

Witness Name: Thomas Cooper

Statement No: WITN00200300

Dated: 2 October 2024

POST OFFICE HORIZON IT INQUIRY

Third Witness Statement of Thomas Cooper

I, Thomas Cooper, will say as follows:

1. I am employed by UK Government Investments ("UKGI") and hold the position of Director, a position I have held since November 2017. This is the third statement that I have made to the Inquiry, my first statement being dated 13 June 2024 [WITN00200100] and my second statement being dated 3 September 2024 [WITN00200200]. This third statement is made in response to "Annex B" of a Rule 9 Request made by the Inquiry dated 25 July 2024 ("Rule 9(2)B"). In this statement, I have sought to address each of the questions posed by the Inquiry in Rule 9(2)B, save where they relate to matters which post-date my role as the Department for Business and Trade's (previously the Department for Business, Energy and Industrial Strategy and collectively referred to herein as the "Department") representative on POL's Board (the "Shareholder NED"). I have cross-referred to my previous witness statements as necessary and also referred to relevant contemporaneous documentation in support of my responses, to the extent that I have considered this may be of assistance to the Inquiry. I have also exhibited key documents.

The attitude of POL senior executives and/or the POL Board towards having a UKGI representative as a member of the Board.

2. I have been asked to describe the attitude of POL's senior executives and or the Board towards having a UKGI representative as a member of the Board. I am not well placed to answer a question about someone else's attitude about a role in which I served. The question is most appropriately addressed to other members of POL's Board (the "Board"). I believe the best way that I can attempt to answer this question is to refer to the Board Effectiveness Reviews ("BERs") that were carried out during my tenure, in which feedback relating to my position on the Board was invited from Board members. I note, for example:
- a. The external BER carried out by Independent Audit dated March 2021 [UKGI00017887] states *"The Board has a shareholder representative NED from UKGI who is felt by colleagues to be engaged and constructive, and to provide good input into debates."*
 - b. The comments section of the internal BER of 2021/2022 [POL00438073] states *"The Shareholder Representative is extraordinarily competent and provides extraordinarily detailed oversight."* However it also states *"It is sometimes difficult to know whether the shareholder rep is reflecting his own or UKGI's view of the business or, whether he represents the policy and direction proposed by BEIS... this can come across as conflicting."*
 - c. By contrast, the 2022/2023 internal BER [UKGI00044328] (which I did not receive at the time as production of the report post-dated my tenure) referred to there being a *"widespread view that UKGI delved too much into the detail"*. I addressed this in paragraph 52 of my second statement, where I said that in my view, engaging in the detail was needed in order to carry out my role given the many challenges that POL (the "Company") was faced with.

Redress and Compensation

3. I have been asked to address a number of questions in relation to my involvement as the Shareholder NED and that of UKGI's shareholder team (the "Shareholder Team"), which I led, in the compensation workstreams arising out of the GLO. Following the handing down of the Group Litigation Order ("GLO") judgments, delivery of compensation to victims of the Horizon scandal was a key priority for POL and HMG. As I referred to in my first witness statement at paragraph 170, this was made clear by the then Secretary of State on 16 March 2019, the day after the Common Issues Judgment ("CIJ") was handed down by Mr Justice Fraser. Providing compensation and implementing the commitments made in the GLO settlement was also highlighted as a key priority for POL in the annual letter sent by the Department to the Chair in February 2020 [POL00104222] and in annual Chair letters thereafter.
4. The first stage of the compensation process was triggered by the settlement agreement relating to the GLO which was agreed in December 2019. As part of the settlement, POL agreed to set up a compensation scheme for all current and former postmasters, subpostmasters and any other eligible claimants (collectively referred to as "SPMs") who had suffered losses as a result of having to repay shortfalls that they did not, in fact, owe. This scheme became the Historical Shortfall Scheme ("HSS").
5. Following referral by the Criminal Cases Review Commission ("CCRC") to the Court of Appeal of the first cases involving SPMs found guilty of criminal offences, POL also worked on the process by which compensation would be delivered to convicted SPMs whose convictions were found to be unsafe. This compensation process is now known as the Overturned Historical Compensation Scheme ("OCS").
6. The Department had a significant role in HSS and OCS, both of which required approvals and funding from the Department. The Shareholder Team played a significant role in supporting the Department in relation to both schemes. The role of the Shareholder Team and my role as the Shareholder NED in these

schemes, as well as the Group Litigation Order Compensation Scheme (“GLO Scheme”), is described below. Throughout this process, the Shareholder Team did not make decisions for or provide assurance to the Department, for example on legal matters, a matter which was agreed between UKGI’s CEO and the Department’s Permanent Secretary (Letter from Charles Donald to Sarah Munby - 9 August 2022 and Letter from Sarah Munby to Charles Donald – 11 August 2022) [UKGI00049062 and UKGI00049064].

7. For completeness, there were two other compensation workstreams that were in train during my tenure on the Board. A scheme to compensate SPMs for errors in reconciling SPMs’ holdings of stamps was introduced and closed during my tenure on the Board. This was known as the Stamps Scheme. The second workstream was called Postmaster Detriment. Postmaster Detriment brought together a number of issues which had gone wrong at POL and which meant that compensation was owed to the SPMs affected. A separate compensation process was required because these claims fell outside of the scope of HSS. The largest component of Postmaster Detriment compensation related to a contractual term in SPM contracts which meant that SPMs were not paid when they were suspended. This term was found to be unlawful in the CIJ. In cases where no shortfall was involved, the SPM concerned was not able to make a claim for suspension pay under HSS. As the Inquiry’s questions have focused on HSS and OCS, I have not addressed the Stamps Scheme or Postmaster Detriment in this witness statement.
8. As I describe in more detail below, UKGI provided a substantial degree of support to the Department on both HSS and OCS. In the early stages of the compensation process, the Department had few resources for the level of governance and oversight required. In the interests of progressing the compensation schemes and supporting the Department, UKGI therefore stepped outside its target operating model, which would not typically involve supporting the delivery of compensation schemes on behalf of HMG. As I described in my first witness statement at paragraph 11, the number of UKGI employees working on compensation matters increased substantially over this

period to support the compensation workstreams and, at its peak, there were approximately 12 people working full or part time on POL matters.

9. The Department also needed support from a lawyer with significant litigation experience, to assist with the compensation workstreams. Although UKGI had an in-house legal team, it did not have significant litigation expertise and it therefore retained the services of an external lawyer with significant litigation experience on a consultancy basis (a former partner at an international law firm), followed by a senior litigator on secondment from another international law firm. Although not UKGI employees, the Shareholder Team treated these lawyers as full members of the Shareholder Team. In performing their role, they had direct involvement with both POL and the Department and provided significant assistance to the Shareholder Team. As I describe below, once these schemes were up and running, the Department increased its involvement and UKGI was able to reduce its dedicated resource on compensation matters over time.
10. The Shareholder Team's role on the Department's behalf in relation to HSS and OCS mainly consisted of the following activities:
 - a. assisting with obtaining funding from HMG;
 - b. assisting with the design of governance arrangements for the Department's oversight of the schemes;
 - c. monitoring the progress of the schemes and assisting the Department where it had a decision-making role;
 - d. attending the Department's decision-making committees (the HSS Steering Committee ("HSS SteerCo") and the POL Overturned Convictions Committee ("POCC" or "POHC")), both of which I attended as an observer; and
 - e. attendance at the Board and Historical Remediation Committee ("HRC", and now called the Remediation Committee ("RC")) which I attended in my capacity as the Shareholder NED.

11. It should be noted that although I left the Board in May 2023, as part of the handover arrangements with my successor, Lorna Gratton, I continued to attend HRC as an observer for a period afterwards. The last HRC meeting I attended was in July 2023.
12. Given the distinct nature of HSS and OCS, I have answered the questions put to me by the Inquiry by reference to each of these schemes separately, in order to help to explain the role of the Shareholder Team in relation to each of them.

HSS

13. Essentially, the Shareholder Team's involvement in HSS can be divided into three phases:
 - a. Initial design and implementation of HSS;
 - b. Governance and operational resourcing of HSS; and
 - c. Monitoring of HSS.

Phase 1: Initial design and implementation of HSS

Initial design of HSS

14. As mentioned above, HSS was set up in order to fulfil one of the requirements of the GLO settlement agreement and the scheme was designed by POL in collaboration with the GLO claimants and their lawyers. Herbert Smith Freeths ("HSF") advised POL on the scheme design and remained involved throughout the time that I was on the Board.
15. When HSS was being designed, the potential scale of the scheme was unknown. Initially, POL thought that HSS might receive a few hundred applications and I recall that POL thought the cost could be of the order of £10m. Because the scheme was part of the GLO settlement that the Department had sanctioned and because of the anticipated cost of the scheme, it was expected that the scheme would be managed and funded by POL and no further

approvals would be required from the Department. As the Shareholder NED, I was involved in approving the scheme design which was considered by the GLO sub-committee of the Board and approved by the full Board in March 2020.

16. The design of the scheme appeared to be well developed and a series of flow charts were attached to the Board paper that showed how claims would be assessed for eligibility, evidence collection, claims assessment, determination by an independent advisory panel (the “IAP”), settlement and dispute resolution [from p. 11 **UKGI00046031**]. However, as time went on, both the number and nature of the claims emerged, and it became clear that there would be a number of complex issues to deal with as outlined below.

