that continue to be made...The Horizon system is both effective and robust. It is independently audited, meets or exceeds industry accreditations and has been used by nearly 500,000 people since it was brought into service. It is currently used by over 78,000 people to perform some six million transactions each day for Post Office customers across the country.... We set up an independent enquiry and, when that failed to find anything wrong with the system, established a scheme to enable people to put forward individual complaints, providing financial support so that they could obtain independent professional advice to do so. This work has provided overwhelming evidence that demonstrates it was not the computer system or any illicit external 'tampering' with it that was responsible for missing money in any of the branches investigated."*¹⁸¹

165. This is a fair summary of the essential message being communicated to ShEx by POL's executive management during this period, which was accurately passed on to Ministers by ShEx in the form of submissions, notes and other briefings. Here, it is being applied specifically to the Panorama investigation and conveys the clear message that, following very extensive interaction with the Panorama team

¹⁷⁸ Ibid, Document 73

¹⁷⁹ Document 102

¹⁸⁰ Document 103

¹⁸¹ Ibid, Document 103

(described by Mr Davies as *'very substantial other written and oral briefing'*¹⁸² including several hours of meetings and six one hour calls with the editor and his deputy), POL were confident that the Panorama investigation had not uncovered any evidence which served to undermine POL's previously expressed confidence in the integrity of the Horizon system.

166. It is now apparent, of course, that a number of the assertions made by POL in the statement were inaccurate and misleading. The Horizon system was not effective and robust. The 'independent enquiry' (Second Sight) had not failed to find anything wrong with the system. There was no overwhelming evidence that it was not the computer system that was responsible for missing money in all of the branches investigated. As explained below, UKGI considers that, on reflection, this important statement should have been presented to the Board before it was released and the Board should have been given (and should have taken) the opportunity to interrogate the evidential basis for the assertions that were being made. In the event, none of this happened. The Board did not see or approve the statement before it was released and the Board did not question POL's executive management as to the evidential basis for the sweeping assertions it contained after it was released.
167. The Panorama programme was broadcast on 17 August 2015. ShEx requested and was provided with a transcript by POL¹⁸³. There was no Board meeting held in August 2015 and thus no immediate opportunity to discuss, at Board level, the issues raised by the programme. However, in the absence of a Board meeting that month, POL's Chief Executive provided the Board with a written *'update on various issues across the business'*, which dealt with the Panorama programme in the following terms:

"Panorama: Trouble at the Post Office, was broadcast on 17 August on Project Sparrow. Despite significant dialogue with the BBC, the programme failed to reflect our position in full, repeating the same unsubstantiated allegations we have addressed over the last 3 years. The week before the broadcast, we offered – under certain necessary conditions – to show the editorial team documents which would disprove the claims

¹⁸² Document 104

¹⁸³ Document 105

*being made. This was refused. We are considering next steps and in the first instance, are meeting with the Panorama Editor and the Director of News and Current Affairs. Again, I'm grateful to Mark and his communications team, along with Jane MacLeod [the POL General Counsel appointed January 2015] and the Sparrow team, for their hard work. The programme contained no new information and received almost no pick up from other media."*¹⁸⁴

Reflection

168. UKGI has reflected on the question of whether the Panorama investigation might have provided an opportunity to further interrogate and challenge POL's confident assertions that there was no evidence of *'anything wrong'*¹⁸⁵ with the Horizon system, and that there was *'overwhelming evidence'*¹⁸⁶ demonstrating that any losses were not attributable to the computer system or any tampering by third parties.
169. The briefing given by the Chief Executive at the Board meeting in July 2015¹⁸⁷ was to the essential effect that it was unclear whether the programme would be broadcast and that the BBC were still considering what (if any) allegations to make, following extensive interaction with POL's executive management. In those circumstances there would have been a relatively limited basis for going behind POL's confident assertion that the Panorama investigation had not uncovered anything new and, in particular, had not identified any evidence of a systemic problem with the Horizon system. Even if the Board and/or ShEx had been concerned that POL's apparent confidence was not fully justified, or its dismissal of the Panorama investigation too *'robust'*, unless and until the product of that investigation became clear there was nothing against which to test POL's position.
170. However, there was an opportunity, most obviously at the July 2015 Board meeting, to interrogate the evidence upon which POL's executive management was basing its refutation of the Panorama investigation, and were a similar situation to arise now, UKGI would expect such interrogation to occur. It was

¹⁸⁴ Document 106

¹⁸⁵ Ibid, Document 103

¹⁸⁶ Ibid, Document 103

¹⁸⁷ Ibid, Document 100

apparent that a reputable investigative broadcaster had conducted an investigation which included the issue of remote access, as well as assertions by a whistleblower in this respect, and the Board ought to have been interested in understanding the detail of what had been revealed of that investigation and the work done by POL's executive management in response, especially in light of Deloitte's work. Furthermore, and as observed above, the very robust statement released by POL in August 2015¹⁸⁸ which refuted the allegations made by Panorama and contained an unequivocal endorsement of the integrity of Horizon should have been considered by the Board before it was released.

171. The position after the programme was broadcast also requires consideration as there were some aspects of the Panorama investigation which did raise additional questions, as highlighted in the correspondence to Baroness Neville-Rolfe from a number of MPs on 24 August 2015 in which they referred to the assertions made by the Fujitsu whistleblower regarding remote access, and the apparent discrepancy between the *'version of the Second Sight report the Post Office has been presenting to Ministers, MPs and the media'* and the assertions made by Second Sight during the programme¹⁸⁹.
172. POL's position following the Panorama broadcast remained essentially unchanged. In a letter to Baroness Neville-Rolfe from POL's General Counsel dated 7 September 2015¹⁹⁰, it was asserted that the programme had been misleading in including *'inaccurate statements, drawn selectively from limited information, to create a misleading and damaging impression of how and why Post Office undertook prosecutions.'* It was further asserted that the BBC had declined POL's offer to provide documents which *'would have conclusively disproved the claims being made'*. The letter referred to a detailed 'Panorama Rebuttal' document which had been provided to ShEx and the Minister¹⁹¹ (albeit not to the Board, as it should have been). That document consisted of a detailed, seven-page analysis of the allegations advanced in the Panorama programme and explained the basis upon

¹⁸⁸ Ibid, Document 103

¹⁸⁹ Document 107

¹⁹⁰ Document 108

¹⁹¹ Document 109

which those allegations were '*wholly rejected*' by POL, including sections dealing with the Fujitsu whistleblower and Second Sight.

173. Notwithstanding the POL executive's strong rebuttal to the Panorama broadcast, it was recognised by ShEx and the Minister that these issues did require further consideration and that it was not adequate simply to rely on POL's assurances as to the integrity of the Horizon system. By this stage, Baroness Neville-Rolfe had already met with Tim Parker, the newly appointed Chair of the POL Board, during which she had asked him to take a '*fresh look*' at the Horizon issue¹⁹² when he took up post in October 2015. There therefore appeared to be an appropriate plan in place for addressing the Panorama allegations as part of a wider review of the evidence relating to the operation of the Horizon system and the concerns raised by subpostmasters and their representatives.
174. Accordingly, by the time of the first Board meeting following the Panorama broadcast, which took place on 22 September 2015¹⁹³, a decision had already been taken that the incoming Chair would, when he took up post the following month, undertake a fresh investigation of the Horizon issue. Nonetheless the consideration of the Panorama programme at the Board meeting, which would appear to have consisted primarily of a brief update by the Chief Executive in which she reported that a complaint had been made to the BBC regarding the '*inaccuracies*' in the programme, appears perfunctory given the significant intervention of the Fujitsu whistleblower. UKGI considers that the serious allegations made in the course of the Panorama programme should have been fully debated by the Board and the POL executive should have been challenged on the general assertion that the programme had contained nothing new by way of evidence or allegation. If the Deloitte report had been shared with the Board this would have provided a means of testing the assertions made by POL's executive management. There may also have been scope for requiring Fujitsu to provide the Board directly with a response to the whistleblower allegations (albeit acknowledging the Board did receive a report from POL's executive management of Fujitsu's position). The ultimate result may not have been any different,

¹⁹² Document 110

¹⁹³ Document 111

particularly given the decision that had already been taken to commission Mr Parker to undertake a fresh investigation, but if an event of the significance of the Panorama broadcast were to occur now, UKGI would expect it to be subjected to careful scrutiny by the Board, and for the Shareholder NED to be centrally involved in so doing.

