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## **Brief for Tim Parker meeting with Baroness Neville Rolfe 19 July**

### **1. Background**

This is a six monthly 'catch up meeting' between the Chairman and the Minister.

*[ Note – We understand that in the recent Government re-shuffle following Theresa May becoming Prime Minister, Baroness Neville Rolfe has become a Minister of State within the new Department of Business, Energy and Industrial Strategy – announced 17 July. It is not clear at this stage whether this impacts her portfolio or responsibilities re Post Office. The following brief assumes no changes to her responsibilities with Post Office].*

Prior to these developments, we understood from BIS that the Minister's expectations of the meeting were as follows;

*She'll be interested in a general update from Tim on how the business is doing and the main live issues. She will also be keen to hear about the outcome of the Board strategy awayday and Tim's thoughts on the future of the business. She will also want an update from Tim on Horizon.*

From Post Office's perspective the meeting is an opportunity to:

- underline the progress that the Post Office is currently making,
- manage expectations (and shore up Ministerial support) for the potentially difficult IR environment impacts that may emerge in the near term,
- indicate our future strategic direction and flag the dependencies on funding to achieve our full commercial potential
- to prompt specific action to support Post Office exemption from the forthcoming public sector redundancy cap
- to provide a verbal update on Horizon

The following high level briefing points cover these specific areas;

### **2. Post Office Ltd – trading position**

- **Report and Accounts** to be issued shortly. 2015/16 shows continued progress towards sustainability. EBITDAS £ (24m) has more than halved from £ (57m) prior year. Network subsidy from Government has reduced £30m in the year. Commercial turnover up 0.5%. Costs reduced by 2.6%. The determined implementation of strategy is now translating into improving numbers. It gives confidence to our continued pursuit of change despite the challenges faced.
- **Current year trading**. Q1 sees us £1m ahead of our EBITDAS profit target. Net Income is slightly below target (combination of FS/Telecoms/Retail behind but Mails/Government Services in front). Costs are better than target – so overall profitability remains on track.
- **Outlook** – the finances for the year remain on course. The external economic environment is difficult (EU referendum effects on wider economy will have some effect - showing up, for example, in FS in the decline in mortgages and Travel Money). There are also challenging internal issues such as the likelihood of Industrial Action as CWU kicks back at the cumulative change agenda. However robust contingency planning in the business means we believe this can be handled and the numbers still delivered this year.

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### 3. Strategy and funding

- Board discussed the business's future direction at our recent strategy awayday. Our fundamental belief is that the Post Office has the potential to be a very successful business - we have a strong brand, clear competitive advantages and the foundations of a robust business model.
- Transformation to date has gone a long way to unlocking this potential - on track to breakeven before subsidy for the first time in 15 years and the subsidy requirement for the non-commercial network has reduced from £210m in 2012/13 to around £50m pa in the next funding period (2018/19 to 2020/21). *[may need to explain that the business is not yet profitable enough to maintain the network in its current size/form without this support]*.
- But not yet operating at our full commercial potential, and with market pressures continuing to intensify we can't afford to stand still. Board therefore agreed three main priorities:
  - **strengthening our commercial partnerships**, in particular by securing our long-term relationship with Royal Mail and renegotiating our FS partnerships to drive greater value for the Post Office;
  - **delivering a lean, competitive cost base**, in particular by optimising the network structure (continuing the shift towards vibrant retail hosts) and by radically restructuring the central organisation; and
  - **investing in our digital capabilities** to respond to rapidly rising customer expectations and provide the platform for future growth.
- Through these measures we can deliver a significant step change in our profitability, enabling us to reinvest in the business and support our social purpose from our own profits rather than from subsidy. Huge opportunity to put the business on a sustainable footing.
- Delivering these changes will not be easy, but the Board and Executive team are determined.
- We need two things from the Government:
  - Support for the strategy in the face of potential opposition from some stakeholders, particularly the unions and NFSP. There is a clear narrative around improving value for money for taxpayers and improving services and accessibility for customers.
  - Access to the investment funding (c£350-600m) needed to implement the proposed changes. While we are now generating sufficient profit to cover our ongoing 'BAU' investment requirements, we are not yet able to self-finance major transformational investments. And we are prevented by HMT rules from accessing the external finance available to normal commercial businesses.
- We will work with your officials on the detail over the summer. Open minded about what solution is used to help us close this funding gap. While in previous funding rounds this has been through direct grant payments, could also consider loan funding. The initiatives we have identified deliver clear returns through specific identified savings in our network and central costs (this is not a speculative investment in future income growth). We therefore have a very high degree of confidence that the investments will deliver and we will be in a position to repay any loan with interest, delivering a clear return to for the Exchequer.