Implementation of HSS

17. The application window for HSS opened in May 2020. As the summer of 2020 progressed and the closing date for applications was extended (to allow for the impact of the Covid-19 pandemic), it became increasingly clear to POL that the number of applications would exceed POL’s initial expectations substantially. In September 2020, the Board was told that there were over 2,200 claims with an estimated cost of around £100m. It was immediately clear to the Board that POL would not be able to fund this amount from its own resources.
18. In October 2020, POL’s Chair wrote to the Minister and Permanent Secretary to request financial support for compensation payments [**POL00168611**]. The Shareholder Team became involved with the funding of the scheme and, on behalf of the Department, led the submission of the business case to HMT along with associated documents. There were a number of challenges for POL in preparing the business case. The ultimate cost of the scheme needed to be quantified to a standard acceptable to HMT, but this was difficult because a large proportion of the claims were either unquantified or only partially quantified. In addition, the Board was concerned to ensure that it would have sufficient funding to cover the worst-case outcome for the scheme and took advice on the wrongful trading risks that existed if the funding proved to be insufficient. POL requested funding of up to £320m but there was a reluctance

on the part of the Department to underwrite such a large figure given the uncertainty as to the overall quantum of the claims. Agreement was reached that the Department would provide funding of up to £285m but, before any HMG funding could be used, POL was required to use the proceeds from the recent disposal of its telecoms business. POL was also required to absorb the costs, both legal and operating costs, of running the scheme. In addition, the Department wanted to have a degree of oversight over the management of the scheme and the ability to stop funding the scheme if the scheme developed in a way that did not meet Managing Public Money requirements. The business case was submitted in January 2021 and funding was approved in March 2021.

19. While funding was being discussed there were extensive discussions between the IAP and HSF (on POL's behalf), and between POL, HSF and the Department about how HSS would operate in practice given the unexpected scale and complexity of the claims that had been submitted. In addition, a suite of agreements was prepared including a funding agreement, a comfort letter and an operations agreement (the "HSS Operations Agreement") [UKGI00049057] which is described below. The Shareholder Team supported the Department in these discussions.
20. A number of important principles were also established, for example, a de minimis level would be set below which claims would be paid without investigation. This would allow several hundred claims to be settled quickly, allowing POL and the IAP to focus on larger and more complex cases.
21. Given the large number of claims, consistency of treatment of claims was a concern for the parties and for the Shareholder Team. The IAP decided that it should develop a series of principles by which it would assess claims and determine compensation awards and that these principles would be developed from a bank of test cases put forward by POL. The principles would be included in Case Assessment Guidance ("CAG") that would inform the IAP's decision-making. In addition to addressing the key heads of loss, such as shortfalls and loss of earnings, the CAG also dealt with other important matters such as the

IAP's approach to claim investigations and unquantified claims as well as the treatment of evidence submitted by claimants.

22. All parties understood from the beginning that many claimants might find it difficult or impossible to provide evidence in support of their claims that would meet the standards required by a court. It was agreed that the IAP would adopt a general approach of accepting a claimant's evidence unless there was evidence to the contrary. With certain exceptions, such as the treatment of evidence, the IAP would determine claims by reference to accepted legal principles such that awards would be made on the basis of what a court would award in the same circumstances. This approach by the IAP meant that, in principle, HSS would meet Managing Public Money requirements.

Phase 2: Governance and operational resourcing of HSS

Governance

23. The Department's oversight of HSS was set out in the HSS Operations Agreement [UKGI00049057] which the Department agreed with POL. In essence, the HSS Operations Agreement provided that decisions which might have a material financial impact on HSS would require Department approval. For example, it was POL's responsibility to engage with the IAP to support it in developing the principles and CAG and, as that was a matter which would have a material impact on the cost of the scheme and therefore affect taxpayers' money, the Department would approve those documents. Other key decisions the Department needed to approve included the approach to significant cases (either because of their nature and precedent setting effect or value) and the dispute resolution process to be applied in the event that the award made by the IAP was not accepted by the claimant. In addition, the Board had decided in early 2020 that it would require a degree of oversight and control over HSS. It was therefore agreed that the Board would also approve the principles, CAG and the approach to significant cases.

24. The time it took to discuss these issues and reach an agreement on funding caused a delay to payment of de minimis claims which POL began to settle shortly after funding approval was obtained. It would take several months longer before POL was able to make offers to claimants with more complex cases as it took time to identify test cases, develop the principles and agree the CAG.
25. To enable such decisions to be made, in January 2021, the Department set up the HSS SteerCo which consisted of the Department's CFO, Senior Responsible Officer (the Director General), Director responsible for POL and Legal Director. HSS SteerCo's terms of reference set out its responsibilities when making certain decisions on behalf of Ministers [UKGI00049065]. I was invited to attend HSS SteerCo meetings as an observer and would be joined by members of the Shareholder Team. My role on HSS SteerCo was primarily to help provide senior Departmental officials with context and an understanding of POL's proposals, in order to inform their own decision-making.
26. The Department also set up a working group (the "HSS Working Group"), comprising members of the Department's policy team and the Shareholder Team. The Shareholder Team initially acted as the secretariat function to both the HSS Working Group and HSS SteerCo, and as part of this would work with the Department's policy team to agree issues for discussion and approval at HSS SteerCo. This function was later handed over to the Department. Members of the HSS Working Group were also involved in the day-to-day interaction with POL and would provide challenge to POL on matters being put for approval by HSS SteerCo. This included working closely with POL and HSF as the principles and CAG were developed. Members of the HSS Working Group also took a detailed interest in the test case process.
27. Notwithstanding the level of oversight and control retained by POL and the Department, I would emphasise that both parties were at pains not to compromise the independence of the IAP. There were occasions when, on specific topics, there were different views held by POL, the Department and the IAP. Although neither I nor members of the Shareholder Team were involved in any discussions with the IAP as they were held by HSF on POL's behalf, I

believe any issues of this kind were discussed openly and in the spirit of achieving fair and consistent outcomes for the claims. I do not recall the IAP expressing any complaints or unhappiness about interference from POL or the Department. If there had been any, I believe they would have been taken very seriously by the Department.

Operational resourcing

28. During this phase, there were discussions at the Board about how POL would operationally resource the compensation workstreams.
29. In Spring 2020, the Shareholder Team contributed to those discussions by providing advice to the Department concerning the separation of historical liabilities and compensation matters arising from the GLO from the 'business as usual' commercial operations of the Company [UKGI00046340]. One option that was suggested was to transfer the management of POL's compensation-related liabilities into a newly created separate company owned wholly by HMG. This would have enabled POL to focus on the strategic and operational issues it faced, whilst in parallel having a dedicated resource set up to deliver compensation to victims of the Horizon scandal. The alternative to this proposal was the establishment of a unit within POL to handle all compensation related matters.
30. UKGI's advice was discussed with POL and HMT as well as the Department. HSF assisted POL in preparing its own paper on the topic which was discussed at the Board [BEIS0000022]. The idea of separating the compensation workstreams from POL received little or no support. The Board determined that POL would take responsibility for the compensation workstreams itself rather than pass it to HMG. It was decided that an internal unit would be set up within POL, the Historical Matter Business Unit ("HMBU"), now known as the Remediation Unit. HMBU was set up in July 2020 and had a remit to deliver the legal and compensation workstreams flowing from the GLO proceedings.

31. Having reflected on this decision and reviewed the advice that UKGI provided, as well as the Board paper, one thing that is conspicuously missing from both documents is the claimants' perspective. Claimants were not approached to give their view at the time and, in hindsight, the lack of trust that claimants had in POL should have been included as a factor in support of separation. We know now that trust remains a major issue for claimants, one example of which is the GLO claimants' refusal to have the GLO Scheme administered by POL. Given that, as of today, significant elements of the compensation being delivered to SPMs are being administered by the Department, as well as the very significant strain that compensation has placed on POL's management which has lacked the bandwidth to handle the multiple, complex issues in front of it, I believe that, with the benefit of hindsight, the option of separating the compensation from POL should have been considered more seriously. However, at the time, following the successful settlement of the GLO and the participation of the GLO claimants in the design of HSS, there was a perception at POL that a degree of trust in POL had been restored. It is possible, therefore, that even if UKGI's advice and the Board paper had identified the issue of trust and captured it fully, the decision made may well have been the same in any event.
32. Having said all of this, the creation of HMBU was fundamentally positive as it created a focused resource within POL dedicated to delivering compensation. In the summer of 2020, Declan Salter was appointed to run HMBU. This was a challenging and complex role and although I recall Declan Salter was highly motivated to deliver good and swift outcomes for claimants, there were various challenges with HMBU's performance during the early stages. Despite the best efforts of all the parties to get on with making offers as soon as possible, the pace of delivery was slow. Although following funding approval de minimis claims were paid relatively quickly, other HSS workstreams appeared to be taking too long, slowed down by requests for information, investigating and assessing claims, preparing and submitting test cases to the IAP and therefore finalising and implementing the applicable principles. On 20 March 2021, I wrote to Tim Parker to express my concerns about these issues and to propose the appointment of a new non-executive Director with significant legal experience

to chair a new sub-committee of the Board to oversee the compensation and other legal workstreams arising from the GLO [UKGI00018239].

33. HRC was subsequently established and Ben Tidswell was recruited to chair it. Under its terms of reference, HRC was given responsibility for overseeing POL's compensation workstreams as well as the other legal issues arising from the GLO including, following the handing down of the Hamilton judgment, POL's stance in relation to convicted SPMs seeking to have their convictions overturned [POL00363158]. Ben Tidswell was a highly experienced litigator who had been the Chair of Ashurst. HRC worked intensively and met weekly to begin with, and later fortnightly. In my first witness statement at paragraph 278, I commented on Ben Tidswell's contribution to the Board. I believe Ben Tidswell made a very positive contribution to POL and was a real asset to the Company.
34. In June 2021, Nick Read informed the Board that Declan Salter would be leaving POL and in August 2021 a paper was presented to HRC that made a number of observations about the way HMBU had operated [UKGI00049056]. It took several months for POL to appoint a successor and it was not until January 2022 that Simon Recaldin joined POL. I believe that the lack of full-time, dedicated leadership of HMBU during the intervening period may have contributed to delays in the delivery of the compensation workstreams. However, Simon Recaldin's arrival was a very positive development. He brought significant experience in delivering compensation schemes and had a strong personal commitment to achieving fair outcomes for claimants. In addition, I believe that Nick Read was instrumental in focusing Simon Recaldin and HMBU on its targets for making offers to HSS claimants. Although targets had existed prior to Simon Recaldin's arrival, they did not appear to be particularly credible or deliverable. However, after his appointment there appeared to be a real and credible commitment to achieving the key target of making offers to 95% of the 2,374 HSS claimants by January 2023.
35. By December 2022, 2,244 offers had been made to applicants representing 94.5% of the claims made. I understand that various actions were taken by Simon Recaldin to try to achieve this target by removing blockages and

bottlenecks in the system. Simon Recaldin will be in the best position to describe them, but one example that I can recall is that around Spring of 2022, it became clear that the capacity of the IAP to process claims was going to be a significant obstacle to meeting the target. Accordingly, POL acted to put in place additional capacity and, at one stage, three panels had been created to make awards.

Phase 3: Monitoring HSS

36. By Autumn 2021, the IAP had begun making decisions on claims above the de minimis threshold and issuing offers to claimants. The Shareholder Team's role was to support the Department in reviewing test cases being submitted to the IAP, reviewing the draft principles before being approved by HSS SteerCo and reviewing individual offers that met the exception criteria set by HSS SteerCo in advance of approval by HSS SteerCo. In addition, the Shareholder Team was responsible for reviewing POL's financial forecasts for HSS so that the Department could understand the financial impact of decisions made within HSS and also monitor POL's operating and legal costs associated with delivering HSS. This activity involved frequent interactions with POL and HSF in the form of regular and ad-hoc meetings and conversations.
37. This monitoring activity was intensive and involved frequent meetings and calls between the Shareholder Team, the Department, POL and HSF. Part of this was a necessary consequence of the Shareholder Team's role, but in the early stages of the scheme, POL had outsourced much of the design and implementation work to HSF and the Shareholder Team's view was that POL's supervision of HSF was inadequate. The Shareholder Team therefore played a useful role in providing constructive challenge to HSF's work, particularly in relation to test cases and the principles. For example, I recall that the Shareholder Team's legal consultant was an early advocate for including distress and inconvenience ("D&I") as a head of loss under which the IAP could make awards. D&I had not been clearly identified as a standalone head of loss in the original HSS terms. In addition, with the assistance of the Shareholder Team's legal consultant, the Shareholder Team challenged POL about the

arrangements POL had made with HSF to process claims between Belfast and London which the Shareholder Team's legal consultant believed was slower and more expensive than necessary. Following Simon Recaldin's appointment, POL's internal governance arrangements improved and the Shareholder Team's concerns about the oversight of HSF by POL reduced.

38. The Shareholder Team's concerns about the apparent lack of speed with which claims were being processed during 2021 resulted in a request for better information as to the progress of claims processing and a regular series of meetings to discuss the information provided with members of HMBU. Monthly meetings were set up at working level as well as quarterly meetings attended by the Department's Senior Responsible Officer who chaired HSS SteerCo.
39. I mentioned above that as cases were examined, many complex issues emerged. Examples included: how to deal with unquantified claims; over what period should shortfalls be investigated in circumstances when the claimant was unable to specify the period in which the shortfall occurred; termination awards; bankruptcy cases; taxation of awards; claimants whose assistants had been wrongly convicted; claimants who were prosecuted but not convicted; claimants who had been given cautions; claimants who had been subject to civil proceedings; claimants who were in partnership; and claimants who were shareholders, directors or employees of dissolved companies. Solutions had to be found to deal with all these scenarios, usually involving the development of new principles and this took considerable time.
40. One area of concern that also emerged concerned the Dispute Resolution Process ("DRP"). During 2021, it became clear that cases in dispute were not progressing. HRC requested information from HMBU about the status of cases in dispute and the information provided showed that POL was slow to respond to correspondence and lacked the necessary resources, for example to field senior employees at escalation meetings.
41. Reflecting on these issues, I believe the DRP was too cumbersome. For example, the process included two good faith meetings before mediation, which

slowed down the resolution of claims in dispute. In addition, there was criticism from some claimants about the way in which good faith meetings were being handled, in particular that POL was represented by HSF at these meetings without a representative from POL being present. There was also feedback from some of the lawyers representing claimants in the DRP that the process was unnecessarily elaborate so that, for example, good faith meetings could be avoided by going straight to the escalation meeting stage.

42. Following his appointment, Simon Recaldin responded to these issues and improvements were made. The number of cases being resolved in DRP increased significantly and the time taken to reach resolution improved. However, at the time I left the Board, there was still a backlog of cases, some of which seemed to have reached an impasse. In such cases, I came to the view that it was important for POL to pay all or at least most of the offer that had been made and I made this point at HRC. I understand that this has now been implemented by POL.
43. HSS SteerCo met frequently. Initially it met weekly so as to be able to coordinate decisions with HRC and it continued to meet weekly for a period even after HRC had moved to a fortnightly rhythm. One of HSS SteerCo's objectives in meeting so frequently was to try to avoid being the cause of delay in the delivery of compensation to HSS claimants. In relation to the approvals that HSS SteerCo was required to give in relation to test cases (both the principles and the cases that met the exception criteria), I do not believe that HSS SteerCo was responsible for any significant delays to the delivery of compensation under HSS. It is possible that the extent of the monitoring activity that the Shareholder Team undertook on the Department's behalf at the early stages of HSS was excessive and led to delays but, overall, my view is that the Shareholder Team played an essential role in trying to ensure that HSS was being implemented in a coherent way and, in part at least, filled a gap in POL's oversight (by providing effective constructive challenge) that would otherwise have been present. I believe that without the Shareholder Team's substantial involvement at the early stages, HSS would have experienced even greater problems than it did, which would then have led to further delays later on.

44. Over the course of 2022, UKGI worked with the Department and POL to implement changes to the governance of HSS to reflect the greater understanding of cases and the further capacity within POL to oversee and deliver the scheme. During this period, most of the key principles had been approved and the IAP had made a significant number of awards. The Department decided it could relax the exception criteria. As a result, the number of cases that needed to be reviewed by the Shareholder Team prior to approval by HSS SteerCo reduced significantly. New principles and changes to existing principles still required approval by HSS Steerco.
45. In addition, during 2022, the Department committed more resources to the compensation workstreams including HSS and by the autumn of 2022 there was a significant degree of duplication between the Department and the Shareholder Team. As a result, it was agreed that the Shareholder Team would step back from most of the monitoring activity. The Shareholder Team continued to be represented at HSS SteerCo with observer status, but by that stage HSS SteerCo was meeting much less frequently in any event.

Reflections on other issues relating to HSS

46. Having described the three phases I identified above in relation to the HSS, I will now turn to consider a number of discrete issues that the Inquiry has asked me to address.

Engagement with SPMs eligible to apply to HSS

47. I recall that in early 2020, before HSS was launched, the Board decided that HSS should be advertised widely to the population of current and former SPMs as all of them might have claims. The Board instructed POL's management to take all reasonable steps to contact potential claimants and I understand that POL invited all current and former postmasters to apply by writing out to them, advertising HSS across its network including placing adverts in SPM magazines, and by directing potential applicants to the HSS website, which

contained eligibility criteria, application forms and some of the relevant guidance (although not all, as I discuss below). On this basis, I consider that the steps taken by POL are those which a company would reasonably take to encourage applications to such a scheme.

48. However, as the Inquiry will be aware, applications continued to be made after the closing date in November 2020 and by the time I left the Board, approximately 2,600 claims had been made to the scheme, including applications submitted after the original deadline. I am told by UKGI colleagues that this number today stands at nearly 4,000. It is obvious therefore, that POL's efforts to reach potential claimants can be described as only partially successful. In fairness to POL, the scheme was launched over the pandemic period which may have affected the initial take up of the scheme. More significant in my view however was the increasing level of media coverage of the Horizon scandal as time went on and other events, such as the Hamilton judgment. After I left the Board, ITV broadcast the Mr Bates v the Post Office drama. I expect that all these events will have increased awareness amongst current and former SPMs about compensation and will have contributed to late applications being made. POL itself could not have generated such nationwide coverage for the availability of compensation through HSS and so it is not clear to me that POL itself could reasonably have done much more to encourage claims.
49. But that is not to say that engagement could not, in my opinion, have been improved. For example, the consequential loss guidance was not put in place until five months after the scheme had been launched, which may have hindered claimants in being able to articulate their claims. It would have been helpful for postmasters to have access to that guidance from the start, even if it meant a short delay in launching HSS whilst those principles were agreed. Following submissions at the Inquiry compensation hearings in 2022, I became concerned about this issue and I deal with it further below.
50. It has also been reported in the media and by commentators (e.g. in Parliament) that some claimants felt they were not being updated regularly in respect of the

progress of their cases and that the pace of the scheme was too slow. In my opinion, POL was not ready to deal with such a large volume of applications and, had it anticipated this, it could have expanded its own capacity earlier to enable it to have more regular engagement with claimants.

51. During my tenure, the closing date for HSS was discussed several times at HRC. On reflection the way late applicants to the scheme were handled was unsatisfactory and I expect would have painted a confusing picture to SPMs. Having at various points been in favour of setting a firm date for closure when I attended HRC, before I left the Board I changed my opinion. Significantly, this was as a result of the evidence presented to the Inquiry at the compensation hearings in July and December 2022, from which it became clear to me that there were significant flaws in the way that HSS had been structured and communicated to potential claimants in 2020.
52. Various criticisms were made in evidence to the Inquiry including: the late communication of the consequential loss guidance; that claimants with legal representation achieved better outcomes than those without legal representation; the absence of reimbursement of legal costs until after an offer had been made; and that reimbursement of legal costs was capped at an inadequate level for complex cases. HRC asked POL's management to investigate these criticisms and assess their impact. POL's management reported back to HRC in July 2023 and it was clear from their work that there was substance to the criticisms and that claimants and potential claimants had been disadvantaged [UKGI00049053]. For example, the paper presented to HRC states:

- a. In relation to the consequential loss guidelines:

"On launch day, 7,100 current and 13,800 former PMs were contacted with a further 6,200 former PMs, who had inadvertently been missed from the original mailing, being contacted in July 2020. The letter guides PMs to a link on the POL website, does not mention Consequential Loss and there is no Post Office telephone Helpline available for PM's to call.

The Application Form for HSS was not included in the letter that was sent nor were the Terms of Reference, rather PMs were directed to access the link on the website, download and complete the Application Form and review the Terms of Reference, and either email, or print and post the forms to POL. Against a background of Covid 19 and lockdown, it is difficult to say how many PM's received letters, accessed the website and were able to submit a claim.

The Consequential Loss Guidelines were approved on 16th September 2020, and it was agreed that these guidelines would be sent to all applicants to HSS and would be published on the POL website in October 2020. At this point there were 2,211 applications from claimants, meaning that approximately 25,000 Postmasters did not receive Consequential Loss Guidelines at all. In addition, c60 Shortfall only claimants (plus 146 who did apply for further losses to be considered) who applied to HSS after the Consequential Loss Guidelines were published did not retrospectively receive the Guidelines. A paper was considered at HMC on 18th January 2023 which considered the issuance of CLG being sent in October 2020 and concluded that no uplift in applications was experienced after the mailing of the CL Guidelines. It should be noted that the CL Guidelines were only sent to actual claimants. The paper was subsequently presented to HRC who concluded that further investigation was required.”;

b. In relation to legal representation:

“Additional information and review by the HSS team, states that a review of Relativity shows the undernoted information. A fuller review of Legal Representation is in course and will be presented in a separate paper.

- i. *Overall, for the 2417 original claims, the average initial Offer is £92.6k for those claims represented and £35k for those unrepresented. Lower DM claims were proportionately less represented than non-de-minimis claims.*

- ii. *Shortfall only claims with representation have an average offer of £17.7k;*
- iii. *Shortfall only claims without representation have an average Offer of £9.6k;*
- iv. *CL claims with representation have an average Offer of £101k;*
- v. *CL claims without representation have an average Offer of £55.4k”; and*

c. In relation to the ratio of shortfall only to consequential loss claims:

“i. Applications submitted before 1st October 2020 had a shortfall only/Consequential Loss claim split of 42%/58% (929 claims/1282 claims);

ii. Applications submitted after 1st October 2020 had a shortfall only/Consequential Loss split of 29%/71% (60 claims / 146 claims) – however no CL Guidelines have been sent to the 60 shortfall only claimants.”

53. I expressed the view at HRC that HSS should be reopened to allow new claims to be submitted and existing claims to be re-submitted and reviewed. I also suggested that claims that had been settled could be reopened and reviewed at the request of the claimant. If, as I understand, there is to be an appeals process as the Horizon Compensation Advisory Board (the “HCAB”) has proposed, I hope that this will provide a route by which these issues and any other defects in the scheme can be remedied.

Keeping individuals informed about HSS

54. Responsibility for communicating with individuals about HSS and the progress of their claims through the scheme sat with POL, supported by HSF. I am aware

that there has been significant criticism of the delays experienced by claimants and of the general lack of communication with them by POL, which is highly regrettable. As a POL-run scheme, it would not have been appropriate for the Department to engage with individual claimants or their legal representatives and had it attempted to take on that role, my view is that this would have simply inserted a 'middle-man' into the process, as the Department and the Shareholder Team would have been reliant on sourcing any information that was relevant to each claim from POL. Correspondence from another party not responsible for delivering the scheme could also have been confusing for claimants.

55. Although UKGI was not involved in communicating with individual claimants, there were instances where claimants wrote to the Department requesting an update or flagging particular issues, which the Shareholder Team would then be made aware of. The general approach to such correspondence was that either the Department or the Shareholder Team would follow up with POL to understand the issue in question, ask them to investigate and request that they respond directly. Any Ministerial correspondence would be responded to by Departmental officials in the usual way.
56. As mentioned above, the Department and the Shareholder Team were updated on the progress of claims and some claimant engagement statistics were generated at a scheme level (e.g. responses to offers, the number of requests for information issued). Updates were also provided through the regular submission of KPIs to HRC and through the regular monitoring sessions. I consider that HMG was updated properly through the existing channels on claimant engagement however, as noted above, there was understandable criticism of the delays experienced by claimants, which could perhaps have been avoided had there been greater capacity within POL at the time to deal with the claims and had some of the organisational issues in HMBU referred to above been addressed at an earlier stage.
57. Public data on the progress of HSS was made available on POL's website from November 2021 and I am aware that this was later published monthly, including

on gov.uk. Given the significant public interest in the scheme, I think it is right that such information is made readily available, although in retrospect I would acknowledge that it was well over a year from the launch of the scheme before data was published. In my view, the information could have been made available earlier.

58. With hindsight, I also believe it would have been beneficial if more claimants had benefitted from legal representation, not only because the outcomes for those clients may well have been better, but also because I expect the presence of stronger advocates for claimants would have put pressure on POL to communicate better and might also have brought to light some of the defects in the scheme, that caused me to believe it was necessary to reopen the scheme.

Providing full and fair compensation to applicants

59. The idea of being able to fully and fairly compensate postmasters for the consequences of the Horizon Scandal, which in many cases has been life changing, is in itself difficult to conceive of. Monetary awards can only go part of the way to achieving redress.
60. It has been argued that the Horizon scandal was such an egregious event that legal precedent and what a court would award is the wrong starting point for considering the fairness of compensation. I have sympathy for this argument, but particularly in the context of thousands of claims, many of them complex, where compensation is being funded from public funds, fairness of awards and consistency between claims are critical principles that need to be observed and demonstrated. A solid framework for assessing claims and awarding compensation is therefore essential.
61. Moreover, in the context of the use of public funds, Managing Public Money guidance applies and the fairness of an award is generally assessed by reference to what a court would award in similar circumstances. Under HSS, the principles were intended to be based on clear and well-established law wherever that was available. In this way, the Department could be reassured

that the compensation awards made by the IAP were appropriate through the combined advice and input of the IAP, POL and POL's solicitors, as well as its own monitoring in which the Shareholder Team was involved.

62. I believe the remit of the IAP and the resources available to it meant that it was set up to achieve the objectives of fairness and consistency in the compensation awards it made. I am not an expert in compensation schemes, so it is difficult for me to give a view as to whether the IAP has achieved these objectives, either in relation to specific cases or in aggregate across the scheme as a whole. However, based on my observation of the scheme and the way the IAP operated, I believe the IAP worked thoroughly and diligently in doing its job. My understanding is that in some respects, such as the approach to evidence and the discretion the IAP was given to make awards that were higher than the amount claimed and for heads of loss that were not claimed, HSS was more flexible than a court process and so the outcomes for claimants in many cases may have been better than going to court.
63. Given the recent wave of applications, it is clear that HSS is far from complete. As of July 2024, I have been informed that £126m has been paid to over 2,500 applicants and that there are over 1,600 eligible applicants who are yet to have their claim settled and paid. This is obviously of concern given it is now more than four years after the scheme opened for applications.

Making offers and payments within a reasonable timeframe

64. The delivery of HSS has been much slower than anyone would have liked, despite the genuine intentions of both POL and HMG. I have outlined above the issues around pace of compensation at the early stage, although the rate at which offers were made did increase over time, especially following Simon Recaldin's appointment.
65. As to the payments themselves, my experience was that this process proceeded relatively smoothly and the Shareholder Team received regular updates from POL Finance to monitor and track spend. Once a compensation

payment had been agreed, including any interim payment, the speed at which that payment was made was relatively quick. This was a metric that was tracked as part of HSS KPIs and my recollection is that there were limited concerns in this regard.

Interim payments

66. Initially, interim payments were largely focused on hardship grounds. However, as time went on and, in an effort to mitigate some of the delays that were being experienced more generally in HSS, POL's approach developed to enable more interim payments to be made. My understanding is that POL now provides payments of up to £50,000 upon submission of a claim, and an interim payment of 100% of its offer if the offer is disputed.
67. My recollection is that the need for interim payments, beyond the limited hardship payments that had been allowed for at the early stages of the scheme, became clearer as it was recognised that the delivery of the scheme was slower than hoped and, in particular, that claims in DRP were taking a long time to resolve. In addition, interim payments had been introduced at an early stage of OCS and this had been well received by claimants. I also remember at one stage there was some concern from POL that making large numbers of interim payments would divert resources from the task of processing the underlying claims which would only cause further delays. However, while recognising that these concerns might have had substance, I was, in principle, in favour of making interim payments where possible and made this point at HRC towards the end of my tenure.
68. Given the difficult circumstances that many postmasters face, I consider the provision of interim payments to have been a positive development and one which I hope will continue to provide some relief and redress to claimants, whilst the remainder of their claims are being settled.

Fixed sum payments

69. I have been asked to summarise my role and that of the Shareholder Team in implementing the £75,000 Fixed Sum Payment offer to HSS claimants. Although I am aware of this policy development, it was introduced after I stepped down from the Board. I do not, therefore, consider myself to be well-placed to express any view about it. From speaking to colleagues within UKGI, it is my understanding that it was a policy decision taken by the Department and that the Shareholder Team did not play any role in it.

The IAP

70. I have described the way HSS operated and the role of the IAP in general terms above. In terms of its processes, the IAP operated as follows: the Panel made its recommendations to POL and POL then had to approve the ultimate award, make the offer of compensation to the claimant and make the compensation payments. During my tenure, I cannot recall any occasion on which POL outright rejected the IAP's recommendations and, in my opinion, the establishment and utilisation of the IAP itself worked well. Indeed, I believe that POL could not have run HSS without an independent panel and, in that sense, the IAP was key to achieving the delivery of HSS.
71. The capacity of the IAP expanded significantly over time to be able to handle the volume of claims. Each panel consisted of an experienced litigator, a retail expert and a forensic accountant. Initially the members of the IAP were Alex Charlton KC, Sunder Sandher and Susan Blower. The fact the Panel had quantum and retail experts meant that they had the expertise and experience to make an assessment of the claimant's losses (such as business losses) based on various assumptions, even where the underlying information may not have been available. I believe the range of skills and experience represented on the IAP enabled the IAP to assess the vast majority of claims effectively without recourse to outside help. Indeed, there were only a few occasions on which I can recall the IAP seeking outside expertise such as in relation to claims that included a medical component.

72. POL also had little, if any, direct engagement with the IAP. All engagement proceeded through HSF, which took the lead in the initial assessment of claims. I am aware that HSS has been criticised as lacking independence. This is unfortunate, as my experience is that the IAP operated as intended, providing independent views unfettered by POL.

Tax treatment of claims in HSS

73. As mentioned above, HSS was designed by POL with assistance from HSF. When it was presented to the Board in early 2020 for approval, the tax status of the scheme was not identified as an issue and the tax status was not explained. Nor were any alternatives put forward. With hindsight, POL should have sought approval for a scheme that was tax-free, but that possibility was not raised until OCS was being designed in 2022.
74. The tax treatment within HSS is an unfortunate feature that caused unfairness for certain categories of claimant. Awards for certain heads of loss in HSS, such as loss of earnings, were taxable in the year of receipt. For large awards, this would be taxable as income at higher rates, even though the earnings that the claimant was being compensated for might only have been taxed at a lower rate (e.g. the basic rate of income tax) over the period in which they would have been received. This was evidently unfair to the claimant.
75. A further issue arising from the tax treatment of HSS was the administrative burden for claimants of having to include their awards for certain heads of loss in their tax returns.
76. These issues of unfairness were highlighted by the Shareholder Team to HSS SteerCo in August 2022 [UKGI00049055]. An attempt was made to assess the number of claimants affected and various solutions were considered. Unfortunately, action was not then taken immediately to rectify the problem.

77. Following adverse comments in the press, however, HSS SteerCo then decided that the issue needed to be addressed. The Shareholder Team supported the Department in quantifying the impact of the different options available and these options were discussed between the Department, HMT and HMRC.⁰ The decision was taken to top-up awards made to all claimants in respect of awards subject to income tax. This had the effect of remedying the unfairness referred to above (i.e. making whole claimants that would be subject to higher rates of tax on their awards but who would have paid lower rates of tax on their earnings when they were SPMs). It was recognised that this solution would result in other claimants (for example those who currently pay no tax or the basic rate on their earnings) being better off as a result of the top-up payments, but it was considered that remedying the unfairness to the other group was more important than a risk that some claimants would be overcompensated. This proposal was approved by Ministers and announced in June 2023 [UKGI00049058].

Addressing the effect of bankruptcy in HSS

78. The treatment of bankruptcy and related consequential losses was a scheme-level issue that required principles to be developed by the IAP in accordance with the process I have set out above. Clearly, the effect of bankruptcy on any individual is substantial and can have life changing consequences. Unfortunately, bankruptcy law is complex and the resolution of these cases which involved multiple parties were some of the last cases to be dealt with during my tenure on the Board.
79. As I understood the position, the two most contentious issues in dealing with bankruptcy cases were causation and the allocation of the compensation award between the claimant and any remaining creditors.
80. It fell to the IAP to determine whether the bankruptcy had been caused by a shortfall and/or Horizon related issues. If so, the bankruptcy principles and related consequential loss principles applied and the IAP would make an award on that basis. Where causation could not be established, compensation would

be provided in respect of all Horizon related losses, but the bankruptcy and consequential losses principles would not be applied in determining the award.

81. In relation to the allocation of pecuniary losses, as a matter of insolvency law, some or all of the compensation would vest in the bankrupt's estate. This meant that, in many cases, the claimant's creditors would have the first call on a large proportion of the compensation awarded in cases where the bankruptcy remained open.
82. In the end, it is my understanding that all but one of the Trustees in Bankruptcy involved in HSS bankruptcy cases (including the Official Receiver) agreed that they would not take any of the compensation payments on behalf of the claimant's creditors. I recall there was one exception to this, and that case was ultimately resolved by way of a top-up payment being made.

Funding for legal assistance under HSS

83. As I have explained above, on reflection, I consider many HSS applicants would have benefited from access to legal assistance in preparing their claims. This was also an inconsistency in the approach taken between the compensation schemes: under HSS, claimants were provided with a maximum of £1,200 to pay for legal advice to support them in considering an offer (with further sums being made available if an offer progressed to DRP), whereas under OCS and the GLO Scheme, more comprehensive legal assistance was available from the outset of their claims (reasonable legal fees on OCS and a tariff on the GLO Scheme).

The HCAB

84. I have been asked to provide any reflections I may have on the HCAB's report dated the 14 June 2023 [RLIT0000250]. I have set out my comments below by reference to the paragraphs in the HCAB report:

- a. Fairness and legal costs (paragraphs 1, 7 and 11): As stated above, I agree with the fairness principles reflected in paragraph 1 of the report and that reimbursement of legal costs should be made, provided they are reasonable in the circumstances of the claimant and their claim.
- b. Taxation (paragraph 2): This issue was dealt with as I described above.
- c. Dispute resolution and trust (paragraphs 3 and 9): I would like to acknowledge the comments that have been made about the outcomes and handling of claims having been “unfair” in some cases. As mentioned above, at the time I left the Board, I believed that HSS should have been reopened to allow for new claims to be submitted and existing claims and settlements to be resubmitted and reviewed. As part of any reopening, claimants should be reimbursed for reasonable legal costs from the outset.
- d. The role of the IAP (paragraphs 4, 5 and 10): The HCAB appears to confirm my view that the IAP acted independently and diligently in assessing claims and making awards and sought to achieve consistency between claimants whose claims were similar.
- e. Differences between HSS and the GLO Scheme (paragraph 6): As I mention below, I was also concerned about this issue and recommended the Department should obtain assurance on the point.
- f. Role of an independent panel to increase trust in the final settlement (paragraph 8): I agree with HCAB’s comment that an independent panel to make a final decision in relation to awards is helpful in building trust. In relation to HSS, unfortunately despite the existence of the IAP, a significant number of awards were disputed and taken through DRP. I believe it is likely that a number of these disputes could be attributed to defects in the way HSS was communicated at the outset, for example the communication of the consequential loss principles. These cases should be capable of being resolved through the DRP, particularly if the

claimant obtains legal representation. Other awards may not have been acceptable to the claimant because the IAP did not have sufficient evidence, even taking account of the discretion available to it, that enabled it to make an award that the claimant would regard as fair. Alternatively, it is possible that some claimants may have had unrealistic expectations about the award the IAP would make even if all relevant evidence was available. HSS did provide that claimants could ultimately have access to mediation and if, having exhausted all available processes, any claimant remained dissatisfied with their award, they could take the matter to court. It was always hoped that there would be sufficient trust in the process that no claimant would feel it necessary to do so. I reached the view that, even if a claimant remained dissatisfied with their award, all or nearly all of the award should be paid to them and that payment should be made once the offer was made by POL.

- g. Damage to reputation and loss of earnings (paragraph 12): I believe the IAP did make awards in relation to claims for loss of reputation. Compensation for loss of earnings was one of the more difficult areas for the IAP which had to balance a number of factors in reaching a decision on a case-by-case basis. I recall that the IAP did take account of the claimants' particular circumstances and a number of awards were made that were higher than the 26 months remuneration figure. Lower awards were also made in some cases, but my recollection is that there were few such cases. I am not a lawyer, but my understanding is that a strict legal analysis might give rise to a lower figure than 26 months because many SPMs had contractual notice periods of 12 months or less. Mr Justice Fraser had also suggested in the CIJ that a notice period of 12 months might be appropriate in many cases. The IAP had to weigh up these factors and reached the conclusion, which I believe was arrived at in good faith, that 26 months remuneration would strike an appropriate balance in many cases.
- h. Overall fairness of awards (paragraph 13): I believe that others are better placed than me to provide informed comment on the overall fairness of

the awards made in HSS. A reopening of the scheme, as I proposed, would provide an opportunity to remedy any unfairness as far as possible.

- i. Overturned convictions (paragraphs 14 to 19): my understanding is that many of the concerns expressed by the HCAB and the recommendations they made will have been dealt with by the legislation introduced by HMG. This took place after I left the Board.

Overturned Convictions Scheme (OCS)

Summary of UKGI's role and involvement in key decisions

- 85. As with HSS, the Shareholder Team took a proactive role at the outset to support the Department with obtaining funding for the scheme and with the governance arrangements relating to the Department's oversight and monitoring of the scheme, providing a challenge function where appropriate. As I have mentioned above, as the Shareholder NED, I participated in decision-making by the Board and HRC in this regard.
- 86. I have set out below the key stages in the development of OCS to provide further detail concerning the Shareholder Team's role. I would also highlight that the process for compensating postmasters who had their convictions overturned was not structured as a "scheme", but I have used this terminology nevertheless.

Decisions on stance and general approach to compensation

- 87. Following the settlement of the GLO proceedings in 2019, POL began the process of dealing with convicted SPMs who were seeking to have their convictions overturned. A disclosure process was set up to assist convicted SPMs to put their appeals together and POL's lawyers advised that POL would need to review the evidence on a case-by-case basis and take a stance as to

whether the conviction should be overturned by the Court of Appeal or the Crown Court, as applicable, in each case.

88. I recall that a number of Board members, including myself, did not think it appropriate for POL to be involved in the process of determining whether any convictions should be overturned given its history of culpability in the Horizon scandal, and felt that this role would be more suitably performed by another party. However, it was explained by POL's lawyers that, in cases where it had been the prosecutor, POL was required to perform this function according to the established legal process for determining whether or not a conviction was safe.
89. In light of this advice, the Board decided that, given the serious implications for the SPMs concerned, it would take the decision on the stance POL would take in each case. The first cases that the Board considered were 47 cases that had been referred to the Court of Appeal by the CCRC. Based on the available evidence and legal advice, which was considered in depth, the Board decided it should oppose three of the appeals but that it would support the remaining 44. In the Hamilton judgment, which was delivered in April 2021, the Court of Appeal confirmed that 39 of the 42 convictions being considered at the hearing should be overturned. The convictions in the three appeals that POL had decided it should oppose were upheld by the Court of Appeal.
90. During my tenure on the Board, decisions concerning POL's stance in relation to criminal appeals were not delegated by the Board. Either the Board or HRC reviewed the legal advice in each case and took the decisions.
91. In parallel with those decisions being made, POL also began receiving advice on the compensation to which convicted SPMs whose convictions were overturned would be entitled. HSF provided POL with advice about malicious prosecution, the total potential quantum of compensation and approaches that might be taken to the settlement of claims and delivery of compensation.
92. In early 2021, HSF began to engage with Hudgell Solicitors ("Hudgell") who, at that stage, POL understood was representing around 65 convicted SPMs

seeking to have their convictions overturned, to discuss the process for compensation. At the Board meeting on 18 March 2021, HSF advised that Hudgell's clients did not want the compensation process to involve a "scheme" like HSS. This information guided the approach that POL would go on to take. I understand that HSF also sought to reach out to the lawyers representing other claimants such as Howe & Co and Paul Marshall, however the feedback the Board received was that they were not in a position to engage at that stage.

93. Another factor in the initial approach taken to compensation was that there was no time limit by which convicted SPMs had to appeal their convictions. While it was hoped that a significant cohort of SPMs might have their convictions overturned quickly and provide the information to be able to assess compensation in a holistic way, it was understood that there might be a tail of claimants coming forward over a potentially long period, possibly years. In practice, despite 39 convictions being overturned as part of the Hamilton judgment and a further six at the Crown Court in December 2020, the flow of claims was slow. This meant that a more negotiated outcome had to be followed with each case being dealt with as it came in.

Interim payments and governance for final payments

94. Shortly after the Hamilton judgment, POL put forward a proposal to make interim payments to postmasters. It was already clear POL had no financial capacity to make compensation payments beyond the amount it had committed to HSS. POL therefore asked HMG to fund interim payments of up to £100,000 per claimant. This figure was based on an analysis by HSF. It was understood that many claimants would be entitled to substantially more than £100,000 but HSF considered that it would be the minimum amount of compensation that most claimants would be entitled to. The proposal was approved by the Board in May 2021. The Shareholder Team then supported the Department in preparing the required business case for the funding, which included reviewing POL's proposal and financial analysis. The business case was approved by HMT on 21 July 2021, which enabled POL to announce the policy and applicants to begin applying for payments.

95. In HSF's view there might have been a small number of cases in which the ultimate amount of compensation that would be payable to a claimant would be lower than £100,000. This situation might arise, for example, if the claimant had earned more after their conviction than they had earned as an SPM. This would result in a small amount of compensation being paid for loss of earnings which was thought to be the largest head of loss for most claimants. Neither POL nor the Department wanted to be in a position where they might have overpaid compensation such that some of an interim payment might then have to be recouped from the claimant. Before making each interim payment, HSF therefore carried out a light touch assessment of the facts of each case, based on details provided in the appeal proceedings, and this informed the appropriateness of the payment being made. During my tenure, there were a handful of cases where HSF recommended an interim payment of less than £100,000.
96. In my view, the interim payment policy worked well. Applications for interim payments were generally received by POL fairly quickly after convicted SPMs had their convictions overturned. Interim payment offers were made relatively swiftly after applications were received and reviewed by HSF. Payment was also made promptly after acceptance. Progress was swift, for example, it was reported to the Board that, by October 2021, 59 SPMs had their convictions overturned, of which 57 had applied for interim payments, 43 offers had been made and 36 payments made. In addition, as the information as to the likely quantum of claims improved, for example following the Early Neutral Evaluation ("ENE") decision by Lord Dyson, interim payments were increased significantly.
97. The Shareholder Team assisted the Department with preparing the business case for funding final compensation payments which was approved by HMT in November 2021. As part of this work, the Shareholder Team was involved in scrutinising POL's financial analysis of the number of potentially affected postmasters and the legal analysis on quantum provided to POL by HSF (with assistance from BEIS legal).

98. Concurrently, POL, UKGI and the Department engaged on the governance arrangements for OCS, which were similar to HSS. By this point, HRC had been established and it incorporated OCS within its Terms of Reference. The Department set up POCC which, as outlined in its Terms of Reference, was designed to make key decisions from HMG's perspective [UKGI00049063]. The decision makers at POCC were the Department's Senior Responsible Officer and Director responsible for POL, the Department's CFO, the Department's Legal Director and a representative from HMT's spending team. As with HSS Steerco, I was invited to attend POCC as an observer along with the Chair of the Department's Audit and Risk Committee. The Department also set up a working group consisting of DBT policy officials and members of the Shareholder Team, which would consider the matters which needed to be put to POCC and which had working level engagement with POL on OCS (the "DBT POCC Working Group") (Working Group Terms of Reference – July 2022) [UKGI00049061]. The Shareholder Team also undertook the secretariat function for POCC until this was handed over to the Department at the end of 2022.
99. In December 2021, POL, UKGI and the Department agreed an operations agreement (the "OCS Operations Agreement") [UKGI00049054] that outlined the different responsibilities for the respective parties. In particular, it outlined the different approval points for the Department, for example the Department would approve the legal principles (designed by POL's lawyers) that would be applied when assessing claims and making compensation awards. In addition, the Department would approve the compensation offers made for the first 20 claims for which offers were made. The intention was that after the initial cases had been settled, the operation of the legal principles would be sufficiently well established and enough precedents set that the Department could either step back entirely from approving offers or reduce its involvement to looking at a small number of claims on an exception or sampling basis.
100. Part of the Shareholder Team's role was also to work with POL to develop management information ("MI") so that the Department could monitor progress. This started with weekly information about the processing of applications for

interim payments. Over time the MI was developed to cover the processing of full compensation claims received. The Shareholder Team also monitored the development of the estimated total cost of OCS which POL calculated by updating the financial model that had been used to support the business case for funding the scheme. Monthly monitoring meetings attended by a number of representatives from each of POL and the Department were also coordinated by the Shareholder Team in a similar manner to that described for HSS.