VII. THE PARKER REVIEW

175. The appointment of a new Chair, Tim Parker, offered a potential opportunity to apply a fresh perspective to the dispute and attempt to resolve, once and for all, whether there really was an issue with the operation of Horizon. Mr Parker had a great deal of experience of running complex businesses, was considered to be well-qualified to address a difficult and long-running dispute of this nature and, as Chair, would have full access to POL information to allow him to investigate. On 10 September 2015, approximately a month before he was due to take up his appointment, Baroness Neville-Rolfe wrote to Mr Parker, with the assistance of ShEx, referencing a conversation between them the previous month and requesting that he give the Horizon issue his earliest attention when he took up his appointment¹⁹⁴. The letter emphasised the importance the Government attached to the issue and the urgency with which it needed to be addressed. Letters were written to, amongst others, Lord James Arbuthnot and Oliver Letwin MP informing them that Mr Parker had been requested to give the matter his most urgent attention¹⁹⁵.

176. Mr Parker responded to the Minister's request with the urgency that had been requested of him and one of his first acts as Chair was to write to the Minister confirming that he intended to instruct a QC to assist him in undertaking a review of the Horizon issue (so as to promote its independence), and that he also intended to meet Second Sight and Sir Anthony Hooper as part of his investigation¹⁹⁶. From ShEx's perspective this was a promising indication that Mr Parker was serious

¹⁹⁴ Document 112

¹⁹⁵ Document 113

¹⁹⁶ *Ibid*, Document 110

about getting to the bottom of the Horizon issue and that his review would be a rigorous and independent one. In particular, Mr Parker's indication that he intended to meet Second Sight appeared to be an encouraging development and the speaking note prepared for Baroness Neville-Rolfe by ShEx in advance of her meeting with Second Sight on 19 October 2015 included encouragement to Second Sight to participate in such a meeting¹⁹⁷.

177. A meeting was scheduled between Baroness Neville-Rolfe and Mr Parker for 26 January 2016 at which it was intended that Mr Parker would provide an update of the progress of his review. A briefing note was prepared for the Minister prior to the meeting in which ShEx recommended that there should be discussion of how the findings of the review should be made public¹⁹⁸, which was clearly the expectation at that stage. The meeting took place as scheduled and Mr Parker provided the Minister with a high-level update of progress which was summarised as '*there remains no evidence of a systemic problem with the Horizon system.*'¹⁹⁹ It was explained that the QC's review was not yet complete but was expected shortly.
178. It is now apparent that the review, which was authored by Jonathan Swift QC (former First Treasury Counsel) and Christopher Knight was completed on 8 February 2016²⁰⁰. It comprises 67 pages and contains eight recommendations for future action. The Inquiry will be well aware of its contents and it is unnecessary to rehearse them. The key point, for the purposes of considering ShEx's involvement at this stage of the chronology, is that the report was not provided to either ShEx or the Minister, at this stage. Indeed, the correspondence indicates that UKGI did not receive a copy of the report until 16 March 2020²⁰¹, over five years later.

¹⁹⁷ Ibid, Document 91

¹⁹⁸ Document 114

¹⁹⁹ Document 115

²⁰⁰ Document 116

²⁰¹ Document 117

179. Instead, a letter was written to the Minister by Mr Parker providing a summary of the report. The letter is dated 4 March 2016²⁰², but it was in fact attached to an email from POL's Programme Director to ShEx dated 7 March 2016²⁰³. The covering email made clear that the letter was confidential and subject to legal professional privilege. The letter speaks for itself but the key conclusions, as set out in Mr Parker's summary, were: (i) POL had complied with its duties as prosecutor (including in respect of disclosure); (ii) there was no evidence that a technical fault in the Horizon system had caused a postmaster to be held wrongly responsible for a loss; and (iii) a number of areas had been identified in respect of which some limited further investigation was required in order to reach a final conclusion²⁰⁴. It was anticipated that those further enquiries would be completed by May 2016. There was no reference to any recommendations. In a submission to the Minister dated 9 March 2016 (incorrectly dated 2015 on its face)²⁰⁵ ShEx noted that Mr Parker's investigations were ongoing and recommended that the Minister seek an update at their next scheduled meeting, on 27 April 2016.
180. Prior to that meeting, there was a development which, with the benefit of hindsight, can be seen as highly significant to the handling of Mr Parker's review. On 13 April 2016, UKGI was notified by POL that they had received a letter from Freeths solicitors confirming that proceedings had been issued in the High Court²⁰⁶. It was now apparent, therefore, that at least some of the issues relating to the operation of the Horizon system were going to be the subject of litigation. This complicating factor was reflected in the briefing note prepared for the Minister in advance of her meeting with Mr Parker on 27 April 2016²⁰⁷. The Minister was reminded to seek an update from Mr Parker on the progress of his review, and the further work that would be required to complete it. However, the Minister was also advised that litigation had now been commenced and that it was possible this might serve to inhibit communication of the outcome of the

²⁰² Document 118

²⁰³ Document 119

²⁰⁴ Ibid, Document 118

²⁰⁵ Ibid, Document 115

²⁰⁶ Document 120

²⁰⁷ Document 121

review to interested parties such as Lord Arbuthnot. It was suggested that this should also form part of the discussion with Mr Parker.

181. At the meeting on 27 April 2016, Mr Parker provided an update on the litigation and explained that the letter of claim was being carefully considered by the POL legal team, and would be discussed by the POL Board at the next Board Meeting on 24 May 2016²⁰⁸. He explained that the further work required to complete his review was progressing, and that Deloitte had been engaged to conduct part of the work, which was expected to take another month or two.
182. In a briefing note to the Minister prepared by ShEx following the meeting it was recommended that, in light of the ongoing litigation, any public commentary on issues that were likely to be the subject of that litigation should be carefully limited²⁰⁹.
183. The POL Board met on 24 May 2016²¹⁰. The meeting was chaired by Mr Parker and was attended by the Shareholder NED (as one of four NEDs) and by POL's CEO and General Counsel, and provided the Board with an update on the litigation. It was said that the Freeths letter of claim had identified '*no new areas of concern that had not been raised previously through the Complaint and Mediation Scheme.*' A legal team to deal with the claim had been instructed. There was no discussion of the review commissioned by Mr Parker and Jonathan Swift QC's report was not provided to the Board. As far as it is possible to ascertain from the minutes, the Board were not provided with Mr Parker's 4 March 2016 letter either.
184. The Board Meeting on 24 May 2016 was the obvious opportunity to present Mr Swift QC's report to the Board. As has been described, Mr Parker was made acutely aware of the importance and urgency of the Horizon issue at the time he took up his position as Chair of the Board and acted with commendable promptness in commissioning an independent report. The contemporaneous documentation does not make clear why the report, once received by Mr Parker,

²⁰⁸ Document 122

²⁰⁹ Ibid, Document 122

²¹⁰ Document 123

was not presented to the Board. Some indication of the rationale is however provided by a letter from Sarah Munby, BEIS Permanent Secretary, to Mr Parker dated 7 October 2020²¹¹, in which she made the following observations:

“As part of our preparation for the BEIS Select Committee hearing which had been scheduled for March, we received from Post Office Limited (POL) a copy of the report prepared by Jonathan Swift QC that was commissioned by you at Baroness Neville-Rolfe’s request after your appointment as Chair in 2015. We understand from work done recently by the company and its advisers to look at the history of Horizon that the findings and recommendations by Jonathan Swift QC were not shared with the rest of the Post Office Board.

We understand that you were advised at the time by the Post Office’s General Counsel that for reasons of confidentiality and preserving legal privilege the circulation of the report should be strictly controlled. Nevertheless, given the background of parliamentary interest, the fact that your review was commissioned by the Minister responsible for the Post Office and the potential significance of the recommendations made by Jonathan Swift QC, we consider it was a mistake not to have ensured that the whole board had an opportunity to see and discuss the detail of its findings and agree what any next steps should be. With hindsight, this information should have been seen by the board and we are disappointed that it wasn’t.”