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- We would have no problem financing these investments in a private sector environment, and so the other option would be to ask HMT to permit us the commercial flexibility to borrow externally.
- If we are unable to secure the necessary funding, the risk isn't just that we miss out on the opportunity to improve profitability and reducing future subsidy requirements. The underlying structural challenges in many of our core markets means that if we are unable to complete the transformation we will start losing customers, clients and host retailers, and regress back to loss making. This will undo the good work done to date and result in larger restructuring or catch-up costs in the future.
- Would welcome your support on this and your advice on how best to take this forward.

#### 4. Current Live Business Issues

The pace of the change agenda in the Post Office is necessarily brisk at present (given the requirements and timing of the current funding and subsidy arrangements which end in March 2018).

**Pensions** – Closure of the DB Plan to future accrual. Current position is following consultation a recommendation put to the Trustees to do this from the end of the Financial Year (March 2017). We have met the Trustee who would like more time to deliberate further before responding to our recommendation. BIS has been kept in the picture and we are grateful for BIS support on RPI in pensions.

**Supply Chain** – Current consultation to cease external work and focus on cash supply within the business.

**Central Functions rationalisation** – Initiatives to rationalise and reduce headcount/increase efficiency in central functions.

**Wind down of the NT Programme** – The expected wind down of this successful exercise in advance of March 2018 – involves removal of roles.

**Crown changes** – Franchising and 'hosting' of Crowns including moves to WH Smith.

*To give an approximation of scale of overall change – the number of redundancies that Post Office Ltd has announced is 1825.*

**Industrial Action** – There has been strong engagement with our people and CWU throughout all the above initiatives. But CWU is now suggesting that it will seek to ballot for industrial action across the Post Office (although we have not yet been formally notified). It is also mounting a publicity campaign (a bus tour) around the country using messages of '*severe cost cutting / Post Office in Crisis / Govt must act now to save the heart of the High Street*'.

We have clear media positions with respect to the CWU – a fair, balanced, resilient line. The initiatives which Post Office is taking forward do not reduce or close services, they retain and enhance service for local communities. They are necessary for the future sustainability of these services, the Post Office and its network. A narrow supplier interest group shouldn't jeopardise the future of the Post Office for the communities it serves. In the event of IA we have robust contingency plans in place to keep business operating. The continuation of Shareholder support through this period will obviously be valued.

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## **5. Public Sector Redundancy Cap**

We regard it as essential that the Post Office secures an exemption from the redundancy cap due to be introduced in regulations under the Enterprise Act 2016 in October. You have written to the Minister on this matter.

- When you met with the (then) SofS earlier in the year, you raised our shared concerns about the proposed application of the public sector redundancy cap to Post Office.
- At that time, this policy raised theoretical risks around our ability to transform Post Office into a commercially sustainable business with diminishing reliance on taxpayer subsidy.
- Those risks are now crystallising into reality as we implement our transformation plans.
- Transforming Post Office into a commercially sustainable business with minimal reliance on taxpayer subsidy is hugely challenging. We are probably looking at 2-3 years of restructuring.
- We need to do this to commercially driven timetables (both moving people on quickly; and retaining people for longer depending on the circumstances); and by minimising the risks of industrial action - these are put at risk by the redundancy cap.
- As background, across a range of initiatives, the number of redundancies that Post Office Ltd has announced is 1825.
- At the moment we think we can mitigate the impact and support for industrial action by giving the affected population options around when and how they leave the business. Application of the redundancy cap is likely to make that much more difficult.
- This would put our business plan at risk and our financial targets for the year and potentially beyond if action is prolonged.
- Whilst we are also concerned about the impact of the redundancy cap on senior recruitment and retention in the long term, it is the immediate risk of industrial action in supply chain and the wider business (notably over Crown franchising) that is of greatest concern.

### ***Our request***

- We are seeking an exemption from the final regulations (and ideally the draft version) in order to support our commercial plans supported by Government.

### ***Our offer***

- We fully understand the message on complying with the “spirit of the law” if an exemption is granted loud and clear.
- If granted an exemption we would bring forward plans to e.g.:
  - 1) subject to consultation, implement our reform of pensions;
  - 2) ask Remco to oversee our approach and ensuring we do what we say we will do; and
  - 3) seek to re-negotiate redundancy framework with the unions.
- If we failed to comply with the spirit of the law, Government would be justified in adding us to the list of bodies covered by the regulations at a later date.

