

OFFICIAL SENSITIVE COMMERCIAL
BEIS HSS STEERING COMMITTEE (STEERCO)

MINUTES – WEDNESDAY 27TH JANUARY 2021 14:00 – 15:00

SteerCo Members:

Carl Creswell – BEIS Post Office Policy Director (Chair) (CC)
Tom Taylor – BEIS Finance Director* (TT)
Patrick Kilgariff – BEIS Legal Director (PK)

Other Attendees:

Tom Cooper – UKGI Director (Observer) (TC)
Nigel Boardman – BEIS NED and ARAC Chair (NB)
Kate Hill – BEIS Finance Deputy Director* (KH)
Eleanor Brooks – BEIS Post Office Policy Deputy Director (EB)
Beth White – BEIS Post Office Policy Deputy Director (BW)
Tim McInnes – UKGI Executive Director (TM)
Simon Morgan – UKGI Legal Advisor (SM)
Joshua Scott – UKGI Manager (Secretariat) (JS)

Apologies

*Tom Taylor unable to attend. Attendance delegated to Kate Hill.
Mike Keoghan – BEIS Acting Director General and HSS SRO (MK)

Minutes

Introduction, Minutes & Actions

CC introduced the meeting, noting new joiners NB, SM and KH (substituting for TT).

Minutes from 11 January 2021 SteerCo meeting were signed off without comment.

CC provided an update on the actions, which were all in hand or have been delivered. CC noted that an approach for the meeting with the Panel had been agreed at official level and would be discussed with the SteerCo shortly.

Business Case Update

CC provided a short update on the business case which, following approval by the BEIS PIC and Permanent Secretary, is now with HMT for final approval. CC thanked all those involved.

PK raised a question regarding the new subsidy regime under the UK-EU TCA. BW confirmed that this issue has been addressed and that, working with members of PK's team (Nelli Orlova and Gareth Evans), officials had strong arguments for adherence to the regime that can be used if asked. This had been reflected in the advice to the BEIS Permanent Secretary. BW thanked Nelli and Gareth for their support.

Update on expected milestones

CC noted that in an initial meeting HMT raised the issue of a further potential Treasury Approval Point (TAP). This may have knock-on effects regarding the timeline.

TC noted that approval of the business case and issuing the guarantee letter is not just about the HSS for POL. The company are very nervous and there is a material risk that it stops BAU spending all together if no funding is announced in mid-Feb. Following a question

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from KH, TC confirmed that the HMT lead (Ross Gray) was new and may be taking a cautious approach; Ross was consulting colleagues and committed to getting back to the team by the end of the week.

CC noted that if BEIS did not get HMT approval it would put it in a difficult position regarding what to say at Supps. The SteerCo agreed.

The SteerCo agreed to take stock at the end of the week once it had heard back from HMT. TC asked about escalation with BEIS Finance and KH agreed she could take it up with TT and senior HMT colleagues if needed. CC also noted the support of the HMT Second Permanent Secretary from the recent UKGI Board discussion as another avenue.

EB noted that officials have started exploring timelines for HSS delivery with POL. A discussion on 26 January did raise some concerns which will be investigated further but the WG wanted the SteerCo to be aware.

Proposed meeting with Panel

TC noted that it has been agreed with POL for the SteerCo to meet the Independent Panel. POL's view is that a substantive meeting could only take place once the Panel has developed its thinking regarding test cases, guidelines etc. The proposition now is whether a two-stage approach with a meet and greet would be useful? This was recommended by TC. CC agreed, noting it should be handled appropriately.

SteerCo agreed with no further comments.

De Minimis Payments

TC presented the *de minimis* paper. He noted that POL wanted to make these payments in November but BEIS did not provide its approval due to the issues around funding and precedent setting elements. Both of these aspects have now progressed.

For fully quantified claims, the issues were in relation to interest and legal costs. POL wanted to pay compound interest and contribute to legal costs – both set precedents. UKGI challenged compound vs. simple interest and the advice from HSF is very clear that REDACTION

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REDACTION On legal costs, POL is providing £400 for *de minimis* claimants towards legal fees and £1200 for claimants with bigger claims – UKGI has also seen HSF's advice REDACTION UKGI is recommending that fully quantified *de minimis* claims be paid as soon as funding is confirmed. The payments will also need to be signed off by the BEIS Permanent Secretary and BEIS Ministers.

PK requested that feedback be provided to HSF regarding their commentary around 'non-negligible risk'.

NB asked if REDACTION
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REDACTION TM noted that these were fair questions that UKGI put to HSF/POL. HSF have advised that REDACTION

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CC agreed with this approach.

On sampling, TC noted that all *de minimis* claims have passed eligibility criteria. It will be a disproportionate effort to investigate these claims given their value.

NB asked if these shortfall payments were net or gross? If someone has a shortfall they will get tax relief and stated this would be a simple calculation to do. TC stated that this is all gross as they are effectively refunds. PK noted that the shortfall sums were wrongfully deducted in the first instance. TM noted that it can't be proven whether or not the claimants would have had to pay tax on the amount.

NB queried the appropriateness of the interest benefit. Can we ask POL to confirm the tax effect of the shortfall? CC noted this and the other questions and agreed to cover these in a further meeting with NB next week.

SM noted that the interest rate has been published. Any movement from that would need to be publicised and that sampling could be possible. He noted that HSF have sent a spreadsheet of all claims which will be analysed by the team.

On the question of sampling, TC raised the point that we need to be clear what the sampling is for. NB suggested that some claims under the REDAC... threshold be treated as a 'normal' claim and investigated.

TC noted that it is a question of what is the best use of officials' time. TC and CC agreed it was a better use of time to focus on the bigger claims given that no precedents (other than the ones noted in the paper) are being set.

SteerCo agreed with the paper in this regard and approved the fully quantified *de minimis* payments subject to a) asking POL to quantify the difference of the other approach on interest, as above; and (b) a fuller response on the tax issue raised by NB.

Turning to partially quantified claims, TC noted that POL are taking a more generous approach and gave an example. TC noted that officials are less comfortable with this; however, it is unlikely that we will get more information from POL given that these claims as per the *de minimis* principle are not being investigated. TC stated we could present POL with a different option of recommending lower offers, but this risks rejection by the claimants, further investigations and higher costs. The other option is to be content with the proposal but give a limit that POL cannot go over without further BEIS approval. Again, this comes back to the best use of time argument. TC asked for the SteerCo's view.

CC noted that he felt it would be riskier getting into disagreements with claimants on these lower value claims.

KH and PK raised questions around precedent. While it may not set a legal precedent, it may inadvertently set precedent for how HSF/POL and the Panel approach more substantive claims. How does BEIS guard against this and rising costs? TC noted that this is a very valid point and that bigger claims will be investigated fully so the company will be able

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to challenge the information and take a more rigorous approach. CC noted that there could be a risk of challenge from claimants with larger claims.

PK noted that these documents would be potentially disclosable. PK noted that the assertion about the setting of precedent in this regard may need to be argued.

NB noted that a 'best estimate' approach could be used instead.

TC stated that the point is that POL can use their judgment on this given the low value (c. **REDACTION**) and suggested this is not the best use of officials' time.

CC noted this and suggested it might not necessarily lead to sampling. At a principle level, SteerCo is supportive of the *de minimis* approach and keeping it simple. Could we put the question back to POL to see if it can take a light-touch and quick assessment? TM noted that this could be difficult. Going back to postmasters is a 6/7-week process because requests for information (RFI) are put to the Panel first.

Questions were raised on the process of *de minimis* with the Panel. JS clarified that all *de minimis* claims go through the Panel but will be in batches i.e. c. 250 fully quantified first, then partially quantified in batches as they are assessed.

TC agreed that officials need to discuss the RFI process with the Panel. **CC agreed for this to be actioned.** It would seem sensible to propose to POL that the Panel should ask postmasters for their best estimate of costs (as long as the requests for further information could be handled in a light-touch, non-bureaucratic way).

HSS – Operations Agreement

EB presented the Operations Agreement. This was iterated with POL and will remain a live document. The outstanding point is the BEIS approval rights over the guidelines. EB stated that we can go back to POL/HSF and look for an approval or we can leave it open for now and discuss after Panel?

EB stated that given the substantive Panel meeting will not be a while, the WG think we should now approach HSF/POL and Panel and ask for an approval right on this. It is preferable to have a clear and documented process.

PK asked for clarification on BEIS involvement in the mediation/escalation process following an offer being made. TC noted the initial good faith meeting as the first step to explain the basis of the offer. The hope is the claimants will accept but if not, it goes to on to mediation where BEIS has approval rights over the mediation parameters.

KH asked for clarification. Is the SteerCo suggesting to look at options for the approval rights rather than using the 'nuclear' option of pausing the scheme? EB clarified that we are looking for a right to iterate and approve the Panel Guidelines.

SteerCo approved the above approach.

BEIS HSS WG and SteerCo ToRs

CC introduced the ToRs and noted that he had been asked by the BEIS Permanent Secretary to be the SRO. CC has accepted this.

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BW raised a question regarding the highlighted variance figure for SteerCo approval. CC suggested that this should be regarded as a placeholder figure to be updated at a later date.

The SteerCo approved the ToRs.

Comms Update

Eleanor Beal (EIB) joined the meeting and gave a brief overview of the comms approach for the announcement. EIB noted that she had discussed and agreed an Oral Statement with Minister Scully to align with the proposed Supplementary Estimates announcement mid-Feb (exact date TBC).

CC noted the issue regarding the business case and any delays to HMT approval. EIB stated that officials are developing a 'plan B' if HMT approval is not provided, however, and as noted before in the meeting, this would create significant presentational/handling issues. BEIS would also likely get a UQ. HMT are aware of this.

CC also noted BEIS Orals as a potential vehicle for the announcement.

AOB and Close

No AOB.

CC noted the further meeting planned between CC, TC and NB next week.

CC thanked attendees and closed the meeting.

Action Tracker

11 January 2021 Meeting			
Action #	Action	Owner	Status
1	Consider new proposal for language in the HSS Operations Agreement document regarding BEIS approval of the Panel Principles. BEIS to discuss with UKGI ahead of reverting to POL.	CC	Done
2	Finalise the HSS Operations Agreement	JS	Updated 27/01 – BEIS to revert to POL requested approval rights over the Guidelines as part of the discussion with the Panel.
3	Finalise SteerCo ToR document	JS	Completed – approved at 27 January 2021 Meeting
27 January 2021 Meeting			
1	<i>De Minimis</i> – Inform POL of the SteerCo decision regarding the <i>de minimis</i> claims and to ask POL to quantify the difference of claims if a court applied 8% compound interest.	JS	New
2	UKGI to clarify the tax issue raised by NB regarding payment of shortfalls with POL.	SM	New
3	Raise the issue of the need to discuss the RFI process with POL and the Panel, including whether POL could ask part-	JS	New

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	quantified claimants to make their best estimate (in a low-cost 'request for information' process).		
4	Raise with POL the SteerCo decision regarding the HSS Operations Agreement, and to request an approval right over the Panel Guidelines.	JS	New