185. It would appear, therefore, that the view taken by POL’s legal team, even before the commencement of the litigation, was that the report commissioned by Mr Parker should be treated as confidential and subject to legal professional privilege, and these were the terms under which the letter summarising its findings were sent to ShEx for onward transmission to the Minister in early March 2016, well before proceedings had been issued. After the litigation had commenced, the view was apparently taken that at least some of the issues raised by the report would be better addressed in the context of litigation.
186. The net effect of this sequence of events is that the POL Board (including the ShEx NED) did not see Mr Swift QC’s report, were not sighted on the detail of recommendations, and were not in a position to assess the report’s findings and/or the adequacy of POL’s response to them. Given the contents of the report, and the purpose for which it had been commissioned, this would seem to represent a significant missed opportunity for the Board to question the reliability of the information concerning Horizon with which it had been provided up to this

²¹¹ Document 124

point, and to question whether POL's confidence in dismissing the concerns expressed by subpostmasters and their representatives was fully justified. That being so, UKGI has reflected very carefully on its role in this aspect of the chronology and whether anything more could and/or should have been done to ensure that the Board was properly sighted on the report's findings and recommendations.

187. The clear conclusion reached by UKGI as a result of that reflection is that the report should have been presented to the Board and the Minister, and the observations set out in Ms Munby's letter to Mr Parker of 7 October 2020²¹² are fully justified. Whilst UKGI is not in a position to provide a detailed commentary on legal advice it has not seen, the proposition that confidentiality and/or legal professional privilege should prevent a Board from being presented with an independent report, commissioned by the Chair, into a high-profile issue of significant and long-standing concern to the company is not one that UKGI would accept. It is also clear from the contemporaneous documentation that it was originally envisaged, when Mr Parker was first commissioned by the Minister to undertake an investigation of the Horizon issue, that his findings would be made public. The background and context were such that a review which was subject to confidentiality and legal professional privilege would be of very limited value in addressing the concerns which had led to it being commissioned in the first place.

Reflection

188. That being so, UKGI has carefully considered whether it should have done more to ensure that the report was properly considered by the POL Board. Were such a report to be commissioned today, UKGI's expectation would be that the Board would be sighted on (and, if appropriate, involved in) the setting of the terms of reference and the establishment of a clear timeline for production of the report and its review by the Board. None of these steps were taken in respect of Mr Parker's review and the Board would appear to have had no involvement in commissioning or the production of the report whatsoever.

²¹² Ibid, Document 124

189. ShEx, however, was at least aware of the report's existence as a result of having been sent a copy of Mr Parker's letter of 4 March 2016²¹³, which contained a summary of its contents. There was, therefore, an opportunity to bring the existence of the report to the Board's attention and to request that the report be provided to the Board so that it could consider its contents in full. In light of the legal advice that had apparently been given by POL's General Counsel, POL's executive management may well have declined such a request, but it would at least have brought the matter to the Board's attention and enabled any reasons for refusal to be scrutinised.

190. However, there are two important aspects of the chronology which clearly had a bearing on the way in which the report was viewed by ShEx and the issue of whether it was imperative that it be brought to the Board's attention. The first was that the summary provided by Mr Parker in his letter of 4 March 2016²¹⁴ not only provided a reassuring picture as to both the conduct of prosecutions and the absence of any grounds for believing that subpostmasters had been wrongly blamed for discrepancies, but also made clear that the review was a work in progress and that further investigations had been commissioned. At that stage, therefore, there was nothing to indicate that the contents of the report were concerning, or that they undermined any of the assurances that POL's executive had provided to the Board thus far. Nor did there seem to be any particular urgency in bringing the matter to the Board's attention in circumstances where the investigation was ongoing and no final conclusions had (apparently) been reached. It is now apparent that careful consideration of the full report would have created a different, less reassuring picture, and may well have prompted further action on the part of ShEx in an attempt to bring the report to the Board's attention. It is plainly unfortunate, therefore, that matters proceeded on the basis of an incomplete summary of Mr Swift QC's findings.

191. The second important aspect of the chronology was the commencement of the GLO litigation in mid-April 2016, a few weeks after Mr Parker had provided his

²¹³ Ibid, Document 118

²¹⁴ Ibid, Document 118

reassuring summary and before the further enquiries he had commissioned had been completed. Stepping back and looking at the way in which events unfolded, it is apparent from the contemporaneous material that the GLO litigation overshadowed the review. In that context, it may be thought to be unsurprising that, when it came to the Board meeting on 24 May 2016²¹⁵, the focus was on the litigation rather than Mr Parker's ongoing (and incomplete) investigation. The commencement of the litigation was clearly a very significant step which, understandably, diverted the attention of the Board away from other aspects of the Horizon dispute. It may be that, but for this shift in focus, the work commissioned by Mr Parker would have been completed and received more of the attention that it clearly deserved in this time period.

192. Whilst this context is relevant, and important, UKGI considers that on balance, and with the benefit of hindsight, more should have been done to insist that the report commissioned by Mr Parker was presented, in full, to the Board and, as addressed below, it now sees such action as being part of its corporate governance role. That is to say, UKGI regards the responsibilities of the Shareholder Team to include striving to ensure that relevant materials of which it is aware, and considers to be sufficiently important to merit full consideration by the Board, are brought to the Board's attention. In this regard, the Inquiry will note the implicit comment of the Shareholder NED (Tom Cooper) in his email to Ms Munby dated 19 April 2020 in which he notes that: *'it seems that neither the QC's report, nor the existence or conclusions of the follow-up work commissioned to deal with the QC's report were known to the Board of the Company or to BEIS.'*²¹⁶
193. In hindsight, ShEx and then UKGI should have requested a copy of the full report, rather than just Mr Parker's summary letter, and it should have then reviewed the report in order to determine whether it was necessary to insist that it be presented to the whole Board. If objections as to confidentiality and/or legal professional privilege had been raised then they should have been scrutinised carefully to see whether they would have held up to analysis. Those are UKGI's conclusions as to

²¹⁵ Ibid, Document 123

²¹⁶ Document 125

what should have happened in early 2016, and that is how UKGI would seek to approach a similar issue were it to arise today.

VIII. THE LITIGATION

194. As noted above, ShEx was informed by POL on 13 April 2016²¹⁷ of receipt of the letter from Freeths confirming that proceedings had been issued. ShEx informed the Minister immediately and followed up that notification with an update on 3 May 2016²¹⁸. The update noted that the Minister had discussed the litigation with Tim Parker and had been told that the Board intended to discuss the litigation at their next meeting. As far as the media was concerned, POL's position would be that they would be responding to the claim '*through legal processes*'. The Minister was advised that the Government maintain the position that the litigation was a matter for POL to address.
195. The Board meeting took place on 24 May 2016²¹⁹ and was attended by POL's General Counsel who provided the Board with a verbal update on the litigation. The Board were informed that no claim had yet been served, that the allegations in the letter of claim identified '*no new areas of concern that had not previously been raised through the Complaint & Mediation Scheme*' and that a legal team had been recruited including a firm of solicitors who had '*detailed knowledge and experience of the claims.*' This summary of the current position was reflected in the UKGI risk register which referred to the civil litigation from September 2016²²⁰ onwards, noting that POL had engaged a team of external legal advisers and were providing updates to the Board on the progress of the litigation. UKGI's position remained that the litigation was a matter for POL to address.
196. The updates received by the Board over the course of the following 12-18 months were relatively high level and lacking in detail, although this may be explained, at least in part, by the relatively slow progress of the litigation in its early stages

²¹⁷ Ibid, Document 120

²¹⁸ Ibid, Document 122

²¹⁹ Ibid, Document 123

²²⁰ Document 126

and the lengthy gaps between the various stages of the case. By way of example, the minutes of the Board meeting of 31 January 2017 simply record (as part of the CEO's Report) that: *'The Group Litigation Order (GLO) came to court on the 26th January. Detailed information will need to be provided for each claimant. The GLO is likely to return to court in the autumn for further procedural directions'*. The general picture revealed by the minutes of the Board meetings conducted through the course of 2017 is one of relatively limited information being provided to the Board concerning the progress of the litigation and relatively limited discussion of the litigation (including POL's strategy for the conduct of its defence) taking place.

