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Department for
Business, Energy
& Industrial Strategy

Date: 26 April 2018

Director General: Mark Russell

Lead Official: Richard Callard

Lead Official Telephone:

Recipient	To Note / Comment	To Approve / Decide
Permanent Secretary		X

POST OFFICE – APPOINTMENT OF TOM COOPER TO POST OFFICE BOARD**Summary**

- On 19 February the Secretary of State agreed to Tom Cooper's appointment to Post Office Limited's (POL) Board of Directors. This requires your consent to extend a Departmental indemnity to Tom, and also agree the terms of his appointment.
- In the absence of an agreed POL policy sponsor team and oversight protocol, you are also requested to approve the reporting regime for POL – proposed by UKGI below.

Timing

- Tom has been appointed to the Board and it is important to put his indemnity in place as soon as possible.

Recommendations

- That you:
 - Agree to the terms of the indemnity, as noted in Annex A, and provide Tom with a signed copy;
 - Note that the final terms of appointment have not yet been agreed with POL, and we will provide further advice shortly; and
 - Agree the reporting regime set out below and note the longer-term intention to clarify responsibilities between UKGI and BEIS.

AdviceIndemnity

- BEIS is entitled, by its special share in POL, to appoint a non-executive director (NED) to sit on the Board of POL. This has traditionally been done by appointing an employee of the Shareholder Executive, and now UKGI to the role.
- While Tom is appointed to the Board to represent the Department's interests, his personal legal obligation, in carrying out the NED role, is to act in POL's best interest, as for any other company director. The role carries considerable personal legal responsibilities, and consequently, considerable liabilities.

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7. As set out in both Managing Public Money and in the Civil Service Management Code, the Crown will generally accept responsibility for civil liabilities of a civil servant incurred in connection with his performance of the functions of a director. It is therefore normal practice for Government nominated NEDs to benefit from a Government indemnity issued by the owning Department. BEIS internal controls and HMT Treasury Officer Accounts are content that such an indemnity can also cover the NED's costs incurred where POL as a corporation is subject to criminal investigation/proceedings, but not in respect of any personal criminal acts (exceptional cases where an individual has been subsequently cleared would have to be considered on a case-by-case basis). Annex A contains the ~~The proposed form of such the indemnity, with which is attached at Annex A.~~ BEIS Legal and BEIS Finance are content ~~with this indemnity~~. If this letter is acceptable, it will require your signature.

Terms of Appointment

8. Tom will be appointed by a letter from Post Office. Whilst Tom will be appointed using POL's standard NED terms, we are seeking to ~~carve out special~~ amend the confidentiality arrangements to reflect Tom's role as a shareholder representative director and manager of the HMG sponsorship team for POL. ~~These The proposed amendments~~ seek to ensure that balance Tom's duties to the company are qualified in a manner that enables him to report effectively with his duties to Government, and to you as Accounting Officer for the organisation ~~the potential conflict that can sometimes cause.~~
9. ~~These new terms would mean that he is~~ The proposed confidentiality arrangements will allow Tom able to disclose matters to Ministers and Officials (and other relevant governmental bodies where appropriate) that would otherwise be confidential, and conversely, to ensure that he is not required to disclose to POL matters that he has learned as part of his wider duties within Government, which may have relevance for POL.
10. ~~We are seeking to a~~ Agreeing the final terms of this particular aspect with the company, ~~which~~ is taking longer than expected, which has delayed the before finalising ationing of the terms of his appointment. Despite this, Tom has now been appointed to the Board, on the basis that the Board noted at the time of appointment that the terms of Tom's appointment letter had not been finalised.
11. Tom's role also differs from other POL NED's in that he is not remunerated for it.

Division of Responsibility between BEIS and UKGI

12. As you aware UKGI and BEIS are having wider discussions about the division of responsibilities for BEIS assets between them. Currently UKGI retains responsibility across the board for POL, including policy matters. The identity of the BEIS policy sponsor for POL is still subject to discussion
13. We intend to work with the BEIS policy sponsor, once the identity of that person is settled, to establish a more formal POL-specific oversight protocol.

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14. In the meantime, to ensure your oversight, we propose holding perioding meetings
~~with you are requested to approve a regime of meetings attended by~~ Tom Cooper
and the shareholder team from UKGI to update you and the Minister responsible
for POL. The agenda would include discussing financial performance, key
personnel issues, progress on key risks including litigation, network performance
and compliance with the network access criteria, and key initiatives involving POL
with BEIS or other departments. Meetings would take place ~~at-on~~ a ~~minimum~~
quarterly ~~basis, with additional meetingser~~ on an ad hoc basis as required.