101. As with HSS, there was a regular drumbeat of meetings on OCS. The DBT POCC Working Group meetings (typically weekly) and POCC meetings (typically every fortnight) were distinct from HSS SteerCo and HSS Working Group. There would also be ad-hoc calls and meetings from time to time involving some or all of the following: Department officials; members of the Shareholder Team; POL; and HSF. Overall, the meetings relating to OCS were more event-driven, for example there was a particular uptick in meetings in the run up to the ENE.

Initial cases and ENE for non-pecuniary damages

102. In addition to claims for interim payments, POL initially received two full compensation claims from Hudgell which were discussed at the Board in August 2021. As anticipated in the OCS Operations Agreement [UKGI00049054], it was important to develop principles to enable fair compensation to be awarded but also to provide consistency between cases. The first two claims were considered as lead and precedent setting cases, both in terms of some of the key principles, such as loss of earnings, and also the process for awarding compensation. They therefore required substantial involvement by POL, HSF and the Shareholder Team. POL and the Department also took advice from counsel.
103. The Board and POCC approved initial offers in December 2021 and January 2022, however, agreement could not be reached as there were disagreements about a number of heads of loss. The most substantial point was in relation to non-pecuniary damages. The offers had been based on precedent cases but

the claimants' solicitors disagreed with this approach as they believed the precedent cases were not comparable to their clients' cases. They believed that the harm suffered by their clients was unprecedented and so higher awards should be made. While sympathetic to the arguments being made, the Department struggled with how it could justify making awards that were higher than those proposed by its own counsel and it took some time to find a way forward. As a result, it took some months before POL was in a position to increase the offers.

104. The Shareholder Team and POL encouraged the Department to consider different ways to resolve the position on non-pecuniary damages with Hudgell and other claimant cohorts. It was clear that the Department needed an independent and authoritative opinion on the range of damages if progress was to be made. After considering various alternatives, HSF produced a paper proposing ENE in April 2022 and the Board agreed with this proposal. The Shareholder Team supported the Department in reviewing the proposal to ensure the Department had a clear understanding of the ENE and its scope. POCC was supportive of ENE and provided comments to help develop proposals as they were put forward including on the terms of reference for the ENE.
105. The proposal to move to ENE was developed in conjunction with Hudgell. Other law firms representing convicted SPMs were offered the opportunity to take part but they chose not to participate at that stage. It was agreed that the ENE would be most beneficial if it could determine a range of awards for a variety of claimants whose circumstances were different. In this way the ENE could provide a basis for agreeing awards in as many cases as possible and minimise areas for disagreement. As a result, the ENE process took some time to set up whilst Hudgell assembled non-pecuniary claims from a further 8 claimants so that, in all, 10 cases could be considered. In early July 2022, the parties made submissions to the evaluator, Lord Dyson, and he reached his opinion at the end of the month. Shortly afterwards, non-pecuniary offers were made to the 10 claimants whose cases had been considered and I recall that most of the offers were accepted quickly. In a few cases, there were some residual

disagreements, but my recollection is that they were resolved within a short period.

106. There is no doubt that the need to have the ENE caused a delay in settling the non-pecuniary claims for the first two claimants, however overall, the ENE proved to be successful as it unblocked the settlement of non-pecuniary awards. It gave HMG reassurance as to the appropriate level for non-pecuniary awards and, in the main, claimants and their solicitors seemed to accept the ranges put forward by Lord Dyson to be appropriate. To illustrate how ENE enabled non-pecuniary claims to be progressed, by early November 2022, POL's management information recorded that there had been 83 convictions overturned and POL had received 40 non-pecuniary claims and in 15 of those cases, POL's offer had been accepted. However fewer than 10 pecuniary claims had been received.
107. The ENE also enabled the threshold for interim payments to be increased to £163,000 because the ranges put forward by Lord Dyson were higher than the level assumed when the £100,000 figure for interim payments had been decided. The increase was approved in October 2022.

Pecuniary damages

108. In relation to non-pecuniary claims, the ENE enabled POL and the claimants' solicitors to take a tariff-based approach to these heads of loss. Pecuniary claims could not be approached in this way, as the quantification of compensation relied on more specific information that was unique to each claimant. For example, to quantify compensation for loss of earnings, the claimant's earnings both in the period shortly prior to conviction and the entire period after conviction had to be obtained (usually from HMRC or the claimant's accounts) or estimated if source material was not available. The approach taken by POL was to seek to negotiate agreement with claimants on different heads of loss based on the information and evidence presented and, if that failed, consider other forms of ADR including mediation. The Shareholder Team supported the Department on the initial lead cases in reviewing POL's lawyers'

recommendations so that POCC could be satisfied with the approach being taken. Where relevant, the Shareholder Team would also consider POL's proposals for resolving issues that could not be agreed between POL and claimants, for example where expert advice may have been needed.

109. Whilst POL, the Department and Ministers shared a desire to settle claims quickly (Letter from Tim Parker to Minister – 22 April 2022) [UKGI00049059] and (Letter from Minister to Tim Parker – May 2022) [UKGI00049060], there were challenges in achieving this objective, for example: only one of the law firms representing some of the claimants, Hudgell, was forthcoming in presenting claims; and POL's lawyers faced challenges in obtaining the required information to support an offer, including from HMRC. However, progress was made and, as mentioned above, fewer than 10 claims had been received by November 2022.
110. Unfortunately, the rate at which pecuniary claims were submitted by claimants was very slow. By the time I left the Board in May 2023, more than two years after the Hamilton judgment, POL's management information recorded that, of the 86 convicted SPMs whose convictions had been overturned by then, only nine pecuniary claims had been submitted and, of these, only two had been settled.
111. The Shareholder Team worked to help OCS progress and overcome obstacles where possible. For example, in March 2022 the Shareholder Team supported the Department in taking forward POL's engagement with HMRC on the tax treatment of OCS. Although UKGI is not an expert in tax matters, the Shareholder Team assisted in the process of quantifying the financial effect on claimants and the cost to the taxpayer of various options in relation to a number of tax issues that arose in OCS. The objective was to evaluate a tax exemption for OCS with HMRC and HMT, which was ultimately agreed and announced in September 2022. I address the specific issue of tax treatment under OCS further below.

112. Over the summer 2022, the Shareholder Team also worked with the Department and HMRC to try to expedite HMRC's response to requests from claimants for historic tax records which would support their claims for loss of earnings.

Remediation approach

113. The issues with pace in the negotiated approach, outlined above, led HMBU to propose a new 'Remediation Approach' which was considered by HRC at a meeting in July 2022. The intention was to develop a detailed and consistent set of principles for assessing heads of loss and for internal POL case assessors to take the lead in considering claims and proposing settlement amounts to claimants.
114. POL and HSF discussed the proposed remediation approach with several of the firms representing claimants including Hudgell. My recollection is that the concept was reasonably well received.
115. The process took some time to develop and evolved over time. For example, it was agreed in November 2022 that the Remediation Approach would only be used for pecuniary damages and that POL and its lawyers would continue to lead on trying to agree non-pecuniary damages with claimants utilising the guidance from ENE.
116. Developing sufficiently detailed principles, which were required in the Remediation Approach, took time. POL's plan was to agree the principles with the law firms representing all the known claimants and potential claimants in OCS. My concern, which I expressed at HRC, was that this process could be long and complicated and that it might in fact lead to delays in compensating claimants.
117. By the time I left the Board, whilst there had been substantial progress on the development of the principles which were being shared with the claimants' solicitors, a number of matters remained to be resolved. For example, POL was

still designing the process for resolving disputes where a claimant did not agree with POL's offer. It was proposed that there would be an independent assessor ("IA") (ideally a KC with the assistance of a forensic account and experts where necessary) to review disputed heads of loss and give a recommendation. If there was still a challenge on a point of law, there would then be an appeals process. However, this had not been finalised by the time I left the Board and I cannot therefore comment on how the subsequent Independent Panel, which has now been appointed, operated nor on the appointment of Sir Gary Hickinbottom as the Chair.

118. During the development of the Remediation Approach, it was intended that negotiations for claims that had already been submitted would continue. Progress with these claims was slow. The Shareholder Team raised its concerns over this slow pace with POL through the Monthly Monitoring Meetings and requested clearer reporting to show where claim assessment was delayed and where issues needed to be escalated.
119. In March 2023, the Shareholder Team also supported the Department in putting up advice to the new Minister, Kevin Hollinrake, on POL's Remediation Approach and the issues that were being faced in achieving pace in OCS. I understand that this increased engagement resulted in the Minister asking the Department to explore an approach of offering claimants a fixed sum settlement in lieu of providing a detailed and evidenced breakdown of their losses. Whilst the Shareholder Team supported the Department on estimating the cost of a fixed sum approach, I was not involved in the policy which was finalised in July 2023 after I had left the Board. I therefore cannot comment on whether the decision to offer £600,000 in full and final settlement under OCS has been effective or provide any further background to this policy.

Engagement with SPMs eligible to apply for OCS

120. Reaching out to convicted SPMs whose convictions were potentially unsafe was a topic that was regularly reported on to the Board and discussed in more depth at HRC. POL undertook an extensive exercise to identify potential future

appellants (“PFAs”). This resulted in 666 PFAs being identified and by June 2022, POL had been able to write to 540 of them. Unfortunately, and for completely understandable reasons, some PFAs could not be found, did not respond, or asked not to be contacted.