197. In the event, the GLO was made on 21 March 2017 and a Case Management Conference was conducted in October 2017 at which a timetable for the litigation was set, fixing the common issues trial for November 2018 and the Horizon issues trial for March 2019.
198. In early 2018, the Board started to adopt a more active and interventionist approach to the litigation. In January 2018 the Postmaster Litigation Board sub-committee was established for the purpose of *'receiving legal advice on the Post Office's Defence in the Group Litigation as it proceeds to final resolution'*²²¹. Membership of the Postmaster Litigation sub-committee comprised Tim Parker, Ken McCall (the Senior Independent Director) and Tom Cooper, the Shareholder NED designate (who formally took up his position in March 2018).
199. The first meeting of the Postmaster Litigation Sub-committee took place on 26 March 2018²²². It was attended by Andy Parsons, the solicitor from Womble Bond Dickinson with conduct of the case on behalf of POL. Mr Parsons provided an update on various aspects of the litigation process including disclosure, the instruction of experts and security for costs. Mr Cooper emphasised the need for UKGI to be provided with *'regular briefings'* on the conduct of the litigation and it was noted that a draft protocol was being drawn up for this purpose. The sub-committee requested that work be undertaken on contingency planning should

²²¹ Document 127

²²² Document 128

the outcome of either or both of the two trials be adverse to POL and was assured that this work was in hand and that it would receive regular updates.

200. In addition to increased visibility of the litigation as part of the sub-committee, the UKGI Shareholder Team focussed on: (i) facilitating BEIS being briefed on POL's litigation strategy and key developments; (ii) encouraging POL to obtain a merits opinion; (iii) obtaining evidence of POL's evaluation of settlement options; and (iv) obtaining evidence of POL's contingency planning in case of an adverse judgement. All of these items were intended to allow scrutiny and, where appropriate, challenge by the Postmaster Litigation sub-committee and by BEIS and UKGI.
201. To assist with this, and reflecting the lessons learned by UKGI during the Magnox inquiry as to the importance of the Shareholder maintaining clear visibility over the conduct and strategy of important litigation, UKGI also insisted on the production of a protocol for POL providing UKGI with regular updates in relation to the litigation. The arrangements reflected in the draft protocol²²³ were novel and designed to promote adequate information flow whilst ensuring the legal professional privilege was properly maintained in respect of documents relating to the litigation.
202. A draft protocol for the provision of regular updates to UKGI concerning the conduct of the litigation was provided by POL in late March 2018²²⁴. It was amended by UKGI to provide for additional updates in response to any changes in the litigation timetable and to provide for the written updates to be provided to UKGI counsel in order to maintain a '*strong and accurate audit trail in respect of its oversight of the litigation.*' The protocol took considerable time to agree, primarily due to POL's legal team's concerns about maintaining the security of privileged information the disclosure of which might impact upon its defence of the claims.
203. The sub-committee met again on 15 May 2018²²⁵. The Shareholder NED was in attendance along with a number of members of POL's legal team including Mr

²²³ Document 129

²²⁴ Ibid, Document 129

²²⁵ Document 130

Parsons, Anthony de Garr Robinson QC and David Cavender QC. At UKGI's request, Mr Cavender provided an interim opinion on the merits of the case which emphasised the complexity of the issues and expressed the view that, in respect of the impending common issues trial, '*PO has the better of the arguments in most of the 23 arguments.*' The issue of settlement, which had also been identified by UKGI as requiring consideration at this stage, was addressed with Mr Cavender's view being recorded as follows: '*Don't see there is anything to settle at the moment. But always need to consider the option of settlement (other side keen on this).*'²²⁶ It was also noted that mediation had been ordered to take place following the common issues trial, and that the service of the Claimants' evidence in September 2018 would represent a '*big milestone*'.

204. On 18 May 2018, UKGI with input from POL's legal team provided a detailed update on the progress of the litigation to the Permanent Secretary²²⁷. It was noted that an information sharing protocol was being developed that would balance UKGI's requirements for increased visibility with POL's legal team's concerns regarding privilege, and that POL had been requested to work up contingency plans in the event of an adverse judgment. POL stated that it had taken, and continued to take, privileged legal advice from Leading Counsel and that this advice was being kept '*under continuous review*'.
205. On 10 August 2018, UKGI provided the Permanent Secretary with a further update²²⁸ including (i) the finalised draft of the information sharing protocol between UKGI and POL by which UKGI would receive information (including privileged information) concerning the progress of the litigation (subsequently signed on 11 June 2018)²²⁹; and (ii) a background briefing from POL's legal team on the merits of the case²³⁰. It was also confirmed that a meeting was being arranged at which POL's legal team would provide the Minister and Permanent Secretary with a briefing on the potential consequences of an adverse outcome and the contingency plans developed to address such a situation. The update made

²²⁶ Ibid, Document 130

²²⁷ Document 131

²²⁸ Document 132

²²⁹ Document 133

²³⁰ Document 134

clear that it had been UKGI (through the Shareholder NED) that had identified the need for contingency planning in the event of an adverse outcome:

“These briefings do not yet address contingency planning, but Tom Cooper has asked POL’s Legal Counsel to focus on this in the run-up to the November 2018 hearing, particularly the question of how POL would handle the business implications of losing, and to provide you with a paper addressing these issues in advance of the 10 September briefing session.”²³¹

206. The next meeting of the Postmaster Litigation Sub-committee took place on 24 September 2018²³². An update was provided by POL’s General Counsel on a number of procedural aspects of the litigation, including the conduct of the Horizon Issues trial. The view of POL’s IT expert was reported to be that ‘Horizon was a robust system which had some ‘bugs’ but which did not have a material impact on the operation of the system.’
207. The briefing for the Minister and Permanent Secretary proposed in UKGI’s 10 August update took place on 17 October 2018. As requested by the Shareholder NED, POL prepared a detailed briefing paper²³³ for the purposes of that meeting dealing with contingency planning in the event of an adverse outcome. The overall assessment provided by POL was the operational impact of an adverse judgment would be limited:

“Neither the Common Issues trial in November 2018 nor the Horizon Issues trial in March 2019 will address question of breach, causation and loss – therefore there will not be any award of damages as a result of either of these trials.

Post Office has a continuous programme of operational improvement and the outcome of the case will not affect that approach. In conjunction with our external legal team, management has assessed the likelihood of adverse outcomes and the operational and financial impacts of such decisions. While there are a number of areas which Counsel consider to be more problematic, Post Office management believe that the impact of an adverse outcome on these issues is manageable. Those arguments which would have the greatest adverse impact on Post Office, are assessed by Counsel as being less likely outcomes.”

²³¹ Ibid, Document 132

²³² Document 135

²³³ Document 136, page 3

208. The read out from the 17 October 2018 meeting²³⁴ indicates that both the Permanent Secretary and BEIS legal advisers pressed for a clearer understanding of Counsel's assessment of the prospects of success, and they wished to see Counsel's advice. POL's General Counsel stated that '*Counsel confirm stronger/better but haven't given % because of complexity of the issues; believe strong case but comes to interpretation of contract and approach judge takes.*' A number of agreed next steps were recorded, including the sharing of POL's legal advice with Government.
209. The Board meeting on 30 October 2018²³⁵ was the final one before the start of the Common Issues trial. It was attended by David Cavender QC and Andy Parsons. The Board were informed that POL had lost an application to limit the evidence adduced at the Common Issues trial but that would not prevent POL from challenging the Claimants' cases where there were inaccuracies or contradictions. As for the Horizon Issues trial, it was reported that POL's expert was confident that the problems with the system identified by the Claimants' expert could be '*rebuffed*'.
210. By the time Board met again, on 27 November 2018, the Common Issues trial had yet to conclude and the Board simply received an update on the progress of case, including the arguments advanced by both sides. The Board was reminded that the Court had ordered mediation to follow the common issues trial and was told that the POL legal team would formulate some '*red lines*' for that mediation which it would share with the Postmaster Litigation Sub-committee in due course. A more detailed update was provided to UKGI by POL (in accordance with the information sharing protocol) on 1 December 2018²³⁶. The update did not attempt to predict the outcome of the trial but observed that, whatever the outcome, it was highly likely that the losing party would appeal.
211. The Postmaster Litigation Sub-committee met on 28 January 2019. The judgment in the Common Issues trial was still awaited. It was noted that the Horizon Issues

²³⁴ Document 137

²³⁵ Document 138

²³⁶ Document 139

trial was still due to commence on 11 March 2019 and an update was provided by POL General Counsel on the current state of the evidence, prompting a request for a further briefing from *'the QCs'* and a further briefing for UKGI and BEIS to be prepared. There was a discussion about mediation, including the red lines that POL might adopt in such a process. It was noted that POL and the Claimants had yet to reach agreement on the identity of the mediator.

212. The next meeting of the Postmaster Litigation Sub-committee was on 21 February 2019²³⁷. The Common Issues judgment was still awaited and the primary purpose of the meeting was to receive an update from Anthony de Garr Robinson QC on the imminent Horizon Issues trial. Mr Robinson outlined a number of *'key risks'* for POL in the litigation. In particular, he explained that the case advanced by POL and Fujitsu on the issue of remote access had *'changed over time'* in that, *'Initially Fujitsu had said that remote access was not possible. The Deloitte audit had found that it was.'* However, despite the risks, and the anticipated criticisms concerning some aspects of the Horizon system, Mr Robinson *'thought [POL's] arguments were strong'* and he remained *'reasonably optimistic'* albeit less so than before Christmas in light of the further evidence that had recently been filed by the Claimants.
213. Following the handing down of the Common Issues judgment in March 2019²³⁸, consideration was given by POL's legal team to making a recusal application on the basis that retaining Fraser J would make it unlikely that POL would receive a fair trial and therefore he should not preside over the Horizon Issues trial. UKGI's General Counsel advised that this was not an issue in which the Shareholder should be involved. He expressed particular concern, which was shared by the Permanent Secretary, that Shareholder involvement in such an application might be interpreted as the Government failing to uphold the independence and integrity of the judiciary²³⁹. In accordance with this advice the Shareholder NED recused himself from the decision-making as to whether POL should make a recusal application in respect of Fraser J's future conduct of the litigation.

²³⁷ Document 140

²³⁸ Document 141

²³⁹ Document 142

214. On 18 March 2019, the Board met to consider the issue of recusal to decide whether to make an application. By that stage, an opinion from Lord Neuberger had been obtained which was reported to be strongly in favour of making a recusal application, and the meeting was attended by Lord Neuberger, who confirmed his advice. In accordance with the advice from UKGI's General Counsel, the Shareholder NED played no part in the Board's decision making on the recusal issue. The Permanent Secretary (following a submission on 19 March 2019²⁴⁰) also supported the Shareholder NED's recusing himself from this decision. In subsequent correspondence from the Shareholder NED, and in an update to the Secretary of State dated 21 March 2019, it was observed that the fact the Board now had independent legal support to assist it in its decision-making relating to the litigation was a welcome development and one that UKGI had been '*pushing for*' for some time.
215. In the event, the recusal application was made, dismissed by the Judge²⁴¹, and a subsequent application for permission to appeal refused²⁴². Accordingly, Fraser J continued to hear the Horizon Issues trial. UKGI provided the Secretary of State with an update on the current state of the litigation on 12 April 2019²⁴³, including the fact that, following intervention by the Chair and the Shareholder NED, POL had refreshed its legal team, including internally reorganising its legal team and replacing its General Counsel and employing a new firm of solicitors, HSF, to '*revisit the approach to the litigation*' in respect of both substance and tone. As noted in the update, this was a welcome development from UKGI's perspective, and was a step that it had been encouraging POL to take:

*"Given the unexpected outcome of the Common Issues trial we have been pressing POL to ensure that their litigation strategy is considered with a fresh set of eyes, so this is a good outcome and we expect it to have a significant bearing on the way the litigation is conducted."*²⁴⁴

²⁴⁰ Document 143

²⁴¹ Document 144

²⁴² Document 145

²⁴³ Document 146

²⁴⁴ Ibid, Document 146

216. HSF prepared a briefing in advance of a meeting of the Postmaster Litigation Sub-committee on 9 May 2019²⁴⁵ in which they set out the extent to which they agreed and disagreed with the current litigation strategy being pursued by POL's original legal team. On the central issue of whether POL should appeal the Common Issues judgment, HSF agreed with POL's proposed approach, although there was a difference of view on timing. It was recognised that the outcome of the Common Issues appeal application was likely to have a bearing on the future course of the Horizon Issues litigation, which had commenced but was yet to be concluded. It was anticipated that, were permission to appeal to be granted, this would provide an advantageous opportunity to engage with the option of settlement.
217. Once the decision to appeal the Common Issues judgment had been made there was considerable discussion concerning the grounds on which the appeal might be advanced. The Shareholder NED was directly involved in those discussions providing his views on (amongst other things) whether a procedural unfairness ground of appeal was tenable, and the need for changes in the legal team. In the event, new Leading Counsel was engaged to advise on the formulation of the grounds of appeal.
218. On 11 June 2019, and following a meeting with the Secretary of State the previous week, UKGI prepared a submission setting out a series of options for the Secretary of State to consider in seeking to bring the litigation to a swift and satisfactory conclusion²⁴⁶. A number of the recommendations identified by UKGI were expressly concerned with encouraging POL to engage with the option of an early settlement.
219. At a meeting on 12 June 2019²⁴⁷, the Postmaster Litigation Sub-committee approved the substantially streamlined grounds of appeal drafted by newly-instructed Leading Counsel. It received an update on progress in the Horizon Issues trial, which was scheduled to end on 2 July 2019. It noted the further work that had been done by POL to contingency plan for an adverse outcome to the

²⁴⁵ Document 147

²⁴⁶ Document 148

²⁴⁷ Document 149

litigation, including the engagement of Deloitte to assist with POL's '*operational readiness*'. The Grounds of Appeal were duly lodged on 13 June 2019²⁴⁸.

220. Whilst judgments were awaited from Fraser J (on the Horizon Issues) and the Court of Appeal (on the application for permission to appeal) HSF was commissioned to undertake some work on the issue of settlement and the practicalities of how that might be approached. HSF produced a detailed briefing note on these issues in advance of a meeting with the Shareholder NED and UKGI's General Counsel on 18 July 2019.
221. On 17 September 2019, there was a meeting of the Postmaster Litigation Sub-committee²⁴⁹ attended by (among others) the Shareholder NED, HSF and the General Counsels of both UKGI and POL. It was noted that the Horizon Issues judgment was still awaited and that the application for permission to appeal the Common Issues judgment had been listed for an oral hearing on 12 November 2019. POL's General Counsel presented an overview of the current state of the litigation, and POL's strategy for its future conduct to the sub-committee. He made clear that, '*Our legal strategy had changed to explore settlement options fully,*' HSF also presented the work it had undertaken on settlement as previously discussed with UKGI.
222. Work on settlement continued over the course of the following two months with advice being commissioned from counsel and HSF. The Shareholder NED remained centrally involved in the strategy surrounding settlement, which reflected the more realistic views expressed by POL's new legal advisers concerning the merits of POL's position in the litigation. Steps were taken to obtain appropriate Treasury approvals and settlement parameters were considered, and approved, by the Postmaster Litigation Sub-committee in advance of a mediation that had been scheduled for 27-28 November 2019.

²⁴⁸ Document 150

²⁴⁹ Document 151

223. At a meeting of the Postmaster Litigation Sub-committee on 10 December 2019²⁵⁰, the Sub-committee was informed that a settlement had been reached the previous day. It is a matter of public record that the settlement was for a total of £57.7 million, and that claimants with criminal convictions would be able to pursue further certain claims arising out of their prosecutions if and when their individual convictions are overturned.

Reflection

224. The level of oversight applied by the POL Board, including the Shareholder NED, improved from early 2018 onwards, as the litigation progressed and it is clear from the chronology set out above that the level of governance and oversight of the litigation was far greater and more effective by the end of that period than it had been at the start. The establishment of a Postmaster Litigation Sub-committee was an important early step and demonstrated an appropriate desire on the part of the Board to obtain a detailed understanding of the manner in which the litigation was being conducted and to intervene if necessary. Thereafter, POL's executive management and its legal team were pressed to provide regular updates and assessments of the prospects of success, and gradually became more receptive to this pressure. In the run up to the Common Issues trial, the Postmaster Litigation Sub-committee also required POL to undertake contingency planning to address the consequences of an adverse outcome. However, building the relationships and understanding within POL to facilitate this fuller provision of information was an iterative process. A key milestone in this journey was after the Common Issues judgment was handed down, when the Shareholder NED and the Postmaster Litigation Sub-committee worked to ensure that changes were made to the legal team. This new team were much more receptive to these fuller sharing arrangements, and in particular the insistence that appropriate consideration was given to settling the litigation, and that the necessary arrangements were made to enable settlement to be achieved quickly and efficiently.
225. From UKGI's perspective, this represents firm and effective corporate governance in circumstances where a company is involved in major, high-profile litigation. In

²⁵⁰ Document 152

such circumstances, UKGI would encourage the POL Board to take an active and interventionist role in reviewing the litigation strategy, with the Shareholder NED (supported by the Shareholder Team) at the centre of that process. The Board should hear directly from the legal team dealing with the case, and should ensure that it understands the issues, the risks associated with the litigation, and the assessment of the prospects of success. There should be clear and robust processes in place for the sharing of privileged documentation between the executive and the Board. The Board should review the relevant documents and provide input, as appropriate, on both the overall strategy (such as whether settlement should be considered) and the detail of the argument (such as the Shareholder NED's intervention in the drafting of the Common Issues ground of appeal). If it considers it appropriate to do so, the Board should press for changes to be made to the legal team dealing with the litigation, and seek second opinions on the strategy being pursued.

226. Whilst the appointment of a NED with specialist legal expertise might be appropriate in some circumstances (as highlighted in §§[241 to 243](#) below), this is an unusual step, and it is not evident that such expertise was required historically at POL. For example, the minutes of the meetings of the Postmaster Litigation Sub-committee demonstrate that it was able to draw on expert legal advice from a range of different sources and the fact that neither the Chair nor the Shareholder NED were lawyers did not prevent them (and other members of the sub-committee) from challenging the position taken by the POL legal team and providing valuable input into the litigation strategy.
227. However, UKGI considers that, when the chronology is reviewed with the benefit of hindsight, the level of active and constructive oversight of the litigation undertaken by the Board following the institution of the Postmaster Litigation Sub-committee in early 2018 could, and should, have commenced earlier. By the time of the first meeting of the Postmaster Litigation Sub-committee in March 2018²⁵¹, the litigation had been underway for almost two years and the Common Issues trial was only eight months away. It took time to establish a the practice of

²⁵¹ Ibid, Document 128

sharing of privileged documentation and advice and the first time that the sub-committee heard directly from the legal team in relation to conduct of the litigation was in May 2018²⁵².

228. Both prior to this point, and for some time afterwards, a review of the POL Board minutes and associated documents (including Chief Executive reports) indicates that the updates being provided to the Board as to the progress of the litigation and the strategy being adopted by POL were sparse and at a high-level of generality. There were updates as to the procedural state of play but very little as to the substance of the arguments, assessment of the merits, or the overall litigation strategy. General assurances were given to the effect that the claims did not disclose any new issues and that POL was confident in its position, but there was insufficient detail provided to the Board to enable it meaningfully to interrogate POL's approach to the litigation.
229. In UKGI's assessment it would have been better, from a corporate governance perspective, and given the importance of the litigation, had the Postmaster Litigation Sub-committee been formed shortly after receipt of the letter of claim so as to exercise rigorous oversight of POL's approach to the litigation from the outset. Whether this would have resulted in the litigation being managed differently is a matter of speculation but it would at least have ensured that the process was subjected to a greater and more effective degree of Board oversight and control.

IX. LESSONS LEARNED/UKGI's RESPONSE

230. Stepping back and viewing this chronology as a whole, it is apparent that – despite the steps which were taken to seek assurances throughout the period – both the POL Board and ShEx and then UKGI placed too much faith, at certain points, in the assurances consistently given by the POL executive management that there was no evidence of any systemic problems with Horizon, that this had been established by exhaustive investigation, and that any suggestion to the contrary

²⁵² Ibid, Document 130

was misconceived. These assertions should have been challenged more robustly and critically and more careful attention should have been paid to information pointing in the other direction. It will be for the POL executive to account for the decisions taken as to what information and documentation should be presented to the Board, but the role of the Board is not limited to the passive receipt of information and there are a number of points in the chronology described above where there was clear scope for the Board to take action on its own initiative to gain a better understanding of the issues relating to the operation of Horizon.

231. It is, of course, impossible fully to avoid hindsight in reaching that conclusion and, in particular, the knowledge of what has now been established through the GLO litigation and the judgments of Fraser J. Those clear and unequivocal findings were not available at the time and the case in support of the integrity of the Horizon system was advanced by the POL executive management, not merely by way of assertion, but by detailed assessments of the type reflected in (for example) the response to the final Second Sight report²⁵³ and the August 2015 PowerPoint presentation²⁵⁴. Neither the Board nor ShEx had the requisite IT expertise to conduct its own assessment of the Horizon system and was thus reliant on the information presented to it.
232. It is also important to keep in mind that there must be a degree of trust in the relationship between a Board and the executive if the business is to run successfully. Challenge, interrogation and debate are all important aspects of a Board's functions but, fundamentally, if the executive management team responsible for the day-to-day operation of the business make assertions or provide assurances, the Board must have confidence that they are accurate and justified. A Board will never be in a position to second guess everything it is told by management, particularly in respect of matters which involve a level of specialist expertise.
233. However, in this case, and as illustrated above, there were points in the chronology at which there was information which was, or should have been,

²⁵³ Ibid, Document 35

²⁵⁴ Ibid, Document 64

available to the Board and/or ShEx and then UKGI which had the potential to cast doubt on the confident assertions being made by POL regarding the Horizon system and should have prompted further debate and challenge, prompted (if necessary) by ShEx and then UKGI. Of particular significance in this regard are: (i) Deloitte's Project Zebra full report; (ii) the final Second Sight report; (iii) the whistleblowing allegations contained in the Panorama broadcast; and (iv) the report commissioned by Mr Parker. It is also important to keep in mind the general context of persistent concern being expressed by subpostmasters and their representatives, which was impossible to reconcile with the assurances being provided by POL. Whilst the Board may not have been in possession of the full facts from which to form a reliable judgement, there was also a lack of rigorous oversight of the litigation, at least in the early stages, and a lack of recognition that both the fact of the litigation and the evidence being assembled by the claimants strongly indicated that there was another side to the story.

234. That being so, it is necessary to confront squarely the question of why the POL Board and/or ShEx and then UKGI did not subject the assurances provided by the POL executive to greater scrutiny and did not do more to satisfy itself, through further enquiries, that it was being presented with an accurate picture of the evidence concerning the operation of Horizon. UKGI has reflected carefully on this issue and will continue to do so as the Inquiry proceeds. At this stage, any analysis must necessarily be provisional, but it is hoped that the Inquiry may be assisted by UKGI's preliminary conclusions as to the reasons why the Board and/or ShEx and then UKGI were not more effective in identifying, and correcting, the failure of POL adequately to deal with the concerns being expressed by subpostmasters (and others) about the operation of Horizon, and the evidence that was accumulating in support of those concerns.
235. The lessons learned by UKGI as a result of the process of analysis and reflection summarised above fall into five key themes, each of which is addressed in turn:
- (i) The need to strike an appropriate balance between promoting appropriate levels of Shareholder visibility and allowing the company to operate with

commercial independence (avoiding unnecessary interference and micro-management).

- (ii) The importance of robust whistleblowing policies and procedures and the role of the Board in ensuring that whistleblowing is taken seriously and responded to appropriately.
- (iii) The importance of the role of the Board in assuring itself that the company's culture is open, transparent and respectful towards its stakeholders.
- (iv) The need to encourage the Board to exercise robust and effective oversight of significant litigation in which the company is engaged including on matters of strategy, representation and compromise.
- (v) The need to ensure separation between the shareholder and policy functions to allow for full and appropriate challenge to be mounted.

ALB Independence and Board Composition

236. There are a number of points in the chronology where the documentation illustrates that the position taken by the Shareholder Team and the Department was one of arm's-length engagement and an unwillingness to get involved in what was perceived to be an operational matter for POL's executive management to address. Whilst that was an understandable position to take in respect of some aspects of the dispute, including the mediation process which plainly had to be operated independently, UKGI considers that the evidence highlights the importance of keeping the level and degree of challenge and scrutiny provided by the Shareholder under careful review. Whilst Public Corporations such as POL benefit from significant independence from Government and UKGI, and must be free to conduct their day to day operations in the commercial interests of the business, UKGI must remain prepared to intervene directly if they consider that red flags have been raised.

237. In addition to this general point about striking the correct balance between POL's commercial independence and the level of Government intervention, there are a number of specific points where the evidence indicates that more challenge was necessary. In particular, the view would appear to have been taken, on more than one occasion, that legal privilege and/or confidentiality operated to prevent the Board and/or UKGI and the Department from being provided with relevant material. Examples include the handling of the Parker Review and the conduct of the litigation until the protocol was established in May 2018. In the future where UKGI considers it appropriate to request that an ALB Chair or Board reassesses the risks associated with a material issue, such as with the Parker Review, UKGI would expect not only for such advice to be shared in full but also to have advanced sight of the terms of reference of such a review and to be able to feed into its methodology. In addition, whilst it is important that legal privilege is preserved in relation to legal advice, it is also important that the Board, and UKGI and the Department, is able properly to consider legal risk and be kept informed of material developments. Legal privilege should not be used to prevent the sharing of legal advice and if legal privilege is used as a justification for withholding material from the Board or UKGI and the Department, UKGI should challenge that approach robustly.
238. When dealing with complex issues of this nature the value of a wider range of expertise and/or perspective on the Board becomes apparent. UKGI has reflected on what more it might do to test a Board's capability in the future and consider a range of options to be available. Where an asset in UKGI's portfolio is experiencing significant challenges in the future, UKGI will encourage an asset's Board to reflect further on whether it has the necessary skillset and experience, particularly where the issues are technical in nature such as those being raised in relation to the Horizon IT system. Where specific or specialist skills cannot be obtained on certain issues, UKGI may opt to also encourage a Board to consider obtaining further technical expertise on certain issues, for example, via the appointment of a Board adviser or the commissioning of its own independent advice. In addition, as part of UKGI Shareholder Team's regular review of Board composition and skillset, it may seek the appointment of, either on a temporary or permanent basis, specialist NED expertise.

239. UKGI considers that there is no 'one size fits all' approach to ensuring that Boards have access to appropriate expertise and it is important to retain flexibility in making appointments, and commissioning expert advice, that meet the needs of the business as they arise. The overriding objective is to encourage the Board to proactively consider whether it has the expertise and experience to adequately understand and address the issues with which it is concerned, and that it takes proactive steps to fill any gaps in expertise, whether by way of additional appointments or through the instruction of external experts.
240. In the particular case of POL, these reflections have been brought to bear via the appointment of a NED on the Board with extensive legal experience, which is plainly appropriate in the current circumstances as they pertain to that company. The appointment of a NED with legal expertise may not always be necessary in light of the ability of the Board to seek its own specialist legal advice where required (as was the case in the aftermath of the Common Issues judgment), but may be deemed appropriate where an asset continues to grapple with significant, complex and prolonged legal challenges.

Whistleblowing

241. The chronology of events surrounding the Panorama broadcast and the allegations made by the Fujitsu whistleblower would indicate that the POL Board did not view whistleblowing as a key aspect of its remit and responsibility (albeit at the time it was not common practice to consider non-employees as whistleblowers as such). The allegations made by the Fujitsu whistleblower do not appear to have been treated as significant by the Board, nor did they prompt consideration by the Board of whether the whistleblowing procedures operated by POL were fit for purpose. Whilst part of the explanation for the Board's response is likely to reside in the fact that the Board were assured by the POL executive that the allegations contained nothing new and had already been exhaustively investigated, it would be expected that the Board would regard whistleblowing allegations of this nature to be sufficiently serious to require active investigation on its part to provide assurance that the allegations really had been addressed.

242. An obvious step to obtain such assurance would have been for the Board to have required Fujitsu to provide a detailed response and/or, to the extent the same was commissioned by the POL executive, for the Board to have interrogated the response and findings. There was also a need for the Board squarely to confront the fact that, if the allegations made by the Fujitsu whistleblower were true, information with which it had been provided by the POL executive concerning the integrity of the Horizon system, and on which it had relied, was not accurate. This necessitated a review of the risk associated with the Horizon remote access claims in particular.
243. UKGI has reflected on how its best practice should evolve in light of the above and the UK Corporate Governance Code issued by the Financial Reporting Council (FRC) in 2018, which includes a number of recommendations as to how companies should better facilitate the reporting of concerns, not just by '*staff*' but by the wider '*workforce*'²⁵⁵. The Code emphasises the central importance of whistleblowing and the need for a board to ensure that the company's obligations are being met in this regard. As a consequence, there are a range of measures that UKGI would expect both the Boards of its assets and Shareholder Teams to consider in similar circumstances, for example:
- (i) UKGI Shareholder Teams should seek to monitor the extent to which an asset's Board has taken sufficiently adequate steps to satisfy itself that the company has appropriate procedures in place to: (a) receive and assess whistleblowing claims; (b) conduct rigorous investigation of such valid claims; (c) ensure the investigation is independent and conducted with appropriate governance and oversight; and (d) provide visibility to the Board on the receipt and handling of potentially significant and/or high-profile claims.
 - (ii) Particularly where significant/ or high-profile whistleblowing matters are brought to an asset's attention, UKGI (via the Shareholder Team and/or Shareholder NED), should take steps to ensure it is properly sighted on how an asset is handling its response, and if it considers the handling to be

²⁵⁵ Document 153

inadequate, it should be prepared to intervene. Depending on the circumstances, this may include UKGI taking the following measures: (a) satisfying itself that the asset's Board is alive to the risks that the issue might present, and that the allegations are being addressed in an appropriate manner; (b) reviewing assurances being provided by an asset's executive team to a Board to test whether they are sufficiently independent and objective; and (c) considering whether the Board may benefit from independent third party assurance on particular matters.

244. These are the practices that UKGI will seek to apply across its portfolio of assets in similar circumstances in the future. In the particular case of POL, there have also been a number of structural changes to the oversight arrangements relating to whistleblowing. Responsibility for whistleblowing has now transferred from the ARC sub-committee to the main Board. In accordance with the recommendations of the FRC Code, concerns may be raised by the 'workforce', not merely by 'staff'²⁵⁶. At §§29.2-29.3 of UKGI's response to the Inquiry's Call for Evidence²⁵⁷ the current POL whistleblowing policy has been noted, and the Framework document states that POL should comply with the FRC Code in providing an adequate system for dealing with whistleblowing on the part of the workforce.

Culture

245. The chronology summarised above clearly illustrates that there were problems with POL's culture, most particularly its response to criticism and challenge which was always defensive and often aggressive. Read with the benefit of hindsight the materials and briefings provided to the Board concerning Horizon lacked balance and objectivity. The essential message conveyed by documents such as the (83-page) response to the final Second Sight report²⁵⁸ and the statement issued in response to Panorama²⁵⁹ was that those who sought to suggest that there were problems with the Horizon system were simply wrong. Similarly, the failure of the Scheme was viewed as the fault of subpostmasters and their unrealistic expectations, and the legal claim was dismissed as containing nothing new and

²⁵⁶ Ibid, Document 153

²⁵⁷ Ibid, Document 1

²⁵⁸ Ibid, Document 35

²⁵⁹ Ibid, Document 103

being without merit. Whilst, on occasion, POL's executive management may have talked about improvements to training and relationships with subpostmasters, a number of which may have been implemented by POL, the overarching impression was of a stance that refuted and rejected any criticisms made of the company.

246. Whilst POL's executive management is responsible for the manner in which it engaged with subpostmasters, UKGI recognises that the Board of a company such as POL has responsibility for establishing the company's purpose, values and strategy and must be satisfied that these, and its culture, are aligned. In particular, current corporate governance standards (informed by the FRC Code) would impose an obligation on the Board to consider the approach being adopted by the company to concerns raised by its business partners, particularly at the point where they felt they had no option but to commence litigation. From UKGI's review to date, there seems to have been insufficient challenge on the part of the Board to the overall approach taken by POL at the executive and working level on the Horizon issue and its dealings with subpostmasters, despite the accumulating evidence of a defensive culture which was preventing an open and self-critical assessment of the concerns that were being raised.
247. UKGI considers that the importance that culture plays in the effective corporate governance of a company must be emphasised, particularly for companies owned by HMG to which high standards are rightly expected to apply. 'Culture' should be a regular item on the Board's agendas, and on the agendas of meetings between UKGI and its assets, at both Board and Executive level. If the Shareholder Team considers that the culture of the company requires improvement then it should be robust in addressing the issue with the Board, the executive and with Ministers where appropriate.
248. In order to address this issue, the period since the conclusion of the litigation has seen an enhanced dialogue between BEIS, UKGI and POL on issues of culture and postmaster relations. The importance of POL building a more productive relationship with postmasters was made clear in the Chair's letter (from the

Permanent Secretary to the POL Chair) in February 2020²⁶⁰ and this has remained an issue of central concern to the Board and UKGI. The particular responsibilities of the Board in achieving these objectives are outlined in §7.2(c) of the UKGI Response to Information Batch Request 004²⁶¹ and include: (a) ensuring that POL continues to develop its understanding of the perspective of postmasters through surveys, focus groups etc; (b) improving the diversity of the Board and taking responsibility for the induction and integration of the postmaster NEDs; and (c) working to achieve the resolution of the outstanding litigation issues²⁶².

249. POL's approach at the executive and working level of viewing the Horizon issue as an intractable dispute between two competing parties in which it was in the right and the subpostmasters were in the wrong does not appear to have been sufficiently challenged by the Board. The POL Board could have done more to understand the dispute from the perspective of affected subpostmasters or the MPs who were advocating on their behalf. It would clearly have been beneficial for the Board to have obtained a better understanding of both sides of the story and, in particular, the human impact of the matters on which it was being briefed.
250. The FRC Corporate Governance Code 2018's relatively recent recommendation in relation to employee board representation as a means of workforce engagement provides a potential means of ensuring that adequate balance, empathy and insight is brought to bear on disputes of the type that arose between POL's executive management and subpostmasters, allowing the Board to maintain an objective overview of the issues. Whilst not a commonly implemented concept at the time, UKGI considers that it would have been valuable for the Board to have included subpostmaster representation as there was plainly a danger that, without it, the Board was deprived of valuable perspective on the evidence and assertions it was being presented by POL. One of the most troubling aspects of this case is the apparent failure to confront the fact that significant numbers of subpostmasters were expressing such persistent concerns. The Board, and ShEx, were frequently presented with statistics detailing how many transactions were processed by

²⁶⁰ Document 154

²⁶¹ Ibid, Document 3

²⁶² Ibid, Document 4

Horizon and how many subpostmasters were operating the system without apparent difficulty, but lying behind these statistics was a number of individuals who had encountered losses which required explanation. Subpostmaster representation on the Board might have contributed to greater focus and challenge in relation that issue.

251. UKGI has given careful thought to this issue and to the relevant recommendations in the FRC Code. In the particular case of POL, UKGI has advocated greater workforce engagement, with the result that there are now two postmaster NEDs on the Board and a NED with specific responsibility for workforce engagement.

Litigation

252. It is apparent that, in the early stages of the litigation, the Board's overall approach was one of limited engagement. It received procedural updates and intermittent oral briefings from POL's General Counsel, but it did not regard itself as having a direct role in reviewing and/or influencing the litigation strategy. Furthermore, there appears to have been no significant attempt on the part of the Board to assess the merits of the POL's case or examine the evidence that was being assembled by both parties. This approach stands in stark contrast to the one adopted from April/May 2018 onwards by both the Postmaster Litigation Sub-committee and UKGI which, in UKGI's assessment, reflects an appropriate level of Board oversight of sensitive and high-profile litigation involving the company.
253. When one steps back and considers the chronology as a whole, it is easy to see how the commencement of the litigation in early 2016 acted as a significant obstacle to the Board's scrutiny of the Horizon issues. In the first instance, it overtook the Parker review and caused attention to shift from that process of investigation to the litigation, which was said to represent a better vehicle for resolving the issues. More generally, it served to inhibit the consideration of Horizon related issues through concern about prejudicing the litigation or breaching privilege. The overall impression, prior to early 2018, is of the Board taking the approach that the litigation was a matter that should be left to the POL legal team to deal with without interference. Similarly, the Shareholder Team maintained an arm's-length approach to the litigation given POL's status as an ALB during this period. It was

not uncommon at the time for Departments, and consequently ShEx and then UKGI acting on their behalf in the performance of the shareholder role to view the handling of litigation as an operational matter for an asset to tackle with minimal interference from Government.

254. By contrast, the chronology from early 2018 onwards illustrates a number of the key developments in the area of litigation oversight. The Board established a Postmaster Litigation Sub-committee which scrutinised the POL litigation strategy and had greater visibility on its conduct with briefings from the key members of its appointed legal team. Later in the conduct of the litigation, the Board also sought its own legal advice on issues such as whether to make a recusal application and provided specific input on the composition of the POL legal team and the formulation of the grounds of appeal. From a shareholder perspective, UKGI also adopted a more interventionist stance from early 2018 onwards. This was largely due to its reflections in relation to ALB governance (particularly in relation to litigation) as a result of its involvement in and reflections as a consequence of its participation in the Magnox Inquiry. For example, UKGI established a protocol with POL to facilitate the sharing of privileged material, requested that the company seek a merits opinion, and directed that contingency planning and preparation for settlement be undertaken.

255. Going forward, UKGI recognises that it (on behalf of the Shareholder) should take a more active role in challenging an asset on its conduct of material litigation. As part of this model of direct and effective intervention it has a range of options that it will consider deploying in challenging the asset's approach. For example, in relation to POL, UKGI and the Department now have access to greater information flow with respect to material litigation. As explained at §32.7(f) of the UKGI Response to the Inquiry's Call for Evidence²⁶³, there is now express provision in the 2020 POL Framework Document²⁶⁴ requiring information sharing protocols to be formulated to enable the provision of legally privileged information to UKGI and the Department, thus ensuring they retain adequate visibility of the substance and progress of the case, including any advice received. In addition, UKGI will

²⁶³ Ibid, Document 1

²⁶⁴ Ibid, Document 8

also consider the following on a case-by-case basis going forward: (i) whether an asset's Board has adequate access to legal advice and external lawyers advising on litigation matters; (ii) the composition and capability of an asset's internal and external legal advisors; and (iii) whether the Board should be encouraged to consider the commission of (a) second opinions on the merits of a case (b) contingency planning and ongoing re-assessments of risk (c) settlement options as part of the Board's strategic oversight. Where litigation materialises which places an asset in direct conflict with a key stakeholder group, such as employees, UKGI as shareholder representative will also take steps to encourage the Board to consider whether the perspective of these stakeholders and other modes of dispute resolution have been considered thoroughly and holistically.

Dual Policy/ Shareholder Role

256. As noted above ShEx and then UKGI performed a dual policy and shareholder role for POL until 2018. Given the range of issues that the Shareholder Team (summarised at §31 above) were focussed on at key moments in the Horizon chronology from 2012 onwards, it may have been the case that this dual function did not allow for the Shareholder Team to sufficiently focus on the governance red flags that were materialising or allow a separate team to review issues from a distinct policy perspective. Since July/August 2018, the policy and shareholder function have been split, with BEIS now performing the former, which aligns with UKGI's preferred shareholder model. UKGI considers that separation of the policy function from the shareholder role permits relevant Shareholder Teams to focus specifically on commercial/financial monitoring and corporate governance matters, and to be able to provide an independent and impartial view of the operation of departmental policy. It is an essential element of the shareholder role that UKGI teams can critically assess the impact and effectiveness of policy in the context of assets and are not unduly influenced by policy considerations. That Ministers now benefit from two teams providing discrete policy and corporate governance/financial performance perspectives, in UKGI's view, only serves to strengthen the visibility that the Shareholder Department has on the range of issues that POL and other assets within its portfolio are grappling with.

CONCLUSION

257. UKGI hopes that this preliminary analysis of its role in the events with which the Inquiry is concerned will be of assistance to the Chair. As made clear at the outset, it has been based on the evidence as it currently stands, and UKGI is well aware that it will need to be kept under careful review as the Inquiry progresses and more evidence becomes available. It is well understood that, as the Inquiry's investigation proceeds, other issues may emerge, other criticisms may fairly be made, and other lessons may be identified.
258. UKGI has also not sought in this statement to set out the detail of how its governance processes operate in practice today. A summary of this has been provided to the Inquiry in UKGI's Response to the Inquiry's Call for Evidence²⁶⁵, and UKGI looks forward to exploring this area in more detail with the Inquiry in the course of Phase 7.
259. UKGI remains acutely conscious of the significant consequences endured by those affected as a consequence of the deficiencies in the Horizon system and will, of course, continue to provide the Inquiry with whatever assistance it may require in the discharge of its terms of reference, and engage, fully and frankly, with the Chair's investigation.

NEIL SHELDON KC

PAUL MERTENS

4 October 2022

²⁶⁵ Ibid, Document 1