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Department for  
Business, Energy  
& Industrial Strategy

## **Post Office Ltd. (POL) – Update to BEIS on POL Litigation**

**Monday 7 September 2020, 16:00 – 17:00**

**MS Teams**

### **External attendees:**

Nick Read, CEO, Post Office Ltd.

Tim Parker, Chair, Post Office Ltd.

Declan Salter, GLO Director, Post Office Ltd.

Ben Foat, Group General Counsel, Post Office Ltd.

Richard Taylor, Group Corporate Affairs & Communications Director, Post Office Ltd.

Alan Watts, Partner, Herbert Smith Freehills

Nick Vamos, Partner, Peters & Peters

### **Internal attendees:**

Paul Scully MP, Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), BEIS – Chair of meeting

Lord Callanan, Parliamentary Under Secretary of State (Minister for Climate Change and Corporate Responsibility), BEIS

Alexander Hitchcock, Special Advisor to the Secretary of State – BEIS

Celia McSwaine, Special Advisor to the Secretary of State – BEIS

Sarah Munby, Permanent Secretary, BEIS

Carl Creswell, Director, BEIS

Eleanor Brooks, Deputy Director, BEIS

Tom Cooper, Director, UKGI

Tim McInnes, Executive Director, UKGI

Richard Watson, General Counsel, UKGI

### **Purpose of meeting and handling:**

The purpose of this meeting is for POL management and their external legal advisers to update the Department on their approach to the cases of postmasters with convictions which are now with the Court of Appeal / Crown Court. POL must respond to these referrals by 2 October, after which it is highly likely that their position will be made public and attract calls for compensation. At present, out of the 61 cases from POL applicants with the Criminal Cases Review Commission, 47 have been referred for appeal.

POL have provided the attached slide deck. This is an opportunity for Ministers to understand POL's position and ask any questions you may have, however it is important to note that the decision with regard to the handling of these cases sits with POL, and the Department must not seek to influence the decision. It is also important to note that as prosecutor POL is under specific legal duties regarding its approach to these cases and it cannot let commercial considerations (e.g. potential compensation claims) influence its duties as prosecutor and the decisions it needs to make in relation to these appeals.

The POL Board is meeting on 4 and 8 September to discuss the matter further and officials will provide updates as needed following decisions by the POL Board. Biographies of all external attendees can be seen at **Annex A**.

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No	Item	Time
1.	Approach to Court of Appeal Criminal Division (CACD)/Crown Court – Timings and Key Issues	1630 – 1650
2.	Likely Outcomes for Cases in Front of CACD/Crown Court and POL Response Plan	1650 – 1710
3.	Potential Future Liability and Compensation	1710 – 1730

**Points to make:****1. Approach to Court of Appeal/Crown Courts**

- Invite Tim Parker to kick-off and update attendees regarding **POL's approach to the cases from POL applicants that have been referred for appeal**. [NB. How POL handles these cases still requires sign off from the POL Board who are meeting on 4 and 8 September to discuss];
- Ask POL what they regard to be as the **key issues in agreeing a position** for these cases? In attendance to the meeting are Nick Vamos of Peters & Peters and Alan Watts of Herbert Smith Freehills who can advise on the criminal and civil elements respectively;
- Ask POL about the **likely timetable for these appeals**. POL need to file Respondent's Notice for the cases with the Court of Appeal on 2 October however it would be useful for POL to give an indication of when these are likely to be heard, noting the pressure on the courts due to the pandemic, and when overturned convictions might start materialising;
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- Note that the Criminal Cases Review Commission has advised that future applicants apply directly to the relevant court for their cases to be considered, as opposed to going via the CCRC.

**2. Likely Outcomes and POL Response**

- Ask POL for an **overview of the scenarios** they are likely to face after the courts have considered the referred cases and for an open discussion about how POL plan to respond in these scenarios;
- Ask POL **what the implications are for the business** and the various ongoing inquiries into POL?

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- Re-emphasise the need for **POL to continue to be as open and transparent as possible** with regards to these cases, and to continue to update the Department regularly.
- Request that **POL consult UKGI and BEIS ahead of any public communications** regarding postmasters who may get their convictions overturned.

### 3. Potential Future Liability and Compensation

- The POL Chair wrote to BEIS SoS in April outlining the significant financial exposure faced by POL as a result of the GLO and the c.900 historical prosecutions of postmasters that involved Horizon. Remind POL that Ministers are aware of this and the fact that **POL cannot afford further litigation costs without HMG support**.
- POL continues to progress its review into the c. 900 historical prosecutions of postmasters that involved the use of Horizon. Ask POL for an update on this review and, therefore, an **updated view on the potential financial liability** POL are exposed to;
- **Ask Nick Read for his views on how POL should go about compensating postmasters whose convictions get overturned.** The question of compensation is not straight forward; Ben, Alan and Nick will likely run through the pros and cons of various options and the risks that they carry;
- **Ask Nick Read what POL want to say on/around 2 October regarding compensation** and what POL requires from Government to enable such a statement to be made;
- Inform Nick Read that, following discussion with HMT, BEIS/UKGI officials have agreed with HMT that **POL should bid for funds to cover compensation claims in-year once more detail is known**. POL, in consultation with UKGI and BEIS, will need to prepare the business case and work with officials to achieve the required clearances;
- Any scheme proposed by POL will be **assessed against BEIS Accounting Officer standards (regularity, propriety, value for money and feasibility)** before going to HMT for their assessment. POL should factor these standards into their assessment of options for compensation;
- **Welcome the £26m reduction in legal costs as part of POL's Spending Review bid** but also reinforce the need for POL to continue exploring ways to manage wider costs associated with the litigation. This was raised at Minister Scully's regular catch up with Nick on 25 August and is a key message officials want to land with POL especially given the likely attention this spend will attract.
- Note that POL's Spending Review bid does not include any money for compensation (for both scheme administration and claim costs) given the uncertainty at present;

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## **Background:**

### **Horizon Litigation**

- The litigation relates to events that started in 1999 when POL's point of sale computerised accounting system (Horizon) was introduced.
- Over the years Horizon recorded shortfalls in cash allegedly caused by sub-postmasters which led to dismissals, recovery of losses by POL and in some instances criminal prosecutions.
- In 2009, postmasters established the "Justice for Sub-Postmasters Alliance" claiming that bugs in Horizon had caused the shortfalls, led by Alan Bates.
- In 2013, POL setup a Complaint Review and Mediation Scheme, in which postmasters could have their case investigated and potentially put forward for mediation. An independent consultancy, Second Sight, was also commissioned to review the robustness of the Horizon system.
- In 2014, there was disagreement between POL and postmasters for which cases were accepted for mediation accompanied by negative media coverage and attention from MP's. The scheme was closed in 2015.
- In 2016, Alan Bates brought the litigation against POL (Alan Bates and Others v Post Office Limited). A Group Litigation Order (GLO) was made in 2017 and 555 current and former postmasters joined the claimant group.
- Following a High Court judgment in March 2019, which was highly critical of POL, and an unsuccessful application by POL to have the Judge recused, POL changed their legal team and developed a strategy to settle the litigation.
- A successful mediation took place in November/December where POL agreed to settle the litigation by paying a total sum of £57.75 million (funded entirely by POL), together with other commitments aimed at strengthening the relationship with postmasters and agreeing to set up a scheme to compensate other postmasters who had wrongly had to pay back shortfalls but were not part of the group litigation (the Historical Shortfall Scheme).
- A further judgment on the reliability of Horizon was handed down on 16 December and was again critical of POL.
- On handing down the Horizon Judgment, Mr Justice Fraser raised concerns with the veracity of the evidence submitted by Fujitsu employees in other trials. Fujitsu provide support and other services for the Horizon system to the Post Office. He has referred this matter to the Director of Public Prosecutions.
- The settlement agreed between the parties concludes the civil case being brought against POL. There are still a number of convicted claimants who are going through a further process with the CCRC and the Court of Appeal (see below).