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## **6. Sparrow / Horizon**

The following is a specific briefing provided by Post Office Legal Services:

### **Background**

1. You most recently met the Minister on 27 April 2016. During this meeting you provided an update on the progress made in respect of your Review. You also noted that given legal proceedings had been issued against POL, it was only right that POL considered what implications these may have on the shape of any output from the Review.
2. POL has since received a Letter of Claim and expects the claim to be formally 'served' before the 10 August deadline. Further, you have received very strong advice from Leading Counsel that the work being undertaken under your Review should come to an immediate end.
3. The Minister's office have confirmed that they understand (and indeed anticipated) the need for prioritising the litigation and therefore, that work would cease on your Review.
4. We understand that the Minister is aware of this position through updates from her officials'. We have been informed that she does not wish to challenge this decision, but would like to better understand the reasons underpinning the legal advice received (see 13 below).
5. Subsequent to the meeting on Tuesday we intend to send the Minister the draft letter previously shared with you, which will formally record your decision. Further, it has been proposed that the POL legal team should provide a briefing to BIS lawyers, and we are happy to facilitate this.

### **Speaking Notes**

6. My original undertaking was to review whether POL's handling of the complaints made by Applicants to the Complaint Review & Mediation Scheme had reasonably considered postmaster's claims.
7. POL appointed Jonathan Swift QC to conduct an independent assessment of the work that had been done and provide advice as to whether anything more could now reasonably be done to address these complaints.
8. My letter of 4 March 2016, set out further information about the approach to the Review, the scope of the work undertaken and Jonathan Swift QC's initial findings. It also set out my plans for bringing this piece of work to a conclusion. Good progress had been made in all areas, despite it being complex, inherently costly, and time consuming – particularly the technical testing of the Horizon system itself.
9. However, in April POL was notified that proceedings had been commenced against it, in the High Court, on behalf of 91 named claimants. Further, there are suggestions that there are at least as many further claimants keen to join a 'class action' who have not done so to date.
10. Though at this stage there is still no information available as to the quantum of the claims or the basis on which the quantum could be estimated, the background to the claim covers a very wide scope of issues – including those which were being addressed through my Review.



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11. The business is, naturally, having to take these Court proceedings extremely seriously. We have engaged one of the most eminent Leading Counsel (Anthony de Garr Robinson QC) in the preparation of our defence, supported by a firm of solicitors with detailed knowledge of the matters since they have acted for us since the first complaints began to be received.
12. I have received very strong advice that the work previously being undertaken under my Review should come to an immediate end and, instead, be carried forward under the scope of the litigation.
13. Once litigation is contemplated, confidential investigations and work done for the dominant purpose of furthering the litigation will be covered by litigation privilege. Any work going forward should therefore be driven by the needs of the litigation and not for other reasons, such as my Review, so to maximise the protection of privilege. If work is not covered by privilege, this may force Post Office to disclose sensitive material to the Claimants, undermining Post Office's position in the litigation.
14. Given my duties to POL as a director and its Chairman, I believe I must act in accordance with this advice. I have therefore instructed that the work being undertaken pursuant to my Review should now be stopped.
15. However, I do think it is important to note that:
  - The work undertaken to date remains valuable and valid and will continue, albeit in a different context and potentially with a different emphasis;
  - The claim against the Post Office is explicit, and records the actual detail (rather than our educated guess) of the complaints against POL, enabling us to address the precise grievances being made;
  - The claim covers the same ground as my Review as well as covering other areas which have previously been addressed by POL. The litigation will therefore potentially cover a much wider range of the issues and to a much fuller extent;
  - A Court process, by definition, offers the parties to it the ultimate assurance of independence in the examination of evidence and the determination of liability in a way that no other forum or process can;
  - The proceedings should lead to a final determination of these matters, which is in the interest of all parties, and which POL has, despite its best efforts, been unable to achieve; and
  - The parties to the litigation include the high profile cases of which parliamentarians and other stakeholders (such as Lord Arbuthnot) are aware. It is therefore incumbent on those Stakeholders to accept that those postmasters have elected to pursue their claims through the courts and the Board of PO believes that this is now the appropriate forum through which the Postmasters' concerns should properly be determined.

The Minister may ask whether POL would consider re-opening the Review, should the Claim not be 'served' or fall away. If it is raised, our view is that such a commitment should not be made and below are some speaking notes to that effect.

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16. It is also clear from the litigation, and echoed in the interviews I undertook and reports in the media, that my Review, albeit conducted at relative arms' length from the business, would still be viewed as an essentially 'internal' exercise. There seems therefore little benefit in re-engaging in an expensive and time consuming exercise which would be of materially less value to postmasters than the independent investigations and advice they should receive from their own legal team through the litigation process.
17. In any event, the 26 cases now under consideration by the CCRC (18 of which are named claimants in the Group Litigation) would continue. The CCRC's role is to consider whether any of these cases could have been subject to a miscarriage of justice and so this avenue of investigation will take place come what may.
18. Further, it is worth noting that as a result of the issues raised through the investigation of cases as part of the Scheme, many changes have been made to improve POL's operating practices, including in relation to training and the type of support offered to Postmasters. We also monitor branch performance more closely with a view to identifying earlier problems that Postmasters are having, so that where possible, issues do not escalate. We would expect any equivalent learning arising from the litigation to be similarly addressed.