

## **OVERTURNED HISTORICAL CONVICTIONS**

### **POL / BEIS OHC OPERATIONS AGREEMENT**

#### **Purpose**

1. This document sets out a common understanding between Post Office Limited (**POL**) and the Department for Business, Energy & Industrial Strategy (**BEIS**) of how compensation for Overturned Historical Convictions (**OHC**) will be delivered.

#### **Roles of POL and BEIS**

2. POL and BEIS have a shared objective to see each postmaster, branch manager and/or assistant (each referred to as a “**postmaster**” and collectively as the “**postmasters**”) receive swift and fair compensation for credible claims against POL for malicious prosecution and/or breach of contract and/or unjust enrichment in relation to postmasters who: i) have their criminal conviction/s overturned following the “Common Issues” and “Horizon Issues” judgments issued in the Post Office Group Litigation and/or the *Hamilton & Ors v. Post Office Limited* judgment issued by the Court of Appeal (Criminal Division); or (ii) were prosecuted but not convicted of offences connected to the Horizon IT system (“**Horizon**”) and suffered detriment in respect of the actions of POL.
3. The POL CEO is POL’s Accountable Officer<sup>1</sup>. As such, the POL CEO is responsible for observing the principles set out by HM Treasury in Managing Public Money regarding any settlements agreed and ensuring that those settlements represent Value for Money (“**VfM**”) to the taxpayer, including with regard to fairness, consistency and minimising litigation costs for POL and postmasters, on both an individual and programme-wide basis.
4. POL and BEIS and their respective agents will work collaboratively on an Alternative Dispute Resolution strategy (the “**ADR Strategy**”) designed to avoid further litigation between POL and postmasters where possible. Ensuring so far as possible that postmasters receive compensation for OHCs without having to litigate is a priority for both organisations, though it is recognised other types of adjudicative mechanism (e.g. arbitration, expert determination) may be required to resolve some issues. This will help resolve the issues raised by Horizon quickly, ensure affected postmasters receive fair and timely compensation and contribute to restoring POL’s reputation as a business of national importance. It is also acknowledged, however, that neither POL nor BEIS can prevent claimants going to court should they so wish.
5. In delivering compensation for OHCs:
  - POL has responsibility for the design and implementation of the ADR Strategy (including for interim payments), development of a strategy in relation to the settlement of individual claims in line with legal principles, delivery of full and final settlements of individual claims, oversight and reporting on OHC progress, management of cash flow and accurate forecasting of spend to BEIS;

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/874283/post-office-limited-shareholder-relationship-framework-part-1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874283/post-office-limited-shareholder-relationship-framework-part-1.pdf)

- BEIS has responsibility for the funding, agreeing key decisions in relation to POL's ADR Strategy as outlined under *The Agreed Process*, and monitoring POL's progress; and
  - POL and BEIS agree to work collaboratively to progress claims expeditiously and avoid undue delay.
6. Approval points and responsibilities have been set out in the flowchart in **Annex A** to reflect how the above roles interact with the decisions to be made.

### **The Agreed Process**

7. In July 2021, Ministers approved POL's proposal to issue interim payments of up to £100k to postmasters (fulfilling certain criteria) whose Horizon-related convictions have been quashed. The governance and control arrangements for these payments are outlined in the Interim Payments Funding Commitment Letter. The relevant section can be seen at **Annex B**.
8. The governance and control arrangements for the final settlements or other payments with postmasters are set out in this OHC Operations Agreement and underpin the ADR Strategy provided by POL to BEIS, including the supporting documents as noted below.
9. POL and BEIS have agreed the following approach to resolving OHC claims:

#### ***9.1 ADR Strategy***

POL have submitted to BEIS an ADR Strategy which BEIS has confirmed is consistent with the objectives set out in the POL OHC Full Compensation Business Case (the **Business Case**). The ADR Strategy sets out how POL and its legal advisers intend to approach the first stage of the settlement process with claimants.

It is recognised and expected that POL's ADR Strategy will change over time as feedback is received from negotiations with claimants and their advisors. POL's ADR Strategy will be developed in consultation with BEIS, and appropriate assurance will be sought by POL with regard to its approach to OHC claims (see *Assurance* section).

The ADR Strategy located at Annex E has been approved by POL's Historical Remediation Committee ("**HRC**") and BEIS. Any material amendments to the ADR Strategy must be agreed between POL and BEIS.

#### ***9.2 OHC Principles***

POL's legal representatives have prepared a set of "**Principles**" incorporating provisions reflecting legal advice provided to BEIS covering the legal issues which relate to the OHC claims and the various heads of loss likely to be claimed (available in **Annex C**). The

Principles will be used by POL's legal representatives to assess and quantify OHC claims and make a rational and reasoned settlement recommendation to POL in each individual case. The Principles located at Annex C have been approved by the POL HRC and BEIS. Any amendments to the Principles must be agreed between POL and BEIS.

The Principles will inform the proposed settlement ranges, methodologies or formulae that will be used in discussion with claimants' legal representatives. This will ensure that the assessment of each case is as far as practicable standardised against the Principles.

### 9.3 The SAR

The Principles provide the basis on which POL's legal representatives will prepare a Settlement Advice and Recommendation note ("**SAR**"), subject to having received sufficient information from the claimant and POL. The SAR will apply the Principles to the facts and evidence of an individual claim so as to provide:

- a rational and principled assessment of the claim by head of loss based on the evidence the claimant has provided and/or could reasonably be expected to provide (including orally), applying lessons learned from previous OHC cases and/or the Historical Shortfall Scheme where appropriate;
- a recommended settlement range based on that assessment;
- a strategy in relation to the opening position and upper limits in the negotiation; and
- an opinion with supporting commentary as to whether settlement within that range represents a better outcome than resolving the claim through litigation or other form of dispute resolution (e.g. arbitration, expert valuation), taking into account any other factors which support settlement (e.g. the impact on POL's reputation, future claimants' faith in the OHC ADR process).

Given funding for settlements will be provided by BEIS, there is a shared expectation that BEIS will scrutinise at least the Initial Cases (as set out below) closely to "test" how the Principles and SARs are proposed to be applied to live cases, and to build confidence in those assessments, recommendations and outcomes. BEIS has the right to access and review all SARs subject to the provisions of the Data Sharing Agreement between POL, UKGI and BEIS in respect of OHC claims to be entered into on or around the date of this version of the Operations Agreement ("**DSA**").

BEIS will not be asked to approve the fact-specific recommendations made in the SARs. Instead, BEIS will need to be suitably assured (see *Assurance* section) that claims have been assessed by subject matter experts (including POL's legal representatives) who have made their recommendations by reference to the appropriate considerations (i.e. the Principles and wider ADR objectives), and that based on the information provided to BEIS by POL, claimants have been treated fairly.

### 9.4 The Initial Cases

To ensure a shared understanding of the practical application of the Principles to individual cases, BEIS will scrutinise and retain full approval rights over an initial tranche of cases (the “**Initial Cases**”). As part of this process, POL will present BEIS with SARs for the Initial Cases setting out how its legal representatives have reached their recommendation in each case.

The Initial Cases will need to be sufficient in number to provide BEIS with a benchmark against which future cases will be judged. POL and BEIS will assess whether sufficient cases have been provided for this benchmark 6 months after the first of the Initial Cases has been presented, or after 20 Initial Cases have been presented, whichever occurs first. BEIS will ask POL to continue to present additional Initial Cases should it not be possible to define appropriate criteria to establish delegation categories for subsequent cases at this stage (see *Subsequent Cases* section).

POL's legal representatives will provide the SAR to POL's Historical Matters Unit (“**HMU**”) who will conduct an initial review. The SAR will then be provided to BEIS who will raise with POL any comments on or challenges to the SAR before it is submitted to POL's HRC, so that BEIS's views are reflected in the SARs and/or the HRC's discussion of them. POL will also upon receipt provide the “QC opinion” (defined below) to BEIS as prepared in accordance with the Assurance section below.

Once BEIS's comments on the SAR and the QC opinion have been received, POL will seek the final decision on the settlement mandate sought through each SAR from POL's HRC. The POL HRC will then submit its final decision to BEIS for ratification. To promote swift resolution of OHC claims, BEIS will provide its confirmation to POL within 5 working days of receipt of the request from HRC for BEIS approval.

Only once BEIS is satisfied that a sufficient number of Initial Cases have been considered and settled so that delegation categories for subsequent cases can be defined, and is confident that the assurances that have been put in place (see *Assurance* section) are operating effectively will it “step back” from scrutinising Initial Cases.

### 9.5 Subsequent Cases

After the Initial Cases, individual cases will be assessed by POL and its legal representatives and will be categorised according to whether authority to provide settlement mandates is delegated to (i) POL's Management, (ii) POL's HRC or (iii) POL's HRC with the approval of BEIS. The criteria for determining the categories cannot be conclusively defined as at the date of this version of the Operations Agreement given the relatively few cases that have come forward, and the limited information provided to date by the claimants to substantiate their claims. POL and BEIS will have a greater understanding of the appropriateness of these categories after the Initial Cases are complete and will work to define the criteria against which cases are assessed at this point. These criteria will be kept under review, and, subject to the DSA, BEIS reserves the right to review individual SARs on a sample basis at any point.

BEIS will receive regular updates consolidating the progress of all cases through assessment, governance and negotiation, with the overall potential financial impact of these claims tracked against an agreed model for OHC Cash Forecasting. This reporting will assist with the identification of cases to be escalated to the HRC and, if appropriate, BEIS. Further detail can be seen under *Monitoring Arrangements*.