121. Over time, extensive efforts were made by POL to identify and contact PFAs including sending further letters when no response was received. In late 2021, an external firm was appointed to help POL obtain contact details for those PFAs, or their next of kin if applicable, which POL did not already have.
122. POL recognised that a number of PFAs might not wish to hear from POL and, in some cases, further correspondence could cause offence or trigger traumatic memories. POL therefore approached the CCRC to ask it to write to PFAs who had not responded to correspondence from POL. In April 2022, the CCRC agreed to write to them and by June 2022, the number of PFAs for which POL had no contact details had been reduced to 31.
123. Shortly before I left the Board, HRC approved a letter that would be sent to PFAs whose convictions POL believed were unsafe. This was based on an extensive review of court papers and other information that POL had been able to obtain without the benefit of information from the claimants themselves or their solicitors. In summary, the letter said that POL would not oppose the PFA's appeal if the PFA decided to seek to have their conviction overturned. This was a further effort to encourage PFAs to come forward.
124. However, at the time I left the Board only 86 convicted SPMs had appealed and successfully had their convictions overturned.
125. Developments since I left the Board appear to have had much greater success in convincing convicted SPMs to come forward. Media coverage such as the ITV drama may have contributed, but perhaps most importantly, the recent legislation that automatically overturns convictions along with the offer of a fixed sum of £600,000 may have had the biggest effect.

126. It is unfortunate that more postmasters did not come forward at an earlier stage. As I say above, this was a topic that was discussed regularly and I do consider POL took all the reasonable steps it could to engage with affected postmasters.

Providing full and fair compensation to applications

127. As I have commented in relation to HSS, it is challenging to fully and fairly compensate those affected by the Horizon scandal. This is particularly relevant with regards to postmasters who were wrongly convicted, who have had the consequences of their convictions hanging over them and their families for much of their lives.
128. Under OCS, legal representation for claimants was fully funded and I recall that very few claimants chose not to be legally represented. This has provided some reassurance that claimants have had the support necessary to claim all the compensation to which they are entitled.
129. With respect to pecuniary damages, POL often made assumptions aimed at enabling claimants to obtain full compensation under relevant heads of loss. For example, POL assumed for loss of earnings claims that postmasters would continue to operate their branches until retirement and assisted claimants to obtain accurate earnings data via HMRC records to support the calculations underpinning their claims.
130. This approach was elaborated upon in its proposed remediation approach, in which POL set out a wide range of heads of loss to help support claimants and their representatives to fully develop their claims.
131. Throughout the process, POL also attempted to avoid placing an evidential burden on claimants that was too high. HMRC records were of great assistance in that regard.
132. However, in relation to compensation for pecuniary claims, beyond commenting that I believe POL sought to ensure that compensation awards would be fair, I

do not feel able to comment on the general fairness of compensation available under the scheme as so few claims had been dealt with by time I left the Board and the Remediation Approach was in the process of being set up.

133. As to non-pecuniary damages, the ENE conducted by Lord Dyson gave me confidence that the approach being developed by POL and the claimant representatives covered the range of heads of loss available. It also reflected the unprecedented nature of the claims being brought which required compensation beyond that awarded in pre-existing case law.

The tax treatment of claims in OCS

134. Compensation awarded under OCS is exempt from Income Tax, National Insurance, Inheritance Tax and Capital Gains Tax. I understand that this is consistent with the tax treatment of compensation awards under the GLO Scheme, but not HSS which I have commented on above.
135. Seeking these tax exemptions was a policy decision taken by the Department, with the support of HMT. The tax exemptions were aimed at ensuring the maximum amount goes to the claimant and avoided the administrative burden for claimants of having to include compensation in their tax returns. I was supportive of OCS being tax exempt despite the inconsistency with HSS. Had OCS compensation payments been taxable, it would have caused the same unfairness that existed in HSS but on a bigger scale because OCS compensation payments were typically substantial and so a high proportion of OCS claimants would have become subject to higher rate income tax.

Addressing the effect of bankruptcy in OCS

136. My recollection is that bankruptcy was not an issue in either of the settlements that had been agreed by the time I left the Board. As part of the Remediation Approach, bankruptcy and insolvency-related losses were in the process of being agreed with claimants' solicitors and these would have included principles

relating to bankruptcy. I am therefore not able to comment on how the issue of bankruptcy was addressed in OCS.

Keeping claimants updated

137. The Shareholder Team was updated on OCS claimant engagement in the same manner as I have described above for HSS. As OCS was more lawyer-led, it was for HSF to keep claimants updated about the scheme's processes via engagement with the lawyers representing them. HSF was also responsible for keeping claimants updated about the progress of their claim, again through their solicitors, and I am aware that HSF had multiple interactions with Hudgell regarding the claimants they were representing, some of which are mentioned above.
138. HSF was also in touch with the lawyers representing other claimants including Howe and Co and Paul Marshall. I have also highlighted that POL reached out to claimants that were not represented as part of the PFA process outlined above.
139. I am also aware that POL updated its website to include details of OCS processes which provided information on the progress of the scheme.

Effectiveness of dispute resolution in OCS

140. During my tenure as the Shareholder NED, the ENE acted as an effective dispute resolution process in relation to non-pecuniary compensation. ENE enabled the non-pecuniary claims for the vast majority of claimants to be settled. I recall there were three cases where the circumstances of the claimant were such that they did not accept that the outcome of the ENE was applicable to them. I recall that, when I left the Board, a second ENE involving Lord Dyson was planned to resolve these cases.
141. I recall that in one of the claims that had been settled, the parties could not agree on compensation for one pecuniary head of loss and this was resolved

through mediation. However, this was an ad-hoc arrangement and a dispute resolution process for pecuniary claims had not been established by the time I left the Board. At that stage, a dispute resolution process was envisaged for the Remediation Approach that was being discussed, but it had not yet been agreed.

GLO Scheme

142. I have been asked a number of questions in relation to my involvement in and the effectiveness of the GLO Scheme. The GLO Scheme was administered by the Department and UKGI did not have an active role in relation to it.
143. There was a limited period where a member of the Shareholder Team attended GLO Scheme steering group meetings as an observer to have an understanding as to how it was being approached and responded to queries from the Department about achieving consistency with HSS and OCS. A junior member of the Shareholder Team also joined the Department on secondment in January 2023 to support the GLO Scheme.
144. However, I was not involved in the GLO Scheme and beyond the background I have described above, I am unable to comment on how it has operated, the policy decisions that were made or its effectiveness.

Ensuring Parity of Compensation across the different redress schemes

145. I am unable to comment on parity of compensation across all the different redress schemes, as the Shareholder Team's role was, in substance, limited to HSS and OCS. As mentioned above, I proposed to the Department that it should obtain assurance that the GLO Scheme would deliver outcomes that were comparable to HSS. I have since understood that the Department did commission this work, but I am not aware of the outcome. I therefore focus on the two schemes with which the Shareholder Team was involved.

146. With respect to the HSS, as noted above, both POL and the Department wanted the IAP to deliver fair compensation to claimants in a consistent manner. In addition, it was important that where similar losses such as shortfalls and consequential losses came to be considered under different schemes, that applicants under each of the schemes would be treated with parity.
147. The legal principles for OCS were developed after those in HSS so naturally POL was guided by them and attempted to ensure consistency. It was supported by the same law firm (HSF) and counsel (Helen Davies KC and Andrew Kinnear KC). Broadly speaking, similar teams at POL, UKGI and DBT were involved which meant that there was a common understanding as to how different heads of loss operated under HSS and OCS.
148. Despite the above objectives and circumstances, there were significant differences between the way certain heads of loss were treated because of the nature of the claim and the extent of the losses suffered by the claimant. A good example is termination payments. In HSS, termination awards were generally determined by reference to a suitable notice period (which was usually longer than the contractual notice period). The IAP often awarded 26 months remuneration for termination. In contrast, the principle followed in OCS was to compensate the claimant as if they had continued to run their branch from the date of prosecution until the normal retirement date and deduct the claimant's actual earnings over the same period. As a result, different levels of compensation were awarded depending on whether a claim for termination was being assessed under HSS or OCS. This different approach was considered appropriate because the consequences of a conviction for a criminal offence are generally more severe than contractual termination. Another example related to taxation, which I have addressed above and believe has now been resolved.
149. A good example of a head of loss that was treated in the same way under both schemes was shortfalls. In respect of a claim for shortfall losses, I had a reasonably high level of confidence that claims would be assessed consistently and similar awards given. This is because POL's HMBU and HSF were

intimately involved with both HSS and OCS and were very familiar with how such heads of loss were to be assessed using the applicable principles. POL and HSF had access to the full bank of test cases and awards made by the IAP. In its reviews of OCS cases, of which there were very few by the time I left the Board, the Shareholder Team was not aware of any discrepancies between HSS and OCS where heads of loss such as this were meant to be assessed in the same way.

150. The nature of claims under OCS were also in some ways different given they related to malicious prosecutions. This meant that certain heads of loss, such as loss of liberty, could only be pursued under OCS. However, where non-pecuniary damages did apply under HSS, POL was able to share the findings of the ENE with the IAP.

STATEMENT OF TRUTH

I believe the contents of this statement to be true.

Signature: The signature is the text "GRO" in a large, bold, black sans-serif font, enclosed within a dashed rectangular border.

Date: 2 October 2024

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4.	POL00438073	Internal Board Effectiveness Review 2021/2022	POL-BSFF-095-0000009
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6.	POL00104222	Chair Letter - 26 February 2020	POL-0103805
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