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### Cases Referred by the CCRC

- The CCRC, which has the power to refer cases to the Court of Appeal/Crown Court, has been considering 61 cases from postmasters seeking to have their convictions overturned.
  - As of 3 June, the CCRC has decided to refer 47 cases for appeal; 41 have gone to the Court of Appeal and 6 have gone to Southwark Crown Court (because they relate to Magistrates Court convictions);
  - In 10 cases the CCRC has provisionally decided that it does not think it has grounds to refer those cases for appeal. Those applicants have the right to respond to the provisional decision before any final decision.
  - There are 4 remaining cases still under review; all 4 are applications that have been received in the last few months.
- All of the 47 cases have been referred "on the basis of an abuse of process argument". There are two limbs to this as follows:
  1. the postmaster did not receive a fair trial because they were not aware of the problems with Horizon; and/or
  2. the postmaster should never have been prosecuted in the first place. This might be because, for example, POL's investigations were inadequate or their commercial and corporate considerations in protecting Horizon were advanced at the expense of the proper exercise of their duties as prosecutor.
- Establishing either limb would be sufficient for the Court of Appeal to overturn the conviction as being unsafe. If limb 2 abuse is established this significantly raises the risk of a successful civil claim for malicious prosecution where damages claims would be higher.
- The CCRC has provided the rationale for each referral (which is set out in the Statement of Reasons (SoRs)). The Court of Appeal granted an extension for POL to 2 October respond to the cases it has received. POL requested a similar extension for those that have been referred to Southwark Crown Court (6).
- In their June press release, the CCRC also called upon MoJ to investigate the safeguards surrounding private prosecutions following the consideration of POLs cases. The Justice Select Committee subsequently opened their own inquiry into this and had its first oral evidence session on 7 July.
- There have been 2 additional CCRC applicants which POL are aware of although they have not been formally notified yet. The CCRC announced alongside service of the SoRs that all future appellants should apply directly to the Court of Appeal.
- Following service of the SoRs by the CCRC, POL must decide what position to take with respect to each individual case. In essence this is effectively:
  - Support the appeal;



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- Not object the appeal; or
  - Oppose the appeal.
- Whatever position POL takes before the Court of Appeal in respect of any individual or group of defendants is likely to bind it in other proceeding.

### Potential Financial Exposure

- If all c. 900 convictions (assuming all of POL's past prosecutions resulted in a conviction) are overturned, POL could be exposed to significant further civil liability. Tim Parker outlined this in a letter to the BEIS SoS on 29 April (attached separately). The latest assessment by POL and its external lawyers puts the potential worst-case financial exposure at between c. £826m - £918m. This range assumes that POL is found culpable of malicious prosecution, which is a high bar to prove.



- Although POL has managed the financial costs of the GLO to date, POL assert that it will not be able to fund further significant civil liability in all credible scenarios, including those which don't include POL being found culpable of malicious prosecution.

### Progress Regarding Compensation

- On 2 July, officials provided advice outlining emerging thinking regarding the setup of a compensation scheme for postmasters who get their convictions overturned.
- We had planned to include a separate bid into the Spending Review to cover funds for such a scheme. However, following discussion with HMT and POL, it is clear that at this stage the uncertainties are too great to enable even an Outline Business Case for HMT's assessment – the cases that have been referred for appeal have not even been considered yet and the design of what the scheme could look like is still in its infancy.
- HMT have pushed back at this stage in providing full budget cover and have indicated that in the first instance they would expect BEIS to cover the cost using in-year underspend. Therefore, there would be financial implications for BEIS's budget.
- We have agreed with HMT at official level that POL will come back with a business case for an in-year bid for funding outside of the SR process once the design of the scheme is more mature and the uncertainties e.g around costs are more known. This will most likely be early next year.

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- In preparation for the 1 September meeting, POL and their external lawyers have developed a 'strawman' proposal of potential compensation routes, pros, cons and risks and will be present these at the meeting with Ministers.
- Officials will provide Ministers with further advice on the options for a compensation scheme in a note following the 1 Sept meeting. This will assess the options against the four Accounting Officer standards (regularity, propriety, value for money and feasibility).

## Post GLO Programme

### POL Management of Post-GLO Work

- The new GLO Director, Declan Salter, joined in July and was announced on 14 August. He has a history of working with various organisations to turnaround complex issues. Officials have been introduced to Declan and whilst it is only his first month initial views are that he is credible. He was introduced to Minister Scully on 25 August;
- On 28 July, the POL Board approved an internal restructure in order to set up a specific executive team, led by Declan, to manage the Post GLO Programme and associated historical liabilities. An implementation plan is being brought to the board in September.

### Historical Shortfall Scheme

- The announcement of Declan's appointment was alongside the closure of the application window for the Historical Shortfalls Scheme, a key milestone in the post-GLO settlement programme. Officials provided an update to Private Offices on 20 August. An updated version of this note with more recent management information is provided at **Annex B**;

### Legal Cost Associated with the Post-GLO Programme

- Officials are concerned regarding some of the costs, particularly legal fees, associated with the programme. POL have now budgeted c. £56m as part of the plan that sits behind their Spending Review bid, down from £82m previously. This is welcome however we will continue to explore whether these costs can be reduced further e.g through rescoping work.

### Project Brisbane – POL's Historical Management of the GLO

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## Annex A – Biographies

*Nick Read, CEO, Post Office Ltd.*



Nick joined Post Office as Chief Executive Officer in September 2019. Nick was most recently Group CEO at Extra Energy and prior to that CEO at Nisa Retail Limited where he led the stabilisation and transformation of the business ahead of its sale to the Co-Op in 2018.

Nick has over 25 years of consumer and commercial experience and has previously held senior roles at Tesco, Vodafone, HBOS, Lloyds Banking Group and Thomas Cook. In his earlier career, Nick was a Consumer and Retail Strategy Manager at Deloitte Consulting, a Purchasing Director for Aldi UK and spent 4 years as Captain of the 4th/7th Royal Dragoon Guard, H.M. Forces.

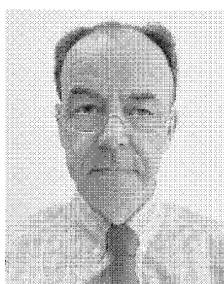
*Tim Parker, Chair, Post Office Ltd.*



Tim Parker became Chairman of the Post Office on 1 October 2015 and took on the role of Chairman at the National Trust on 8 November 2014. He also took on the role of Chairman of HM Courts & Tribunals Service on 27 April 2018. He is Chairman of Samsonite.

Tim has enjoyed a long business as CEO of several well-known companies. He has been CEO of Clarks, the shoe company, Kwik-Fit, the AA, and until recently, Samsonite, where he remains Chairman. Tim has been Chairman of Channel Nine TV in Australia and the Autobar Group, Europe's largest vending company. He has also served as a non-executive director on the Boards of Legal & General, Alliance Boots and Compass Group.

*Declan Salter, GLO Director, Post Office Ltd.*



Declan Salter spent 20 years in the printing industry modernising technology and improving customer service; ultimately becoming CEO of a large, successful UK mid-250 quoted PLC.

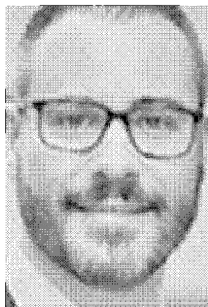
Subsequently, Declan has worked independently as a turnaround director inside many companies on behalf of banks, shareholders and government; often with multi stakeholder interests in a wide variety of sectors including manufacturing, property, health and postal.



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*Ben Foat – Group General Counsel, Post Office Ltd.*



Ben is the General Counsel of Post Office Limited and an executive member of Post Office Limited and Post Office Management Services Limited. He is responsible for managing the legal, compliance and company secretariat departments across the organisation and works with executive management and boards in helping to shape strategy, maximise commercial opportunity and mitigate legal, regulatory and governance risk.

Prior to joining Post Office, he was employed at Zurich Insurance plc in the UK and was previously a Senior Associate in private practice in Australia.

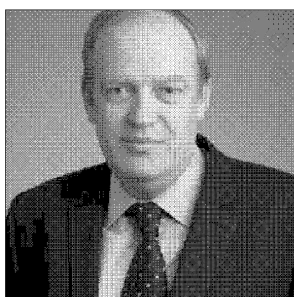
*Richard Taylor, Group Corporate Affairs & Communications Director, Post Office Ltd.*



Richard joined the Post Office in January 2020 after four years as Communications Director at ScottishPower and six years as Corporate Affairs and Communications Director at the supermarket chain Morrisons.

Richard has over 25 years of political, media and commercial experience having previously worked for the CBI, the Labour Party, as Special Adviser to the Secretary of State for Defence and as a Partner at Portland Communications. He holds an MPhil in Environment and Development from the University of Cambridge

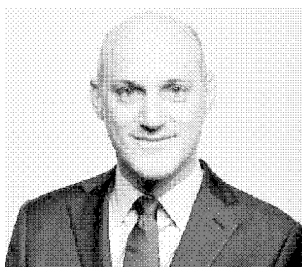
*Alan Watts, Partner, Herbert Smith Freehills*



Herbert Smith Freehills joined Post Office's legal team in the latter stages of the litigation, following the Common Issues Judgement in March 2019.

Alan works with clients on all forms of dispute resolution including High Court litigation, arbitration and mediation proceedings. Alan advises his clients on sports law, media and entertainment law, company and commercial disputes, professional negligence claims and defamation matters.

*Nick Vamos, Partner, Peters & Peters*



Nick has nearly 20 years of criminal law experience focussed on international, high-profile and sensitive matters. Nick joined Peters & Peters in September 2017 from the Crown Prosecution Service where he was Head of Special Crime, overseeing the most complex casework in the CPS including the Hillsborough disaster, corporate manslaughter, police corruption, deaths in custody, medical manslaughter and election fraud cases.

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Department for  
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- **Closure of Application Window:** The HSS application window officially closed on 14 August (21 August for postal applications). As of 25 August, 2013 claims have been received amounting to c. £100m (to be clear these are what the claimants are claiming, not the assessed figure that POL will pay, and a number of these claims are unquantified). POL are also working through a backlog of applications received shortly before the deadline. Please note that there are a few exceptions to the deadline, notably the cohort of c. 6200 former postmasters who were identified late by POL and notified about the scheme in July. Therefore, there could be a material increase in the number of claims over the Autumn period. Any late applications will be considered by the decision making panel on a case by case basis.
- **Judicial Review Application:** On 11 August POL received a pre-action letter from Edwin Coe LLP threatening to bring a judicial review claim against Post Office concerning the HSS. Broadly, the three grounds of challenge relate to applicants having (i) inadequate time to apply; (ii) inadequate information concerning the assessment of claims; and (iii) to surrender legal rights to bring certain claims. The letter was copied to BEIS as an alleged interested party. On 18 August the claim was served against POL and it is now for POL to file a response and then the judge to consider the application and decide whether to grant permission to bring a JR claim. At this stage it is too early to say what the implications for BEIS may be if permission is granted to bring the claim. UKGI will provide an update for Ministers and monitor developments.
- **Stamps:** Following an internal investigation and assurance work by KMPG over the past few months, POL have identified that their stamp stock procedures had the potential to produce cash surpluses or shortfalls for postmasters in certain circumstances and, in some cases involving a shortfall, that there may not have been an equivalent loss to Post Office, in some instances potentially back to 2000. POL released this information in a press statement on 14 August. Postmasters who believe they have experienced stamp related shortfalls will be able to apply to a specific process under the umbrella of the HSS. POL have allocated £4m for this and whilst the values involved are significantly lower than other claims, it again raises questions regarding the quality of processes at POL and these issues are likely to be needed to be disclosed to the Court of Appeal when considering postmaster convictions. It is an easy negative news story i.e “the Post Office can’t even count stamps properly” and indeed Nick Wallis, the journalist who has been following the Post Office for a number of years, has already posted along those lines on his blog [here](#). We have drafted the below lines (subject to comms clearance) should the Department be approached for comment:

**A BEIS Spokesperson said:**

“It is important that Post Office learn the lessons from the Horizon dispute and implement the necessary cultural and organisational changes within the business. Following a review of its processes, the Post Office has identified that their stamp stock procedures had the potential to cause cash discrepancies in certain circumstances”

“The Post Office has committed to providing a redress mechanism, based on the Historical Shortfalls Scheme, for postmaster who believe they have experienced this issue. It will be open to those who have already applied to the Historical Shortfalls Scheme.”

“Post Office will announce details soon”