### *9.6 Unsuccessful Mediation / Settlement Discussions*

There is no guarantee that settlement discussions or mediation between POL and postmasters' legal representatives will result in a settlement agreement, as both are voluntary processes.

If settlement cannot be agreed within an approved mandated range, a revised SAR will be prepared reflecting what was learned from the negotiations with the claimant and seeking POL's instructions on next steps, e.g. whether the range should be increased to secure a reasonable settlement, or whether the claim should proceed to mediation (with or without a revised settlement mandate), some other dispute resolution process (e.g. arbitration or expert determination) or potentially even to litigation (e.g. if the claimants' expectations are unreasonably high).

Subject to the commitment under the OHC Funding Commitment Letter, BEIS's approval will be required in relation to proposed next steps, including any proposal to increase quantum, for all of these cases until such time as BEIS and POL agree criteria to determine which cases require BEIS' approval.

Given the potential financial and reputational implications, BEIS expects POL to review its ADR Strategy regularly, and to seek appropriate external assurance and consult BEIS.

### **Value for Money Analysis**

10. As part of the SAR, POL will provide BEIS with a VfM analysis – at both an individual case level and programme wide taking into account any precedents set by a case. VfM judgements should consider both financial costs and the successful delivery of the programme objectives. As such VfM judgements on cases should take into account the broader success of the ADR strategy and the merits of proceeding with the proposed approach instead of proceeding with any alternative options for that individual case including the costs of litigation.
11. It is understood that POL has provided BEIS with an estimate of OHC settlement costs with which BEIS has sought funding from HM Treasury of up to £780m (including interim payments) based on the estimated number of postmasters convicted since the introduction of the Horizon system (including those prosecuted by other, non-POL prosecutors).
12. POL should establish strong controls on the level of spend on legal advisers for OHC Claims to ensure that the costs incurred in connection with cases are reasonable in amount and proportionate to the matters in issue, including the objectives for the programme as a whole.

### **Assurance**

13. As set out above, the SARs will be prepared in accordance with the Principles and recommend settlement ranges that are fair, take into account VfM and so far as possible are consistent between claimants. As also set out above, POL and BEIS need to be assured that claims have been assessed by subject matter experts, who have made their recommendations by reference to the appropriate considerations, and that claimants have been treated fairly.

14. Accordingly, after an initial review by the POL's HMU, POL will seek assurance on the SARs as follows:

- For the Initial Cases, POL will contract at its expense with a QC or suitably qualified legal professional (the "QC") to provide his/her opinion as to whether the SARs (or any revised SARs) reflect the appropriate considerations set out in the ADR Strategy and Principles documents, take into account VfM, and treat claimants fairly and (so far as is possible) consistently.
- The QC may also be asked to give his/her opinion as to whether additional professional expertise (e.g. on valuation or other expert matters) could be used to facilitate a resolution of the case (with any such appointment to be agreed between BEIS and POL).
- Each party will have full access to the QC opinion and will, where they have legitimate concerns regarding it, be able to: clarify and/or raise further questions in relation to it and seek assistance with such other matters as may reasonably be required, such as when the Principles are updated. Where legitimate concerns have been raised by BEIS regarding the QC opinion, any further instructions to the QC incorporating those concerns (i.e. clarifications sought or further questions asked) should come from POL as the instructing client.
- For Subsequent Cases, POL may continue to obtain QC opinions over the SARs as necessary for assurance purposes, applying lessons learned from the Initial Cases and depending on the extent to which POL and BEIS are comfortable that the settlement process is operating effectively.

15. More widely, POL will maintain an appropriate three lines of defence model to manage its risks and plan its approach to assurance, covering both legal and operational elements of the OHC process including HMU. POL will provide BEIS with a monthly copy of its risk register and the findings of any assurance conducted.

16. POL will provide sufficient information to enable BEIS to monitor POL's management information and the findings of POL's assurance work to help develop and plan BEIS's assurance requirements. BEIS will coordinate its assurance plans with POL and will agree the requirements for POL's three lines of defence (such agreement not to be unreasonably withheld or delayed). POL will provide access to POL's internal audit team or other providers of assurance as necessary.

17. To the extent permitted under the DSA, BEIS reserves the right to undertake an independent audit from time to time of OHC settlement offers to ensure the Principles are being applied fairly and consistently, for example if BEIS is required to do so by the Government Internal Audit Agency ("GIAA") or National Audit Office ("NAO").

### **Monitoring Arrangements**

18. **Monthly Monitoring:** POL will provide regular updates on progress in negotiating and settling the claims by way of extending the existing monthly interim payments monitoring meeting and Management Information ("MI") pack to include case progress and

settlement information for OHCs. The extended MI pack will be agreed between POL and BEIS. Monitoring information will be reviewed and may change from time to time as POL's ADR strategy develops.

19. **Quarterly Monitoring:** POL will meet with BEIS's senior board on a quarterly basis, including the BEIS Senior Responsible Officer, to provide an update on OHC progress and outlook for expected cashflows and costs.
20. This meeting will be a systematic review for BEIS and will provide the opportunity for BEIS to pause OHC funding if VfM can no longer be established until such time that these issues are resolved.
21. Should BEIS take the decision to pause funding as above, BEIS and POL will agree an action plan to resolve the issues identified with the aim of restarting progress (or implement an alternative solution if one is identified) as soon as BEIS is satisfied that the issues have been addressed.
22. POL and BEIS will agree a financial model with an initial cost estimate covering both settlement and programme costs (including spend on legal advisers). This should be updated with information from negotiations and settlements. This model should support high level financial forecasts, manage programme costs and to help assess SARs. The initial cost estimate will be used as a baseline for monitoring going forward. This will be updated from time to time.

#### **Funding and Cost Sharing Arrangements**

23. Funding and cost sharing arrangements regarding the delivery of compensation for OHCs, including interim payments, will be set out in the relevant Funding Commitment Letter.
24. The process relating to BEIS' reimbursement of full and final settlement payments is set out in the BEIS Reimbursement Process diagram found at **Annex D**.

#### **Review Points**

25. The operation of *The Agreed Process and Monitoring Arrangements* will be reviewed in Summer 2022 by the BEIS Senior Responsible Officer (on advice from officials) and thereafter as reasonably required by BEIS.

#### **Data Sharing**

26. The data sharing and protection arrangements between POL and BEIS regarding OHCs are set out in the DSA.
27. The process by which POL will share SARs with UKGI/BEIS is set out below:
  - (a) POL's legal representatives will prepare a SAR in each case and this will be shared with POL;
  - (b) UKGI/BEIS will provide POL with a list of individuals who need to view the SAR;

- (c) POL will present the SAR in accordance with the DSA to the nominated UKGI/BEIS individuals by Quatrix or some other secure system, marked *"legally privileged and confidential"* and *"this document contains personal data"*;
- (d) Other than for agreed legal advisers, UKGI/BEIS must obtain consent from POL if it intends to share the SAR more widely with any other individuals;
- (e) If POL consents, UKGI/BEIS can share the SAR on the same basis and subject to the same principles as contained in the DSA, including but not limited to the duty to keep its contents confidential;
- (f) Once an individual case is settled UKGI/BEIS will take all appropriate steps to delete all copies of the SAR from its computer systems and securely dispose of any physical copies of the document which were created, in accordance with the retention policies of UKGI and BEIS respectively. UKGI/BEIS will take all appropriate and reasonable steps to see that any copy of the SAR shared with any other individuals are similarly destroyed. Should UKGI/BEIS require access to the SAR in future it may request copies from POL.

**Other**

28. The OHC Operations Agreement is considered a 'live' document that will be updated from time to time as needed. Any amendments must be approved by both POL and BEIS respectively and recorded in writing.



**ANNEX A: Full and Final Settlements – Process Flowchart**

Process flow.pptx

**ANNEX B – Extract of Governance and Controls section from Interim Payments Funding Commitment Letter****Governance and controls:**

It is expected that the process for payments including assessment of the Criteria, will be assessed and approved by the Post Office Board or the relevant subcommittee – in this case the Historical Remediation Committee (HRC) – prior to the submission to BEIS for the release of funding.

Interim Payments of up to £100,000 per affected postmaster will be made by the Company in accordance with the Criteria. Interim Funding in respect of each Interim Payment will be made to the Company promptly once a confirmation has been made to BEIS that the Criteria have been met and an assessment has been done on the affected postmaster's case.

The Company will provide BEIS with a monthly forecast report containing management information and a breakdown of the Interim Payments that the Company forecasts will become payable by it to affected postmasters in the forthcoming monthly period (the "Monthly Report").

The Company will meet with the BEIS Senior Responsible Officer (SRO) and working-level officials monthly, or more frequently if required, to discuss progress made on compensating affected postmasters.

The status of compensation for affected postmasters will also be a standing agenda item at Quarterly Shareholder Meetings.

Governance arrangements will be kept under review and updated from time to time to take account of any developments in the Company's negotiations with postmasters and their legal representatives.

Any funding provided by BEIS to the Company is subject to meeting the arrangements set out in this document and BEIS reserves the right to pause funding under this funding commitment if the Company fails to meet any of the conditions (as determined by BEIS acting reasonably) set out pending further discussions.

**ANNEX C: Principles****ANNEX D: BEIS Reimbursement process****ANNEX E: ADR Strategy**

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