Annexes

A. Indemnity

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ANNEX A – PROPOSED INDEMNITY

[DEPARTMENT HEADED PAPER]

Tom Cooper
UK Government Investments
1 Victoria Street
London, SW1H 0ET

[Date]

Dear Tom

Your board membership of Post Office Limited (“POL”)

I am writing to confirm that your appointment as a non-executive board member of POL will be consideration for, and subject to, the following indemnity in respect of any liabilities which you may incur as a result of holding, or having held, that office.

This indemnity applies from the date on which you were appointed as a non-executive board member of POL and will continue to apply irrespective of whether you have ceased to be a non-executive board member of the POL.

The Department for Business, Energy and Industrial Strategy (the “**Department**”) hereby indemnifies you in full and on demand to the fullest extent permitted by law, against any and all claims, liabilities, costs, charges, expenses, losses, penalties, any award of damages or compensation which may be made against you, or other liability whatsoever (including, without limitation in respect of taxes) (a “**Liability**”) including any Liability reasonably suffered or incurred by you disputing, defending, investigating or providing any evidence in connection with any actual, threatened or alleged claims, demands, investigations or proceedings (whether civil, criminal or regulatory and whether under the laws of England and Wales or elsewhere) arising in connection with your actual or purported performance or exercise of (or failure to perform or exercise) your duties, responsibilities or powers as a non-executive board member of POL provided that the Liability does not arise from any wilful default, bad faith or wilful breach of statutory duty on your part.

We shall pay to you the on-going costs incurred in seeking advice or disputing, defending, investigating or providing any evidence in connection with any actual, threatened or alleged claim, demand, investigation or proceeding upon the presentation to us of all such information and documentation that we may reasonably request in connection with those costs.

If a payment is due from us and is subject to tax (whether by way of direct assessment or withholding at its source) then you shall be entitled to receive from us such amounts as will ensure

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that you retain, after payment of the tax so chargeable, the amount you would have retained had the payment not been subject to taxation.

If you are at any time entitled (whether by insurance or otherwise) to recover from some other person (including, without limitation, under any indemnity provided by POL any sum (i) in respect of any matter or Liability giving rise (or which may give rise) to a claim under this letter or (ii) for the payment or reimbursement of expenditure under this letter (in each case whether before or after the Department has made a payment or provided funding hereunder) you shall:

- (a) as soon as reasonably practicable notify the Department and provide such information as the Department may reasonably require relating to such right of recovery and the steps taken or to be taken by you in connection with it;
- (b) unless such entitlement is contingent upon you having first exhausted your rights to indemnification in respect of the relevant Liability under this letter, if so required by the Department, take all steps (whether by way of a claim against any relevant insurer, under any indemnity provided by POL or otherwise including, without limitation, legal proceedings) as the Department may reasonably require to enforce such recovery but at the reasonable cost of the Department; and

(c) keep the Department fully informed of the progress of any action taken, and thereafter any claim against the Department under this letter shall be limited to the amount by which the loss suffered or incurred by you as a result of the matter giving rise to the claim under this letter (or expenditure incurred or to be incurred) exceeds the amount so recovered.

If: (i) you are paid an amount pursuant to this letter; and (ii) you subsequently recover from a third party a sum (whether by insurance or otherwise) which is referable to the matter giving rise to the payment made under (i), above, then you shall repay to the Department:

- (a) subject to (b), below, an amount equal to the sum recovered from the third party less any reasonable out-of-pocket costs and expenses incurred by you in recovering the same; or
- (b) if the figure resulting under (a), above, is greater than the amount paid by the Department to you, an amount equal to the amount actually paid by the Department to you.

The above indemnity covers any Liability arising as a result of criminal proceedings (including criminal investigations) against the body corporate and to the extent permitted by law. The above indemnity includes the cover provided for at paragraph 12.2.5 of the Civil Service Management Code (issued by the Cabinet Office).

This letter of indemnity is intended to create legal relations between the parties to it and is to be governed by, and construed in accordance with, English law. The courts of England and Wales are to have exclusive jurisdiction to settle any dispute arising out of or in connection with this letter of indemnity.

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Yours sincerely,

.....

For and on behalf of the Department

Acknowledging receipt and agreement to the above terms,

.....

Tom Cooper

Date: