

Written evidence submitted by Eleanor Shaikh (POH0032)

Questions For The BEIS Select Committee Regarding Oversight Of Post Office Limited In The Years Leading Up To
The Horizon Scandal By The Department For Business, Energy And Industrial Strategy And UK Government
Investments

Eleanor Shaikh, 30th May 2020

'The proposition that Horizon worked as it was supposed to is an obviously flawed one. Indeed, that proposition is also inconsistent with common sense'.

Horizon Issues Judgement, 19th December 2019, paragraph 116

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HORIZON	The name 'Horizon' is used to refer to POL's IT system, defined in the Horizon Judgement to mean 'the Horizon computer system hardware and software, communications equipment in branch and central data centres where records of transactions made in branch were processed...' (1). It has existed in a number of iterations, Legacy Horizon (2000-2010) and Online Horizon (or HNG-X, 2010-2017) fell within the remit of the litigation. Its most recent version, HNG-A (2017 to now) was not subject to the scrutiny of the High Court.
ARC	The Audit, Risk and Compliance Committee of the Post Office Limited (POL) is referred to as its ARC Committee.
BEIS	The Department for Business, Energy and Industrial Strategy is referred to as BEIS, previously the Department for Business, Innovation and Skills (BIS) until July 2016.
UKGI	United Kingdom Government Investments is referred to as UKGI.
ShEx	Prior to its inception, the management of government shares in POL was undertaken by UKGI's antecedent, the Shared Executive (ShEx).
ALB	For definitions of the term ALB (Arm's Length Body) and its appropriateness to the status of POL, see Appendix.

UKGI INTRODUCTION

UKGI/SHEx: THE TRANSFER OF RESPONSIBILITY AND THE INHERITANCE OF RISK

UKGI operations commenced in April 2016 - the year the application for the Group Litigation Order was submitted to the Queen's Bench Division of the High Court - although transfer from ShEx to UKGI began soon after its incorporation in September 2015 (2).

Though some of the issues in contention were historic and pre-date its inception, UKGI is not exonerated from the effects of inherited risk if it failed to adequately monitor and report those risks to the sponsor department from 2016. Having a place on the POL board and its ARC Committee, UKGI had a clear vantage point of the decision-making processes which failed to mitigate these risks and which ultimately led POL to the High Court.

UKGI's forerunner, ShEx, also functioned to manage the department's shareholder interests in POL via the presence of a representative on its board and ARC Committee from as far back as 2012 (3). UKGI Executive Director, Richard Callard, was the government representative on POL's board from 2014-2018, he led the POL team at BIS and had been at ShEx since 2007. He, in conjunction with a transition team (4), was able to assure continuity of oversight and communications across the ShEx/UKGI transfer.

Moreover, in order for UKGI to report to its own ARC Committee on POL's risk profile, UKGI needed to equip itself with an understanding of the claimant grievances and of the alleged IT deficiencies dating from the introduction of Horizon on which their case was founded. In order to achieve such oversight as well as maintaining a continuum in management across the re-structure, it was incumbent upon UKGI to brief itself on events leading up to the litigation. Neither the level of risk nor an appropriate strategy for its mitigation could be determined by the POL board or ARC Committee, by UKGI or BEIS, without first understanding this historic context and how it related to IT risks still manifesting as shortfalls in branch accounts in 2017.

It must also be considered that Online Horizon, introduced in 2010 and falling within the scope of the litigation alongside Legacy Horizon, was still in operation until at least October 2017 (5). Any questions regarding its integrity would therefore have fallen under the scrutiny of POL's ARC Committee (and its UKGI/BEIS representative) as a contemporary risk - as well as an historic issue - up to and including 2017.

UKGI AS DEPARTMENTAL REPRESENTATIVE ON POL'S AUDIT, RISK & COMPLIANCE COMMITTEE

According to the findings of the Horizon Judgement, Legacy Horizon in use 2000-2010 was 'not remotely robust' whilst its subsequent iteration, Online Horizon, or HNG-X, in use until 2017 was also found to have been impacted by bugs, errors and defects which bore the potential to adversely impact branch accounts (6).

The inadequacies in respect of POL's IT investigations, mitigations, auditing, reporting and information-sharing which failed to identify or resolve such problems fall directly under the remit of the POL ARC Committee.

BEIS holds a seat on this committee - as well as on POL's board- in the person of its UKGI representative. Between 2016 and the end of the 2018/19 financial year, this representative attended 17/17 of POL's ARC Committee meetings (7). A presence was similarly maintained by the department on POL's board and ARC Committee via its ShEx representative (8).

The overarching purpose of an ARC Committee is to advise the board, it also functions to support the Accounting Officer and must ensure that critical information of risk is shared across the organisation. To facilitate this, the ARC Committee Chair is also a member of the POL board. Effective risk management is an essential part of governance.

What does UKGI understand to be the function of its representing BEIS on POL's ARC Committee?

BEIS's Under-Secretary of State recently described its UKGI representative on POL's board as having adopted a 'passive approach' (9).

Would UKGI describe its approach on POL's ARC Committee as 'passive' and if so, can it explain how this works in practice with regard to the activities and duties of an ARC Committee?

1: WHAT DID UKGI KNOW OF THE INTEGRITY OF HORIZON PAST & PRESENT?

According to the Judge ‘...all the weight of evidence, both of fact and expert, was heavily against the proposition that Legacy Horizon was robust. It clearly was not’ (10).

How did this escape POL’s ARC Committee and its departmental representative?

Internal POL documents exposed throughout the Horizon Trial (some of which were seen by the POL board and ARC Committee) reveal significant, known problems with Horizon and its back end support which impacted upon its functional accuracy. These date from 1999 until at least 2018 (11).

What was the level of disclosure to UKGI via POL’s ARC Committee of information regarding bugs, errors or defects in Horizon with respect both to historic cases and to those concurrent with the litigation 2016-19?

RED FLAGS:

The Judge made comment upon several significant warning signs of Horizon’s lack of robustness which ought to have prompted investigation and action by POL’s ARC Committee:

i) KNOWN ERROR LOG

The Horizon Judgement considers in great detail the Known Error Log kept by Fujitsu and to which POL had access under the terms of its contract. It was identified in the Support Services Operational Manual as early as 2001 (12) and summarised by the Judge:

‘The Known Error Log appears to be a comprehensive record of all the errors and defects of which Fujitsu have become aware over the life of Horizon’ (13).

Did the ARC Committee know of the existence of this log? If not, how was it able to critically challenge the adequacy and effectiveness of POL’s control processes in responding to evolving IT risks? How was it able to monitor the total number of bugs, errors and defects which PO acknowledged existed but claimed caused no lasting impact to branch accounts? Without recourse to such documentation, how could the ARC Committee accurately identify the repeat of incidents or monitor the time taken to resolve problems?

Did the ARC Committee enquire if such a log existed or suggest there should be one? What was the response?

Is the ARC Committee now able to access information collated in the Known Error Log?

Judge Fraser noted that the phenomenon of doubling up of discrepancies was still a recent occurrence: ‘Even the 2018 Operations Board document showed that these were still occurring in mid 2018 - on 3 separate occasions in that week alone’ (14).

From its position on the ARC Committee, can UKGI confirm if it is fully satisfied that adequate systems are now in place to increase Horizon’s error repellency?

ii) TRANSACTION CORRECTIONS:

‘The sheer scale of the number of TCs issued by the Post Office each year – which is over one hundred thousand for many of the years that are the subject of the group litigation – supports my conclusion that there was a significant and material risk of inaccuracy in branch accounts as a result of bugs, errors and defects in the Horizon System (both Legacy Horizon and HNG-X) (15).

Does the ARC Committee monitor the frequency of Transaction Corrections, did it investigate reasons for the high volume issued to correct errors during the years encompassed by the litigation?

Has UKGI witnessed a significant culture-change on POL’s ARC Committee since the High Court Judgements with regard to its approach to the mitigation and communication of risk?

iii) INTERNAL DOCUMENTS

A document of October 2016 revealed during the trial indicates the scale of challenges which faced POL’s ARC Committee:

'Our back office also struggles with the complications of dealing differently with each of our many clients, heavy manual processes, reconciling disparate sources of data, retrospective financial controls and lack of flexibility. This backlog of challenges, poor support contracts and a lack of skills have led to a prohibitive cost of change, prevents the about [sic] improvements, that should occur as part of a business as usual' (16).

As a member of POL's ARC Committee at this time, does UKGI recognise this as an accurate appraisal?

The Horizon Judgement cites a 2017 document which refers to an IT Strategy Update approved by the POL board in July 2016:

'In July we outlined that IT was not fit for purpose, expensive and difficult to change'.

It goes on:

'We need to quickly rationalise and resolve misaligned contracts enacted to support legacy IT, obsolescence, a lack of PO technical competence' (17).

'The IT strategy outlined a view of the current state of technology within PO as failing to meet PO aspirations on any assessment lens', the Horizon system being colour coded as 'high risk' within its risk appetite (18).

What is UKGI's response to this document, having a representative both on POL's board which approved it, and on its ARC Committee? Was the full weight of risk communicated to UKGI's ARC Committee which aspires to 'fully document the risk and mitigations in place across its shareholder portfolio'(19)? Does UKGI believe the contents warranted escalation to the sponsor department given the group litigation was by this time already underway? If so, what was BEIS's response?

2: WHAT DID UKGI KNOW OF HORIZON'S REMOTE ACCESS?

According to the Horizon Judgement POL was aware remote access occurred without the knowledge of sub-postmasters in order to correct errors caused by legacy Horizon (20) but publicly denied this until 2019 (21).

Was the use of remote access known to the ARC Committee and therefore to UKGI and if not, ought it to have been? Did the ARC Committee actively seek the definitive answer before allowing POL to build its defence on the false premise that remote access was not possible? Has the ARC Committee since identified where and how this serious gap in communication occurred?

Did it strike the ARC Committee as untenable that a system such as Horizon was not accessible remotely?

Does UKGI accept that POL's failure to admit the truth regarding the possibility of remote access was a failure shared by its ARC Committee?

The Judge highlighted:

'The experts are agreed that for any large commercial IT system, which Horizon obviously is, it is necessary for some technical users to have privileged access to databases with wide-ranging capabilities. This however, is not for application related purposes, but is for system maintenance and problem-solving purposes. It is also agreed by both IT experts that it is important that the number of users with these abilities is kept down to the minimum possible, and for each action that they take whilst logged in to be recorded and audited' (22).

Now that POL has admitted to Fujitsu's (and perhaps its own) ability to remotely access the Horizon system, the question arises of how rigorously this procedure was monitored:

PUA (Privileged User Access) logs indicate that until 2015, entries recorded only that PUA was logged on or off, what actions were taken were not recorded or audited (23).

This is considered by the Judge '...a serious deficiency both in the required level of controls in Horizon, in the recording of what privileged users were actually doing...and also a corresponding absence of recording and auditing those activities' (24). But it was a vulnerability brought to POL's attention by its external auditors Ernst and Young as early as 2011 (25).

Does UKGI agree that not only did this compromise Horizon's robustness in a way which ought to have been picked up by the ARC Committee, but that POL's failure to address it for least four years signals an untenable complacency with regard to risk?

Did UKGI, in its capacity as ARC Committee member, take into consideration the audits of Ernst and Young whilst determining the robustness of Horizon or of evaluating the cost/benefit and risk exposure of litigation? (See p21-23 for more detail on Ernst and Young reports).

3: WAS UKGI SATISFIED WITH POL INVESTIGATIONS PAST & PRESENT?

The Judge found '... the stance taken by the Post Office at the time in 2013 demonstrates the most dreadful complacency, and total lack of interest in investigating these serious issues, bordering on fearfulness of what might be found if they were properly investigated' (26).

Does UKGI recognise this portrayal of POL's attitude to investigations? As a member of the ARC Committee, how satisfied was UKGI with the rigour and efficiency of POL's investigations department into alleged branch discrepancies - i) with respect to historic cases ii) with respect to cases which occurred 2017/18 some of which were still unresolved in 2019/20?

Did the ARC Committee actively seek assurance that conclusions of the investigations department were accurate, decisive and objective when determining the root causes of branch shortfalls?

Was UKGI confident that the ARC Committee had sufficient protocols in place to monitor and improve the investigations department including professional qualifications of its personnel?

A member of the ARC Committee, UKGI would have been familiar with the contractual mechanism by which POL could offload all branch discrepancies onto sub-postmasters. **Was UKGI concerned this might dis-incentivise POL from undertaking adequate investigations into root cause of shortfalls or from making costly IT improvements to reduce Horizon's known high error rate?**

Did UKGI ever raise concerns about POL's investigation department with its board or BEIS? Ought it to have done?

AUDIT VERSUS CREDENCE DATA:

'Audit data is a complete and accurate record of everything that has occurred, which in the context of Horizon means including a full record of keystrokes used by a SPM (or assistant) in the branch. This accurate record is kept in what is called the audit store. This is a secure place for the keeping of such data. It is vital to the proper operation of a system such as Horizon that such accurate audit data is kept' (27).

'...where there is a dispute between the Post Office and a SPM about branch accounts (...), the audit data should be consulted. That is one of the purposes of having it in the first place. I can think of no sensible reason not to consult the audit data in such a scenario' (28).

In the event of such a dispute does UKGI agree that the definitive means of establishing the root cause of the discrepancy would be to consult the unfiltered (ARQ) Audit Data?

POL, however, consulted only Credence data before deciding how to handle discrepancies. Not only was this an incomplete source of information, it has the potential to create a false picture. According to the Judge 'The Credence data was inadequate to show what had actually happened. Indeed, not only was this data inadequate, it made it look as though the SPM has done something that he or she had not done, and which the system had done' (29).

Was the ARC Committee aware of this vulnerability and can UKGI, as a member of POL's ARC Committee, explain why the definitive Audit Data was not used for investigative purposes?

The Judge emphasised the added importance of using audit data in circumstances '...where there are so many bugs acknowledged as existing, and also at a time (much earlier than this judgment in 2019) when Fujitsu knew there were bugs in Horizon such as Dalmellington and Callendar Square, and also given the Credence data has been shown to have been wrong on occasion' (30).

A quote from the trial of sub-postmistress, Seema Misra, which led to her custodial sentence in 2010 serves to underline the value placed on Horizon's data as evidence:

'There is no direct evidence of her taking any money...There is no CCTV evidence. There are no fingerprints or marked bank notes or anything of that kind. There is no evidence of her accumulating cash anywhere else or spending large sums of money or paying off debts, no evidence about her bank accounts at all. Nothing incriminating was found when her home was searched' (31).

Instead the jury was invited to make 'circumstantial inference' on the basis of a Horizon's integrity.

POL acts as a prosecuting authority and has brought hundreds of prosecutions solely on evidence from Horizon.

Does UKGI concede, therefore, that verifying the integrity of the data used in POL investigations was a fundamental and imperative duty of the ARC Committee?

THE BURDEN OF PROOF

'Because the reports and data available to SPMs were so limited, their ability to investigate was itself similarly limited. The expert agreement to which I refer at [998] above makes it clear in IT terms (based on the transaction data and reporting functions available to SPMs) that SPMs simply could not identify apparent or alleged discrepancies and shortfalls, their causes, nor access or properly identify transactions recorded on Horizon, themselves' (32).

Does UKGI agree that sub-postmasters did not have access to the evidence which might allow them to determine the underlying cause of branch discrepancies? Did it consider it reasonable to place the burden of proof onto a sub-postmaster in the event of a dispute?

FUJITSU

In turn, POL's investigations were reliant upon information provided by Fujitsu, its IT department could not undertake investigations into whether the causes of alleged shortfalls were caused by Horizon's bugs, errors or defects without going through Fujitsu.

It was therefore incumbent upon POL's ARC Committee to assure itself of the integrity and completeness of the information it was receiving from Fujitsu.

What measures did POL's ARC Committee take to assure itself that information provided by Fujitsu was reliable and unbiased? Was UKGI aware of cost implications for POL in retrieving data over an agreed quota of requests? (33). Does it consider this may have deterred POL from investigating adequately?

Was the ARC Committee, for example, satisfied with the integrity and consistency of procedures by which Fujitsu categorised causes of branch discrepancies? Is UKGI surprised to learn of Fujitsu employees 'If they were unable to find the cause of the discrepancy, the assumption would be made that it must be the SPM to blame' (34)?

A PEAK entry of 1999 indicates a £43k branch discrepancy logged by Fujitsu as 'No fault can be found and developments do not expect to be able to find a fault with the evidence available'. The Judge notes 'The approach to this discrepancy mirrors so much of the case. A discrepancy occurs, Fujitsu cannot find a fault; and say they do not expect to be able to find one "with the evidence available"' (35).

Does UKGI accept that the onus was upon POL's ARC Committee to assure itself of the integrity and comprehensiveness of Fujitsu's investigations particularly in cases where a disputed discrepancy might lead to termination of contract or prosecution?

The Terms of Reference of POL's ARC Committee lays out it 'shall have the power to conduct or authorise investigations into any company matters within the Committee's scope of responsibilities. The Committee shall be empowered to obtain independent legal advice, and engage counsel, accountants, or others to assist it in the conduct of any investigation' (36). **Did the ARC Committee ever consider invoking these powers or seek independent verification of the integrity of Horizon? Does UKGI regret that it did not do so?**

4: UKGI AND POL'S LEVEL OF REPORTING

How efficient does UKGI consider the ARC Committee's upward reporting mechanisms for escalating risks, how did UKGI ensure these escalation routes were clear and streamlined right up to BEIS?

Was UKGI in its capacity as ARC Committee member satisfied that major incidents were reported and lessons captured? Was UKGI familiar, for example, with the history of the Dalmellington bug (also known as Branch Outreach Issue/Bug)?

'When investigating this Fujitsu found 112 occurrences affecting 88 different branches in the previous 5 years' (37).

This bug had lain undiscovered, though its effects were apparent, 2010-2015. Fixes were still being applied to it in 2016 (38) by which time UKGI had its representative in the POL ARC Committee.

Did this prompt UKGI to question if POL's investigations were conducted and reported in an efficient and timely manner, was it satisfied with the level of reporting such incidents throughout the organisation?

Was UKGI confident of the integrity of information the ARC Committee was receiving and on which its recommendations were made to the board to support decision-making?

Were adequate mechanisms in place to monitor the reliability of this information?

How successfully did the ARC Committee review the reliability and integrity of the assurances it gave to the POLtd board? How has this changed since the Horizon Issues Judgement?

Given the reliability of Horizon 2000-2017 has been proven to be the antithesis of that asserted by POL, does UKGI feel it was misled, if so by whom? Was it the responsibility of POL's ARC Committee to uncover and bridge any such gaps in reporting?

The Horizon Judgement cites an internal document, 'Extract from Lessons Learned Log' of November 2015, in which Angela Van Den Bogerd (later Business Improvement Director) acknowledged weakness in reporting: 'Failure to be open and honest when issues arise eg roll out of Horizon, HNGx migration issues/issues affecting branches not seemingly publicised' (39).

Was UKGI aware if subsequent measures were introduced and monitored to improve reporting? Ms Van Den Bogerd made an appearance three years later as POL's most high-ranking official to give evidence at the High Court. Of her reliability the Judge remarked:

'There are two specific matters in which I find that she did not give me frank evidence, and sought to obfuscate matters, and mislead me' (40).

Does the fact that Ms Van Den Bogerd remained in office at POL until May 2020 suggest rather a high tolerance threshold with regard to 'failure to be open and honest'?

Does UKGI believe her continued directorship after demonstrating a flagrant disregard for the truth under oath sends the right signal to other employees, or engenders a culture of honesty and openness at POL on which the mitigation of risk depends?

What can UKGI say about the level of reporting to POL's ARC Committee of external audits conducted by Ernst and Young? Their communications are referred to in the Horizon Issues Judgement no less than eight times (41). **Does UKGI familiarise itself with POL's contemporary external reports and did it consider those from the period encompassed by the litigation? Would it have been useful for the ARC Committee do so in determining the robustness of Horizon and the likelihood of success at the High Court before POL committed itself to legal action?**

5: HOW EFFECTIVE DOES UKGI CONSIDER THE IMPLEMENTATION OF ITS WHISTLEBLOWING POLICY?

According to POL's CEO 'A culture of openness and accountability is essential in order to prevent illegal, improper or unethical conduct and an effective Whistleblowing Policy helps us to identify and address situations as they occur' (42).

The ARC Committee reports to the board on matters relating to the Whistleblowing policy. **Was UKGI, as member both of the ARC Committee and board, confident that Whistleblowing procedures were functioning**

effectively, in line with PIDA and how did POL's ARC Committee verify this? How was data used when raised by Whistleblowers? Were any systemic issues identified?

6: WHAT DID UKGI KNOW OF EMERGENT RISKS?

In January 2017, POL's parent company, Postal Services Holding Company (PSHC), published its 2015/16 Annual Report (43). Two of its three directors were UKGI personnel, the third an employee of BIS.

Can UKGI explain what triggered the significant upscaling of mitigations against IT risk at POL detailed in its Strategic Report and reasons for their being made visible to the parent organisation? Did UKGI, as a member of POL's ARC Committee subsequently see evidence to assure itself that IT risks at POL were being managed effectively in accordance with these new measures?

UKGI's Roger Lowe signed off the Management of Risk in this PSHC document. It reported that IT Transformation in its subsidiary, POL, may not be fully delivered due to the 'complexity of replacing legacy IT'. Potential consequences of this are identified as 'systems infrastructure that are not fit for purpose' (44).

Six months previously, however, in July 2016, a POL board-approved document had already identified POL IT as unfit for purpose:

'This document forms an update to the IT Strategy approved in July 2016 by the PO Board. In July we outlined that IT was not fit for purpose, expensive and difficult to change'.

It goes on:

'We need to quickly rationalise and resolve misaligned contracts enacted to support legacy IT, obsolescence, a lack of PO technical competence, particular focus on Fujitsu and Accenture' (45).

As a member of POL's Board, UKGI would have been aware that risks pertaining to IT which it signed off as 'potential' in the parent company annual report had already actualised.

Can UKGI explain why the true extent of Horizon's obsolescence was not incorporated into the 2015-16 PSHC Annual Report? Did it communicate to BEIS that the assessment of IT risk as 'potential' in this report was not wholly accurate? Ought it to have done so prior to the commencement of litigation which had at its centre the contention of Horizon's fitness for purpose?

Might the lack of candour in this PSHC Annual Report indicate a level of complicity on the part of UKGI with POL in its failure to acknowledge Horizon's obsolescence and associated risk?

The contemporaneous 2015-16 POL Annual Report published in August 2016 (46) also cites as 'potential' IT risks which by July 2016 its Board had received evidence of having actualised.

Did POL's Board or ARC Committee fulfil its obligation to ensure appropriate visibility of risks in POL's annual financial and governance statement of 2015-16? Would a failure to have done so be consistent with UKGI's obligations to the shareholder or its core value of 'openness and honesty in communications' (47)?

7: WHAT DID UKGI KNOW OF SECOND SIGHT'S FINDINGS?

The same individual (Richard Callard) fulfilled the function of the departmental POL Board member 2014-18, bridging the crossover between ShEx and UKGI, his uninterrupted appointment spanning critical years of the Horizon controversy. From part way through the 2015-16 financial year he also sat on POL's ARC Committee (48).

What level of knowledge did UKGI inherit - or seek - regarding POL's failed Initial Complaint Review and Mediation Scheme (2012-2015)? It was instigated by a number of MPs and was conducted in the full knowledge of the department. What did UKGI know about the work of independent forensic accountants who were appointed to investigate Horizon under this scheme?

Does UKGI agree that, as a member of POL's Board from 2016 it needed an informed understanding of the historic context of the Horizon issues? If the ARC Committee on which UKGI sat was to assist the board in charting a way forward, it needed a tight grasp on the events prior to 2016 which had set the company on its risk flight-path toward the High Court.

Was UKGI aware of the circumstances which prompted the original mediation scheme and why it was abruptly terminated by POL? Did UKGI review the only independent analysis of POL's IT system, that of Second Sight arising out of the scheme, for an objective view on Horizon's fitness for purpose?

Given their reports presaged the findings of the High Court with significant accuracy, does it regret not having done so?

8: HOW DID UKGI ASSESS THE RISKS OF POL'S LITIGATION?

In accordance with its Terms of Reference, POL's ARC Committee reviews legal matters which may impact on the financial statements.

Also identified in the POL Annual Report of 2015-16 and the parallel PSHC document was the emerging risk of the group litigation. Both UKGI and POL were aware that allegations of Horizon's unfitness for purpose underpinned many of the claimants' grievances (49).

Either in its capacity on POL's board & ARC Committee, or as directors and signatories on the Annual Reports of its parent company PSHC, did UKGI make any challenge to POL to determine whether IT issues pertaining to the litigation were the domino effects of IT risks already known to have actualised? Was any challenge made to POL regarding the viability of litigation in this regard or was the shareholder advised to make such challenge before sanctioning legal action of such magnitude and risk? What measures did the POL ARC Committee take to satisfy itself that legal advice it was receiving from POL's internal advisors was sufficiently independent?

How independent does UKGI consider the ARC Committee to have been?

Was it independent enough?

From its position on POL's Board, can UKGI describe how decisions were made in balancing the potential risks of litigation with the costs/effort of an alternative strategy?

9: WHAT DID UKGI KNOW OF SUB-POSTMASTER CONTRACTS?

A substantial area of contention in the litigation and one which constituted the lion's share of the Common Issues Trial, concerned the legitimacy of contracts by which POL 'onerously' bound its sub-postmasters (50).

What assurances did the ARC Committee seek from POL's Groups Director of Legal, Risk and Governance with regard to the terms of POL's contracts? Did UKGI seek advice from BEIS, the department which bears overall responsibility for Company Law, regarding the legitimacy of POL's contracts before it exposed itself to the risk of their defence at the High Court?

Given these contracts were used unlawfully to impose liability on sub-postmasters for all branch discrepancies, are the internal legal advisors who got it so wrong still employed by POL? If so, why?

Is UKGI satisfied that new contracts are in place? To what risk was the company and its sub-postmasters exposed, in the time between POL's contracts deemed unworkable and their being replaced?

Did the POL Board on which BEIS is represented by UKGI, fail in its duty to ensure POL operations complied with the rule of law with regard to sub-postmaster contracts?

10 WHAT DID UKGI KNOW OF THE INVOLVEMENT OF THE CRIMINAL CASE REVIEW COMMISSION?

The shadow of alleged miscarriages of justice hung over POL even before UKGI's inception. From as early as 2009 MPs were publicly questioning the safety of multiple POL convictions - some involving custodial sentences - at the hands of a government-owned company (51). Not only did POL have the power to bring its own prosecutions but it presided with absolute authority over the only source of evidence used in those prosecutions.

15 such cases were brought to the attention of the Criminal Case Review Commission (CCRC) in 2015.

In the light of the Commission's inability to resolve cases without further disclosure of evidence, did it occur to UKGI to call upon the authority of the sponsor department to investigate and to quash any suspicion of miscarriages of justice using its rights of access to information enshrined in the 2011 Postal Services Act (52) and POL's Articles of Association (53)? Were any concerns regarding potential abuse of process discussed between UKGI and BEIS?

Did the involvement of the CCRC in cases involving large branch discrepancies give rise to any suspicion in UKGI's mind over Horizon or of POL's stance on Horizon? Did this position change after its Board representative was alerted to Horizon's 'unfitness for purpose in July 16th? (See ref 45)

Does UKGI consider that a matter of this gravity constituted an 'operational' or a 'strategic' matter with regard to Shareholder intervention? Was it clear to UKGI where BEIS drew the lines with regard to BEIS's 'operational' versus 'strategic' issues? Did it agree with this demarcation with respect to POL's Horizon controversy?

Was the evolving status and number of CCRC cases reported to BEIS between 2015 and 2020, if so how regularly? What was the response of the Sponsor Department?

Was UKGI satisfied with the level of shareholder engagement in POL? If not, at what point would it have been helpful for BEIS to engage? What might this have achieved? Did the department ever refuse a request by UKGI for it to intervene 2016-2019?

11: UKGI AS BEIS REPRESENTATIVE ON POL'S BOARD AND ARC COMMITTEE: HOW DID IT MONITOR THE COSTS OF LITIGATION?

During the course of the first mediation scheme (2012-2015) an estimated average quantum loss calculation was made for 39 of 150 cases of £700k per individual. By November 2017 there were a total of 555 names attached to the Group Litigation Order representing, using the first projection as a benchmark, a potential claim of £389m.

UKGI signed off the 2015-16 PSHC Annual Report which considered the pending litigation threatened 'no material adverse impact' (54). The same assessment was made in the POL Annual Reports of 2015-16 and of 2016-17 (55). **On what basis could such assurances be given?**

Were calculations of potential compensation figures updated and communicated to BEIS as increasing numbers of ex-sub-postmasters joined the Group Litigation 2016-18? Given POL made no annual profits for 2015-16 and only £13m 2016-17, what discussion took place between UKGI and BEIS as to how potential compensation would be underwritten in the event of POL losing?

Even before the trials commenced, the Judge admonished POL for incurring costs which he considered 'extraordinarily high, unreasonable and disproportionate' (56) and adjusted the intervals of cost-reporting to the court to accommodate the escalation: 'Both this level, and rate of expenditure is very high, even by the standards of commercial litigation between very high value blue chip companies' (57).

What mechanism was put in place for UKGI/BEIS to monitor POL's legal costs, how regularly was this reviewed and at what intervals was it communicated to BEIS? Did BEIS raise any concerns regarding the rate of escalation of POL's legal costs?

The Accounting Officers of POL, UKGI and BEIS are all bound to act in accordance with the principles of HM Treasury's 'Managing Public Money', of propriety, regularity, value for money and feasibility. They are answerable to Parliament for doing so.

In response to the question what criteria BEIS use when considering whether to give permission under Article 11.1(0) of POL's Articles of Association to incur a commitment or liability of more than £50 million, BEIS's Under Secretary of State replied:

'As the sole Shareholder, the government expects the Post Office Limited to ensure value for money principles in its use of resources at all times' (58.1).

Can UKGI give a figure on POL's legal costs to date, (excluding potential costs pertaining to unresolved CCRC cases, to those already referred to the Court of Appeal by the CCRC, to investigations initiated by POL into an estimated 918 historic convictions and to those expected to register with its Historical Shortfall Scheme)?

Does this figure represent, in UKGI's opinion, value for money?

Does UKGI believe POL's legal expenditure ought to have been curbed? If so, by whom?

As underwriter of any liability POL could not meet in the event of losing, what criteria did UKGI apply to identify the point of active shareholder intervention so as not to overreach BEIS's risk appetite (58.2)? Was this point reached?

How does UKGI rate its own performance in monitoring POL legal expenditure throughout the course of litigation?

What calculation of potential compensation costs has POL's ARC made in relation to the current 61 CCRC cases not covered by the out of court settlement of December 2019? What calculation of potential costs to POL has been made relating to the Historical Shortfall Scheme and the estimated 918 convictions being reviewed by POL in the light of Judge Fraser's Rulings?

From its position on POL's ARC Committee, what assurance can UKGI give that these costs do not represent an 'existential threat' to POL? What is the estimated impact on the company's financial forecasts, on its maintaining profitability and achieving commercial sustainability after the planned reduction in government subsidy?

The new Framework Agreement between BEIS and POL stipulates quarterly updates to the department's representative on active or anticipated legal action. **Does UKGI regret such protocols were not embedded in a Framework Agreement prior to 2020 in order to monitor its legal expenditure (59)?**

How much does POL rely on its reputation as a trusted and respected brand? What was the risk appetite with regard to POL's reputation? How were the reputational costs of POL's High Court litigation monitored and how regularly was this communicated to BEIS? Has UKGI observed sufficient transformational drive across the business to repair the damage of litigation to the brand and to attract new sub-postmasters to the business?

12: UKGI AS DEPARTMENTAL REPRESENTATIVE ON POL'S BOARD: THE CONDUCT OF POL DURING LITIGATION

Judge Fraser was unforgiving in his appraisal of POL's conduct during the litigation, noting that its 'approach to evidence, even despite their considerable resources, which are being liberally deployed at considerable cost, amounts to attack and disparagement of the claimants individually and collectively' (60).

He remarked that POL 'resisted timely resolution of this Group Litigation whenever it can' (61), and criticised its manner of disclosure finding it 'disruptive to the proceedings, and it leads to an increase in the costs and/or causes delay. It is the antithesis of co-operation, which the Civil Procedure Rules expressly require' (62). POL was submitting evidence to the court more than three months after the Horizon Trial had ended.

POL's legal strategy included a failed attempt to appeal the Commons Issues Ruling which was thrown out on all 26 counts and a futile bid to have the Judge recuse himself on account of alleged bias. The latter tactic alone cost POL an estimated £500k, serving only to procrastinate - though threatening to derail - the judicial process.

How closely was UKGI monitoring POL's legal strategy and communicating it to BEIS?

Were any concerns raised by UKGI or BEIS over POL's conduct during the litigation, were any interventions implemented as a result?

The impact of such tactics upon the innocent party was profound. In defending an IT system known to be unfit for purpose, POL's attritional and obstructive approach to litigation increased costs to the sub-postmasters to such a degree they could not afford to fund the third and fourth trials scheduled to take place. It has been suggested that this was the aim of POL's legal strategy.

Is UKGI, 'the UK government's centre of excellence in corporate finance and corporate governance' comfortable with this outcome?

Does UKGI feel justice has been served to sub-postmasters whose only option for clearing their names was through expensive third party funders? Is it fair that honest servants of their community are unlikely to recover even the sums they were forced to pay to balance phantom shortfalls generated by obsolete IT?

UKGI's website features POL as one of three case studies amongst its portfolio (63). **Does UKGI consider POL a role-model for a government-owned company under its auspices? Is UKGI proud to hold up the governance of POL as a paragon of how its stewardship works in practice?**

Who does UKGI consider is responsible for ensuring POL acts in accordance with the Nolan principles in all aspects of its conduct?

13: UKGI AND THE QUESTION OF SHAREHOLDER INTERVENTION

In its written Opening for the Common Issues trial POL claimed the litigation posed an unprecedented level of threat:

‘If the Claimants were right in the broad thrust of their case, this would represent an existential threat to Post Office’s ability to continue to carry on its business throughout the UK in the way it presently does’ (64).

As a member of POL’s Board and ARC Committee does UKGI consider this to have been an accurate risk assessment? Does it consider this a tenable level of risk for one of its portfolio entities? Was any concern raised by UKGI with POL or BEIS that the risk appetite set by POL’s board was too high?

UKGI’s representative signed POL’s 2018 Entrustment Letter on behalf of the department (65), a document which itemises the Services of General Economic Interest which POL is legally bound to provide. **Does UKGI agree that an eventuality which poses an ‘existential threat’ to POL risks impacting upon BEIS’s strategic vision with regard to POL’s unique social remit? Was this a threshold which triggered immediate shareholder engagement?**

Was it clear to UKGI where the demarcation lay between ‘operational’ and ‘strategic’ by which BEIS rationalised - and rationed - its intervention? How could UKGI fulfil its role ‘as an agent for Ministers and government departments’ (66) without the clarity of a formal Framework Agreement between itself and BEIS?

Was this division between ‘strategic’ and ‘operational’ practicable with regard to the remit of an ARC Committee?

Does UKGI agree with recommendations in the BEIS Select Committee Report of October 2019 for BEIS’s tighter of scrutiny of POL in respect both of strategic and operational activity?

Provision is made for greater departmental engagement in the April 2020 Shareholder Relationship Document which formalises the POL/BEIS relationship (67). **Might such an agreement have prompted more meaningful shareholder oversight in the years leading up to the litigation had it been implemented at an earlier opportunity?**

Prior to 1st April 2020 who was responsible for ensuring the level of shareholder oversight was commensurate with the level of unfolding risk, UKGI or BEIS?

UKGI’s own HMTreasury Framework Agreement stipulates the need for Memoranda of Understanding with all Sponsor Departments of its portfolio enterprises (68). This would including protocols to ensure advice passes directly from UKGI to Ministers and Accounting Officers. In its own words, such an agreement serves to ‘limit risks by defining ownership of risks’ (69). **Why was none in place governing the relationship between BEIS, UKGI and POL? Did the lack of formal clarity hinder UKGI’s ability to manage the company on behalf of its shareholder? Did UKGI raise the issue of an absence of a BEIS/POL Framework Agreement with the department? What was its response?**

Had departmental oversight been formalised and exercised at an earlier opportunity does UKGI believe impacts of the Horizon controversy might have been more successfully mitigated?

14: HOW DOES UKGI RATE ITS PERFORMANCE?

UKGI’s function is to represent the Government’s interests in its companies ‘ensuring their good governance, scrutinising their performance and looking to optimise their value and operational efficiency on behalf of the taxpayer’ (70). Risk assessment is an essential part of this function.

UKGI’s inaugural 2015/16 Annual Report outlines how risk management is to be achieved across its portfolio of enterprises and gives insight into how evolving risk at POL ought to have been monitored and escalated:

‘UKGI will maintain two company-level risk registers. These will cover respectively: operational and strategic risks; and RISKS RELATED TO THE PROJECTS AND ASSETS UNDER UKGI’S MANAGEMENT [Emphasis added]. These company-level risk registers will be informed by individual project and asset-level risk registers, which are maintained at a working level. Each working level risk register will be updated monthly, with a summary examined by the Executive Committee and sent to the Audit and Risk Committee for information and comment where appropriate.

The Audit and Risk Committee will review and approve the two full UKGI risk registers, with any supporting project or asset level risk registers as required, on an annual basis. Furthermore, the Audit and Risk Committee will consider those UKGI projects or assets which are either moving from, or moving to, a high risk rating at each committee meeting.

Bespoke risk rating guidance and training is provided to UKGI staff, including a risk framework for each area of UKGI to ensure consistency of risk reporting across UKGI.

The overall governance of UKGI will function with regular dialogue between the Chief Executive and Chairman. Any risk matters which are urgent and significant will be escalated directly by the Chief Executive to the Chairman' (71).

Will UKGI reveal if and when POL was registered as 'high risk' within its reporting mechanisms? For the purpose of the BEIS Select Committee Inquiry into the Horizon controversy will it release details of its working-level risk register with regard to POL from 2016 to the present? Will it detail markers reached which warranted escalation to the department? Can it clarify what level of scrutiny was applied by BEIS's Accounting Officer as a non-executive director of UKGI to the 'existential threat' posed to POL?

Despite the aspirations outlined above, UKGI's 2016/17 Annual Report details recommendations of the Government Internal Audit Agency (GIAA) which include, for areas of improvement, to 'enhance the effectiveness of the framework of governance, risk management and control' (72).

The same recommendations were made the following year, and the Annual Report of 2018/19 shows them to have been made by GIAA for a third year in succession (73).

Does UKGI consider consistent failure to address inadequacies in its 'effectiveness of the frameworks of governance and risk control' may have impacted upon its management of POL? Does UKGI consider it has now achieved a key objective of its 2018-19 Annual Report 'to ensure UKGI fully documents the risks and mitigations in place across its shareholder portfolio' during 2019-20 (74)?

In February 2019 an external auditor was invited to assess the effectiveness of UKGI's Board, coinciding with POL's engagement in the largest and most expensive litigation passing through the UK courts at that time.

Was any challenge made by the external facilitator during the course of this review on the appropriateness or otherwise of POL's High Court action with regard to its reputational or financial costs? How successful was the performance of UKGI's board considered to be and did this include the effectiveness of the framework of governance and the mitigation of risk with regard to POL on behalf of BEIS?

The external facilitator for this review was Alice Perkins, ex-Chair of POL whose position at the helm of the company 2011-2015 coincided with defining years in the Horizon controversy (75). She was named in the Horizon Trial as a key stakeholder in the Branch Support Programme set up in response to Second Sight's Interim Report. (76).

Who sanctioned Ms Perkin's appointment as UKGI external facilitator and what assessment was made regarding any potential conflict of interest? Does UKGI consider an ex-POL Chair, so tangibly connected to issues central to the litigation, was the best person to deliver an unbiased appraisal of UKGI's oversight of POL?

UKGI: SUMMARY QUESTIONS

Does UKGI consider the scrutiny of POL's ARC - itself included - to have been sufficiently active and rigorous 2016-2019?

Does UKGI consider POL's ARC Committee possessed the requisite knowledge and skills to effectively challenge the POL board? Was it independent enough to critically review the adequacy of control processes in responding to risks within POL's governance, operations and information systems?

If an ARC is to be fully 'fit for purpose' can any aspect of its functions be undertaken 'passively'?

In the light of the Common Issues and Horizon Judgements, does UKGI consider POL's ARC Committee failed? Does UKGI consider POL's Board failed?

In January 2020, UKGI published a document by its former CE (also ex- director of POL's parent company and NED of BIS) which identifies critical success factors for the delivery of sound governance between departments and their partner organisations.

Of departmental Board membership it states 'The role of Board members must be clear and understood. Having departmental observers on an ALB board can lead to ambiguity and confusion over what the Department client knows and/or has agreed, potentially confusing accountability and information flows ' (77, including UKGI's definition of the term ALB).

'Government officials sitting on ALB boards should be of sufficient seniority and experience, and understand how to fulfil effectively their responsibility as board members' (78).

With regard to supporting effectiveness of two-way information sharing, it stresses the importance of 'one version of the truth' and agreements as to when independent assurance of management information is appropriate 'to give all parties confidence in the information' (79).

Does UKGI recognise the great disparity between these recommendations and events which unfolded during its stewardship of POL? Will it make public any retrospective report on where it believes things went so wrong?

According to the 2013 POL Board Terms of Reference:

'The Board of Post Office Limited is *collectively responsible* for setting the Company's primary business objectives, *for establishing a proper governance framework to manage and monitor risk* and for ensuring that the company has the resources and leadership required to achieve its stated objectives. Directors statutory duties are set out in the Companies Act 2006. The primary duty of the directors is to promote the success of Post Office as a Company for the benefit of its Government shareholder and the wider stakeholder community' (80).

[Emphasis added]

Did UKGI successfully discharge its 'collective responsibilities' as departmental representative on the Board of POL 2016-2019?

BEIS INTRODUCTION:

There are three fundamental questions regarding the department's relationship with POL in the years leading up to the Horizon controversy:

Did BEIS fail to see and evaluate the unfolding crisis?

Did BEIS fail to act using the levers of control within its power to avert the unfolding crisis?

Did BEIS fail to provide clarity and consistency in governance via the implementation of a Framework Document between itself and POL prior April 2020?

The answers will reveal the extent to which BEIS's failures were a contributory factor in POL's crisis.

Underpinning each is the question of the 'operational' versus 'strategic' demarcation by which the department consistently justified its lack of intervention. **Was this, in hindsight, an appropriate response or was it an abnegation of responsibility with profound and far-reaching effects?**

THE OPERATIONAL/STRATEGIC DIVIDE

Recommendations of the 2019 BEIS Select Committee Report urged for greater oversight of POL by its sponsor department both in respect of its strategic and its operational functions. Though declining to comment on the Horizon controversy which was at the time sub judice, it also recommends greater clarity and consistency between what BEIS defines as 'strategic' and 'operational'.

'It is important that POL is held properly accountable by the Government for its decisions, whether strategic or operational, and there needs to be consistency in the criteria applied by Government in its decision of whether or not to intervene'

'...when questioned, the Minister appeared unclear about the distinctions between 'operational' and 'strategic' decisions' (81).

For years, BEIS insisted that issues pertaining to the IT system of its partner organisation belonged to the 'operational' rather than 'strategic' side of the business and therefore, it maintained, beyond any shareholder remit.

'...while we are the Post Office's shareholder, it is commercially run, so it is within its rights to manage operational delivery...' (82).

Does BEIS concede that, in holding steadfast to this over-simplified divide, it failed to monitor and respond to warning signs of Horizon's obsolescence despite the delivery of the department's strategic vision for POL being entirely dependent upon it?

Does BEIS concede that red flags including calls for judicial review by parliamentarians, the reports of independent forensic investigators and those of POL's own external auditors were ignored because of this over-narrowing of shareholder responsibility?

With the result that, by the time POL claimed to be in a position of 'existential threat', the boat had almost sailed with regard to shareholder intervention. Risk had already escalated to a level where it breached the operational/strategic divide, threatening the entire business model:

"....[If the Claimants' case were right] this would have a very serious impact on Post Office and its ability to control its network throughout the UK" and "If the Claimants were right in the broad thrust of their case, this would represent an existential threat to Post Office's ability to continue to carry on its business throughout the UK in the way it presently does" (83).

The Horizon controversy, however was no 'black swan' event; for years its ominous shadow had forewarned of crisis up-stream. Since 2000 a nation-wide pattern began to emerge of unexplained discrepancies causing 'temporary' branch closures with the effect that, for months on end, numerous communities had reduced access to Services of General Economic Interest which POL has a legal obligation to provide. The department knew this because MPs brought it to the attention of Parliament on many occasions and with the beginnings of a united front from 2010.

If the department failed to monitor the pattern and impact of business interruption across the network due to consistent issues of large, unexplained branch shortfalls, can it clarify why identifying the root causes of discrepancies in a rash of branches did not fall within the department's remit, being accountable as it is to Parliament for POL's compliance with the ministerial instruction to provide SGEI?

For this reason alone, did seeking independent verification of the viability of POL's IT System not override any operational/strategic divide?

And if such an overarching demarcation were valid, how does the department explain its written evidence to this committee which acknowledges the role of its UKGI Board representative in operational matters?

'In that capacity, the UKGI NED is one of four NEDs on the Post Office Board. The NED's role is to challenge management, including the CEO, on financial and operating issues and the strategy to execute the company's objectives' (84).

If operational and strategic are so divided, how does the department account for the significant detail of POL's risk and mitigations (including legacy IT) which feature in the Strategy Report of its parent company's Annual Report of 2015-16 (85)? How does it account for the 2016-17 POL Annual Report which notes the potential consequence of the complexity of replacing legacy IT as being the potential to 'significantly impact Post Office strategic objectives' (86)? How does it explain references to technology and to the reporting on major risks to the department within the Strategic Plan directives in POL's 2013 Articles of Association (87)?

On all counts, operational risk is clearly acknowledged to have the potential to impact on strategic delivery.

But without BEIS's oversight across such interfaces where 'operational' and 'strategic' overlap, without an understanding of how a risk domino effect may cross from one to the other, what mechanisms were parliamentarians expected to use to call POL to account on 'operational' issues?

According to Kevan Jones MP '...we are unable, as parliamentarians, to scrutinise the Post Office...Trying to scrutinise the Post Office and get it to account for that is virtually impossible. When I have asked parliamentary questions, they are referred to the Post Office'. ...'...because the Post Office is an arm's length body, the Department for Business, Energy and Industrial Strategy shift them over to the Post Office - it is at arm's length' (88).

In its refusal to engage in what it defined as operational, and in its routine deflection of complaints back to POL's own leadership - complaints precipitated by the weakness of that very leadership - was the department short-circuiting the vertical chain of accountability and creating a never-ending spiral of irresolution? Did BEIS's refusal to cross its self-imposed divide grant POL the freedom to behave as if 'answerable only to itself' (89)?

Was it a workable divide, did it help or did it exacerbate a coherent, 'joined-up' shareholder response?

The new Relationship Framework Document between the department and POL makes provision for greater shareholder input across the divide without compromising POL's autonomy with regard to its day-to-day running.

Does BEIS regret that this balance was not achieved prior to April 2020?

BEIS's Accounting Officer System Statement confirms that indeed operational risk, when it reaches a predetermined degree, falls under the radar of the BEIS Board:

'The Department's approach is to make a distinction between strategic and operational risks. The PFR Committee and the Departmental Board drive the identification of high-level strategic risks that are directly aligned to departmental objectives as formulated through the SDP. Underneath the strategic risks sit operational risks relating to the Department's objectives, which take the top risks from group or directorate risk registers. These risks are escalated to the PFR Committee when it appears that they are outside tolerance and threaten the delivery of the Department's objectives. This structure allows for movement of risks between levels so that the level of decision-making reflects the impact on the objectives' (90).

The point at which the level of 'outside tolerance' is reached, however, can only be assessed if appropriate levels of monitoring are in place.

1: BEIS: THE FAILURE TO SEE

Mechanisms for communication and accountability between POL and the department (via its representative UKGI) pre-date the 2020 Shareholder Relationship Framework Document; BEIS's Accounting Officer is a non-executive director of UKGI (91); UKGI represents BEIS on POL's Board and Audit Risk and Compliance Committee, UKGI's Chief Executive was a member of the board of BIS (92) whilst both he and a UKGI director were also directors of POL's parent company PSHC (93).

Such interconnectivity is designed to ease transparency and the monitoring of internal controls along the chain of accountability. It is intended to facilitate the management and communication of risk, and to allow the streamlined escalation of critical information to the sponsor department.

Rather than accepting its failure to use these channels for monitoring the unfolding IT risk at POL, the department has maintained the fault lies with POL. BEIS's Parliamentary Under-Secretary recently claimed 'during the unfolding of this scandal, BEIS officials were clearly misled by the Post Office and the information provided was not correct' (94).

Can the ascending levels of good governance really be misled? Only if there is a decision not to scrutinise.

And is the department satisfied with that explanation of being 'misinformed' as the end of the matter? If it considers itself to have been misled with regard to known flaws in Horizon, by whom?

Given what we now know of remote access to Horizon - the denial of which was central to POL's case - and given the devastating impacts to branch accounts of Horizon's known but undisclosed intermittent failings - does BEIS consider it acceptable for it to have been misled? Its partner organisation spent an estimated £100m - £120m in defending falsehoods and two decades securing a potential 918 convictions on evidence now proven to be unreliable. **Is the department happy to accept this level of misinformation without delivering consequences for those responsible?**

What signals or incentives does such lack of reprisal offer to its array of partner organisations regarding future compliance?

What steps has BEIS initiated to identify and bring to book those who misled the department, UKGI or the Board of POL? Why would the department not seek to identify those responsible for misleading its Minister and Principle Accounting Officer - themselves accountable to Parliament - when the consequence of POL's obfuscation has been as grave as wrongful imprisonment? And how can BEIS assure itself it is not still exposed to misinformation if those responsible for giving it guarantees today- at all three levels of risk assurance up to and including POL's Chair - may have been the perpetrators of yesterday's inaccuracies?

According to the departmental Under-Secretary 'BEIS relied on the Post Office management to investigate the issues with the Horizon system and the Government were assured that the system was robust... BEIS pressed management on these issues and was given consistent advice from the company's experts that appeared to verify those claims at the time' (95).

Will BEIS release correspondence in which these assurances were asked of and received from POL?

In the Horizon Issues Ruling, evidence provided by POL's expert was described unforgivingly by the Judge as 'fundamentally unsound', 'entirely circular', 'wholly flawed' and 'riddled with plainly unsupportable assumptions' (96).

Where is the empirical evidence which BEIS accepted and which gave the department such confidence in POL, its experts and its IT systems? On what basis did POL earn such trust from BEIS when its case was so weak in the cold light of the High Court?

The claim by the department to have been so deceived omits the fact that BEIS had an independent director representing its shareholder interests on POL's Board at all times, as well as on its ARC Committee, providing a clear window through which to glean everything it needed to know during the unfolding crisis.

1.1 EYES WIDE SHUT

According to BEIS's Accounting Officer System Statement:

'As part of the governance arrangements, BEIS and most of its partner organisations have established assurance bodies (e.g. Audit and Risk Assurance Committees, ARACs) which advise their management boards on governance, control and risk management. For those organisations with a more significant budget share and associated risks an internal audit function exists to provide independent assurance over the work of the organisation, with a representative of internal audit regularly attending meetings of the assurance board. This independent assurance provides a valuable link into the assurance needs of the Principal Accounting Officer' (97).

The Horizon Trial brought to light documents of significant relevance, some passing through its ARC, others approved by the POL Board itself - and therefore known to BEIS's representative.

"This document forms an update to the IT Strategy approved in July 2016 by the PO Board. In July we outlined that IT was not fit for purpose, expensive and difficult to change".

The same document also states that

"We need to quickly rationalise and resolve misaligned contracts enacted to support legacy IT, obsolescence, a lack of PO technical competence, particular focus on Fujitsu and Accenture" (98).

Of this, the Judge remarked 'A conclusion in terms that the IT is 'not fit for purpose' is not something that would have been reached lightly in an IT Strategy document, or approved lightly by the Post Office Board. The Post Office Board is a serious level within the organisation. The Board are not likely to be involved in, nor to have brought to their attention, matters that are anything other than serious, considered and fully researched' (99).

How did the department see so little from its ringside seat?

Can it explain how it failed to pick up on stark warning signs and instead believes itself to have been 'misled'? A primary purpose of its presence on POL's Board is to form an internal perspective, one more penetrating than assurances released by POL to the public domain. **Does BEIS concede that its shareholder presence is embedded within the layers of governance to help monitor performance and risk?**

Can the department confirm receiving the information of Horizon's unfitness for purpose in July 2016 - in which case it was not misled in the way it maintains - or did its representative fail to communicate this information?

Either way, a 'passive' response at any level of governance to this would not have been the appropriate one, least of all on the cusp of High Court action which had at its core the question of Horizon's fitness for purpose.

Many other internal POL communications uncovered during the trial expose an awareness of significant functionality issues with Horizon and its back end support:

'An internal Post Office IT risk management document from 2017 stated that "the HNG-X platform is end of life and is running on unsupported Windows software", that it needs replacing, and also that the "Branch counter technology is aged and unreliable, with frequent hardware failures, resulting in branch disruptions." Mr Godeseth agreed with all of this. The unsupported platform is Windows NT4. As Mr Godeseth put it, "any technologist would tell you that was too old" (100).

With branch discrepancies still occurring in the tens of thousands of pounds until as recently as 2017-18 (and the contentious HNG-X iteration of Horizon still in use in one of those affected, in October 2017) and with a representative on the ARC Committee how did the department not know about this?

Are we to believe this level of obsolescence and associated risk was hidden from POL's ARC Committee? Or was the department, even at this point, simply choosing not to see that which it considered 'operational'?

A 2014 Update to the Executive Committee on the Branch Support Programme, cited amongst its 6 key performance indicators:

- Reduction in subpostmaster suspensions as a result of audit shortages to a level of 60 per year
- Reduction of audit losses of £10k or over by 50%

As noted by the Judge, a target to reduce audit losses and SPM suspensions 'is not consistent with a view that the debt/suspensions/audit losses are incurred by carelessness on the part of SPMs or criminal activity' (101).

Was information such as this missed because between 2013-2015, critical years in the Horizon controversy, the department withdrew its appointee from POL's ARC Committee? Can it explain why, despite there being a government appointee on POL's ARC Committee 2012-13, there was no such representative from April 2013 until over half way through the 2015-16 financial year (102)?

This period, and the above 2014 Update, coincided with the presence of independent forensic accountants, Second Sight, who had Horizon under a microscope 2012-2015. They were invited to do so under the mediation scheme established at the behest of disconcerted MPs to investigate allegations of Horizon-generated shortfalls in branch accounts.

Does the department agree that withdrawing its presence from the ARC Committee at a time when all its questions regarding Horizon's integrity might have been answered means it must shoulder at least some of the blame for being 'misled'?

1.2: LOSING SIGHT OF SECOND SIGHT

During a June 2015 parliamentary debate, the department's Under Secretary of State misrepresented provisional findings of the outdated 2013 Interim Report Second Sight, to justify the department's decision to refuse a judicial review. Surprisingly he failed to draw conclusions from the extensive and highly critical 2014-15 Second Sight Briefing Reports produced after two further years of forensic investigation at the heart of POL (103).

The Second Sight Reports were the only objective gauge by which the department might assess Horizon and the validity of POL's assurances of its integrity. They identified multiple vulnerabilities and were proven through the course of the litigation to have been correct in every respect. Significantly they resonated with - and gave substance to - the internal concerns and warning signs which the department was failing to see.

We know from the recent written witness statement provided by the department for the BEIS Committee Inquiry that in August 2015 the reports were discussed between itself and POL:

'The Post Office Minister meets with POL to discuss the Complaint Review and Mediation Scheme, Second Sight reports and POL's approach to addressing issues raised about the Horizon system' (104).

Why did the department fail to take their evidence into consideration? Did it view them only through the myopic lens of POL? How did it not take into account POL's financial and reputational motivation for discrediting them and preventing their publication?

1.3 ERNST AND YOUNG: AN INDEPENDENT VIEW

In a public statement made by POL against allegations contained in the 2015 Panorama Programme, the company defended the integrity of its IT system claiming it was 'independently audited'.

Did the department's Accounting Officer turn to POL's external auditors, Ernst and Young, in order to corroborate the assurances given by its partner organisation to quell any doubts of 'propriety and regularity' or of Horizon's integrity?

Even a passing glance of their communications might have sufficed to reveal to the department that POL was not being entirely transparent regarding the question of remote access or the integrity of data used in investigations.

The findings of E&Y in relation to Horizon are referred to no less than eight times in the Horizon Judgement (105).

The E&Y Management Letter for the year ending March 2011, to name but one, identified main areas for focus as being IT governance and it urged POL to strengthen its review of privileged access noting 'Within the IT environment our audit work has again identified weaknesses mainly relating to the control environment operated by POL's third party IT suppliers' (106).

E&Y '...were unable to identify an internal control which the third-party service provider [Fujitsu] to authorise fixes and maintenance changes prior to development for applications' and 'There is an increased risk that unauthorised and inappropriate changes are deployed if they are not adequately authorised, tested and approved prior to migration to the production environment' (107).

Of this letter the Judge strikingly remarked:

'A company such as E&Y would not lightly refer to "again identified weaknesses" in the Management Letter for a particular year unless that conclusion had been reached after a high degree of professional and in depth investigation, of a type that even a lengthy adversarial trial such as this one cannot hope to replicate' (108).

Can the department explain its failure to consult the Management Letters of POL's auditors prior to the litigation, despite their detail and integrity being sufficient to warrant such attention by the Judge? Did BEIS's Accounting Officer, in pursuit of his personal satisfaction of 'likelihood of success' of POL's case, consult them prior to the department granting its assent to high-cost litigation? The department had a representative on POL's ARC Committee from at least as early as 2012- until April 2013. What did it know of these reports at the time?

Yet POL, it appears, like its sponsor department, took little heed, for again:

'In 2012, Post Office auditors observed that there were inappropriate system privileges assigned to the APPSUP role (which allowed amendments to the BRDB) (109).

And as far back as 2011, Ernst and Young had questioned the integrity of data in Credence which was used as evidence by POL in the prosecution of sub-postmasters (110). The Judge was emphatic in pointing to the need for ARQ Audit data to be consulted where a dispute arose over a discrepancy because of the incompleteness of Credence.

And presciently, with regard to the question of remote access and the integrity of non ARQ data which was used evidentially E&Y also reported:

"During our walkthrough of user administration of the front end of Credence we noted several users with administrator rights, including some generic users (...). These users have the access rights to create and amend reports, including those which may be relied upon for audit evidence. These users can change report design, and processing without documented request, test or approval. When users have the rights to change reports that are used by the business for reconciliation, exception reporting or other processing, there is the risk that the reports are manipulated either intentionally or accidentally."(111).

Minutes of POL's Risk, Compliance Committee of September 2013 showed that not all the risks identified in the recent E&Y had been addressed. Though heavily redacted, one entry details a risk not addressed '...relating to the communication by Fujitsu of changes made to the Horizon system, was still outstanding. It was identified that it would cost over £1m to implement the mitigation being suggested by the audit and that this was not proportional to the risk being managed' In my Judgement it does go to the robustness of Horizon' (112).

Were such insights communicated to the department by its representative on the ARC Committee? Not at this point in time because it had none; between 2013-2015 the absence of a departmental representative on the ARC Committee disabled the department's monitoring of such potentially far-reaching consequences of cost/benefit decisions. The impact of some, the Judge infers, compromised the robustness of Horizon.

E&Y continued to audit POL until at least the end of 2014 and their communications would have been available to the department for its scrutiny at any later point, along with unredacted committee minutes, had it chosen to corroborate POL's stance on Horizon (113).

1.4: POL'S SUSPENSE ACCOUNTS: OUT OF SIGHT, OUT OF MIND

Irrespective of BEIS's Framework Agreement with POL, departmental Accounting Officer (AO) responsibilities have always included the accounting for regularity & propriety of commercial businesses wholly or partly owned by the government, for safeguarding assets and for 'reporting irregularities and seeking explanations for unusual trends' (114). This is the case even where AO responsibilities are delegated to a partner organisation, as in the case of POL, although the departmental AO maintained direct AO responsibility over its parent company, PSHC, a limited company directly owned by BEIS and included in the consolidated Departmental Group accounts (115). The department's assurance of internal governance and financial reporting is essential because the Whole of Government Accounts includes POL; the integrity of WGA depends upon the integrity of departmental accounts (116).

In accordance with principles laid out in 'Managing Public Money' the Accounting Officer must ensure efficiency, economy, effectiveness and prudence in the administration of public resources and his office represents another line of accountability, another window into POL's workings and another lever of control over the company which has always been at the disposal of the department long before being formalised in its Framework Document.

Was explanation ever sought by the departmental Accounting Officer regarding POL's suspense accounts reported in 2014 to be in excess of £150m? The existence of these large, unattributed sums was revealed by Second Sight's reports (117). They constitute funds mysteriously accrued in Horizon which are absorbed into the profits of POL if the company fails to identify their correct destination. Their existence, according to the Judge, is 'a point directly relevant to the likelihood of Horizon's bugs, errors and defects having a potential impact upon branch accounts' (118). Even POL's own expert unwittingly conceded 'money that disappears somewhere has to pop up' (119).

Does the department agree that this irregularity - noteworthy in scale - ought to have been brought to the attention of its Accounting Officer? If so, by whom? How was it apparently missed by the financial reporting mechanisms? Was the department alerted to these accounts by Second Sight's reports, if not when did BEIS learn of POL's suspense accounts?

Did BEIS's Accounting Officer eventually recognise this serious irregularity for the alarm bell that it was? Should he have investigated how such large and unallocated funds could accrue in a system deemed 'fully fit for purpose'?

As the department itself acknowledged in a 2015 Commons Debate:

'The Post Office handles large amounts of public money every day and operates a trusted role in communities, so it is vital that it has processes in place to protect that money and guard against fraud or theft' (120).

The Government is customer, as well as funder and owner of POL. **What assurances did BEIS's AO seek that the accounts of government's contracting entities - among them HMTreasury, Home Office, Cabinet Office, DWP - were not impacted? Was he certain that the processing of payments of social benefits, tax credits and public utility services were handled securely by a system which generated such large unaccountable sums?**

A 2019 letter from BEIS's Accounting Officer to POL's CEO demonstrates the readiness, in its capacity as funder, for BEIS to exert innate AO powers - on this occasion to exact repayment of £2.3m of government funding wrongly allocated by POL to its legal costs:

'As Principle Accounting Officer I am personally responsible for ensuring the department has a high standard of governance and exercises effective controls over the management of resources, including those of its partner organisations' (121).

What was the mechanism by which this was brought to the attention of the departmental AO? Why was there apparently no parallel channel through which the irregularities of POLs suspense accounts were reported and escalated?

For Accounting Officer duties of oversight are not limited only to the funding relationship between itself and POL:

'The Accounting Officer of the Department is responsible for ensuring that appropriate systems and controls are in place to ensure that any grants that the Department makes to its sponsored bodies are applied for the purposes intended and that such expenditure and the other income and expenditure of the sponsored bodies are properly accounted for, for the purposes of consolidation within the resource accounts' [Emphasis added] (122).

So with regard to POL's inflated suspense accounts, and with regard to the looming costs of large-scale litigation, BEIS was duty bound to investigate rigorously what was going on. It is for the Accounting Officer to ascertain when issues are 'sufficiently tricky or significant to merit his or her intervention' (123), it is for the Accounting Officer to be personally satisfied that the reporting of management information is sufficiently accurate and complete to support his or her decisions.

Did the department apply sufficient scrutiny, via the innate authority of its AO, to enable it to determine POL's likelihood of success and therefore 'value for money' criteria for the litigation?

'When the accounting officer of a public sector organisation faces difficult decisions, he or she needs to be clear that the actions of the organisation can be justified if called upon to explain them, whether in parliament or in public.

This is a personal responsibility. It calls for judging risks, balancing competing objectives and dealing with uncertainty. It is the accounting officer's job to make the best assessment he or she can, integrating, sifting and weighing all the factors' (124).

If BEIS failed to take into account the suspense accounts, if it failed to take into account information provided by POL's auditors, by Second Sight and disclosed in minutes of POL's Board and ARC Committee, which showed that both had been alerted to IT obsolescence, can it claim to have made an informed and qualified assessment of what was happening, as it was duty-bound to do, before assenting to the litigation?

2: BEIS: THE FAILURE TO ACT:

'Control is evidenced by the ability to control, not by the actions of controlling. Where a department has a continuing right to exercise overall control but chooses not to do so, that still amounts to control' (125).

Mechanisms of control over POL are multifaceted, BEIS is sole shareholder, funder, policy director and Board member as well as customer. **Did BEIS maintain the necessary clarity between these functions for effective governance?** (126).

Powers derived from the ownership of a public non-financial corporation are significant. POL's Articles of Association (recently updated) confer rights to the Special Shareholder which give the department levers of both active and passive control. They include the approval of appointment or removal of directors, CE and Chair, (127), the issuing of directives (128), access to information (129), and the approval of transactions or liabilities over £50m (130).

Prior to April 2020 who defined the explicit triggers for shareholder intervention? Who was responsible for monitoring these protocols?

Were they consistent with triggers across the department's partner organisations? Without a Framework Document, who bore ultimate responsibility for ensuring relationships between the department and POL functioned efficiently and that channels of communication were unobstructed from POL through UKGI up to BEIS in order that it could legitimately be held accountable to Parliament for the actions of its partner organisation?

2.1: INACTION ON THE POL BOARD:

As a member of the POL Board vicariously through UKGI, the department was a position to assess if POL's capability and its reporting infrastructure was sufficiently strong for the delegations and freedoms it has been granted. But the role is more than passive observer, it functions as another lever of influence.

How could BEIS use this lever, or its representative effectively fulfill responsibilities as Board Member, if the department predetermined a 'passive' approach?

On the department's non-executive director on POL's Board, BEIS's Under-Secretary of State recently commented 'His role has evolved from a perhaps more passive approach to a much more active one going forward. We have to have a much stronger view about how we manage this area, through the chief executive, the chairman and the non-executive director with responsibility for governance and clear adherence to the responsibilities of the board itself' (131).

Is this admission that the departmental representative did *not* previously adhere to the responsibilities of board membership?

Is a 'passive approach' consistent with POL Board Terms of Reference which stipulate 'collective responsibility' of its members and make no exception for inaction on account of the government-appointed NED (132)? There is no distinction in law between executive and non-executive directors; defined in the 2006 Companies Act they share the same responsibilities, liabilities and duties which include the exercising of independent judgement, reasonable care, skill and due diligence. They also share the same rights of access to sensitive company information (133).

Is a 'passive' NED able to constructively challenge and analyse management performance, or to ensure company compliance with the rule of law? Even UKGI, whose own representative sits on POL's Board, recognises the importance of 'a strong set of non-executive directors ...who play a critical role in the effectiveness of an ALB' in determining critical success factors for strong governance between departments and their partner organisations' (134).

Effective risk management - both on a company and on a departmental level - is an integral component of good governance. It relies on the integrity of information provided. It is therefore an essential and an active function of a board and ARC Committee to satisfy itself of the reliability and comprehensiveness of the information it receives and upon which its decisions are made. It is not a function which can be undertaken 'passively'.

Had the department adopted a 'much more active' approach it might have drawn upon its powers to verify, in the midst of hot contention, whether it was being misled by POL's assurances: for the departmental presence both in capacity of POL Board and ARC membership had the authority to engage independent investigations:

'A non-Executive Director may, in the performance of due diligence, seek professional advice independently and at the expense of the company, if deemed necessary' (135).

And, according to the POL ARC Terms of Reference, the Committee 'shall have the power to conduct or authorise investigations into any company matters within the Committee's scope of responsibilities. The Committee shall be empowered to obtain independent legal advice, and engage counsel, accountants, or others to assist it in the conduct of any investigation' (136).

In the presence of so much evidence pointing to IT problems, can the department explain why it failed to actively seek such independent assurance? How did POL earn such unswerving trust of the department?

In fact, according to its recent witness statement submitted as written evidence to the BEIS Select Committee, the department revealed that in September 2015:

'The Post Office Minister commissions POL's new Chair to undertake a review of POL's Horizon system and handling of postmaster issues' (137).

But it goes on to say that the review was halted following commencement of legal proceedings lodged against POL by the JFSA in April 2016.

Can the department elaborate on why, having apparently taken the initiative of instigating an investigation into Horizon, it was abandoned at the precise moment, pre-litigation, that it needed to know all the facts regarding Horizon's functional accuracy? Will BEIS release correspondence between itself and POL regarding why this was halted and can BEIS explain why it agreed? Did the department suspect POL may have stood down investigations because it feared they could surface evidence to undermine its defence in pending litigation?

2.2: INACTION REGARDING A JUDICIAL REVIEW

During a debate of June 2015 - the department received requests from MPs for a judicial inquiry into POL's Horizon controversy (138). **Despite their deep concerns and by now the involvement of the Criminal Case Review Commission in reviewing fifteen POL prosecutions for potential miscarriage of justice, why did the department not use this opportunity for independent scrutiny?**

'I do not see any reason for the Government to intervene in this matter by instigating a full judicial inquiry' (139).

Does the department agree that, had it launched a judicial inquiry in 2015, revelations might have accelerated a re-orchestration in the way it managed its relationship with POL? Does it agree, had a judicial inquiry surfaced Horizon's problems and victims compensated at that point, the High Court litigation could have been avoided?

An Early Day Motion of September 2015, signed by 40 MPs, urged the Government 'to establish a full independent judicial inquiry' (140). **In hindsight was it wise for the department not to have acted on parliament's recommendation?**

2.3: INACTION: THE SHAREHOLDER'S RIGHT TO INFORMATION

BEIS's new Framework Agreement makes provision for the 'proactive' sharing of information - even that subject to legal privilege - between POL and its sponsor department in order for it 'to properly exercise the Shareholder function' (141).

This inclusion of knowledge-sharing protocol anticipates circumstances where the performance of meaningful oversight might depend upon the disclosure of critical, if sensitive, information.

But for the department and POL, this has always been the case. Would that BEIS had heeded the words of its own intermediary, UKGI, which recognises 'the granting of autonomy to deliver comes with an obligation for transparency' (142).

Does BEIS regret that ineffective reporting structures within POL were not identified before the delegation of so much authority to POL's Board?

The rights of access to information belonged to the department both as Holder of the Special Share - by virtue of POL's Articles of Association - and by the 2011 Postal Services Act which gives the Secretary of State authority to prescribe disclosure by order:

'... the Special Shareholder shall be entitled to request such information in relation to the affairs of the group (or any particular member of the group) as it may consider necessary or desirable' (143).

'Disclosure is permitted:

c) for the purpose of facilitating the carrying out by the Secretary of State, the Treasury or the [Competition and Marketing Authority] of any of their functions under this Act.

e) in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings.

f) for the purposes of any civil proceedings brought as a result of this Part or any prescribed enactment.

3) In subsection 2) 'prescribed' means prescribed by an order of the Secretary of State' (144).

Judge Fraser comments on POL's resistance to disclosure - a recurrent theme not only of this litigation but one which characterises POL's behaviour from Horizon's launch - as an 'extreme sensitivity (seeming to verge, on occasion, to institutional paranoia) concerning any information that may throw doubt on the reputation of Horizon, or expose it to further scrutiny' (145).

Does BEIS agree that such behaviour is diametrically opposed to the level of trust placed in it by the department and that confidence in an organisation is rightly earned by transparency not by secrecy?

Does the department concede that its innate powers could have been exercised at its discretion in the ways indicated in the Framework Agreement during the years which lead up to the High Court Litigation? Might such action have enabled the department to establish more clearly the facts regarding the occurrence of bugs/errors/defects in Horizon and potentially averted alleged miscarriages of justice perpetrated behind POL's closed doors?

Does the department agree that POL's aversion to disclosure was not only an early warning sign whose significance it failed to register, but it frustrated the judicial process in a way which was 'the antithesis of co-operation, which the Civil Procedure Rules expressly require' (146)? Does the department regret not exercising its authority in prompting POL to a greater level of cooperation with regard to disclosure?

A former Post Office Minister spoke in a recent Lords debate of her personal disquiet with regard to the Horizon controversy confessing: '...as the Minister responsible at the time, I was uneasy because it involved claims of dishonesty by apparently honest citizens. I therefore advised the Post Office to take outside legal counsel to try and get at the truth' (147).

How widespread was this sense of 'unease' within the department, and why did BEIS not exercise its statutory powers regarding disclosure in matters pertaining to litigation in order to insist it 'got to the truth'?

Throughout the period of the Horizon controversy, Criminal proceedings involving sub-postmasters were initiated not by the police or the Crown Prosecution Service but by POL in its capacity as prosecuting authority. Concerns regarding miscarriages of justice were being openly discussed in Parliament in 2014 (148), according to the CCRC 'The former CEO Paula Vennells spoke quite openly about these cases in the press' (149) and a letter sent by Vennells to BIS in 2015 acknowledged 'You will know that, more recently, the Post Office's conduct on legal matters, such as prosecution, has been questioned' (150).

What does BEIS consider to be the function of its statutory powers to enforce disclosure if not to facilitate oversight, to prevent the department from being misled and to embed checks and stays in POL's powers as a prosecuting authority? Who, if not the department, was entrusted with the authority to maintain the equilibrium of oversight in the absence of Crown Prosecution involvement?

What can it say about its failure to take ownership of latent powers which it only now sees fit to incorporate into its long-overdue Framework Document?

POL is now investigating an additional 918 of its historic prosecutions in addition to the unprecedented 39 cases already referred by the CCRC to the Court of Appeal and 22 pending review.

Is the department comfortable that perhaps the largest miscarriage of justice in British legal history, has been delivered by its partner organisation on its watch?

Who will decide if POL should retain powers to bring about prosecutions in the event of the Court of Appeal finding 'abuse of process' in cases under its review? The Post Office has been found by a High Court Judge to have argued its case on false premises time after time. Regarding its failure to admit to the fundamental question of remote access he commented:

'I consider the significance of the previously factually untrue statements to be considerable...The situation was pleaded to by the Post Office in its General Defence, with a statement of truth. This also turned out not to be correct' (151).

Is such a cavalier approach to the truth in dealing with sub-postmasters, the public, the department, the BIS Select Committee, parliament, the High Court and the courts which signed off hundreds of previous convictions, is this compatible with the highest ethical and procedural standards of a prosecuting authority? Does the department agree that POL must relinquish its powers of prosecution until it demonstrates - rather than simply promises - a new commitment to transparency? Does the department recognise that POL's track record on 'truth' renders a full Judicial Inquiry the only viable instrument of investigation capable of restoring public confidence in a transformed POL?

2.4: THE SHAREHOLDER'S INACTION WITH REGARD TO POL'S LEGAL ACTION

According to its Articles of Association POL must obtain permission of its Special Shareholder before an undertaking which may incur a liability in excess of £50m

How confident is BEIS's Accounting Officer that his personal scrutiny of POL's defence was sufficiently rigorous before sanctioning engagement in litigation with costs of the magnitude incurred at the High Court? Does BEIS consider the level of his scrutiny commensurate with the weight of risk carried by POL - and by default the department- of pursuing the litigation? In considering whether the proposition offered 'value for money' how did he calculate if the costs were likely to translate into a reasonable return?

The Horizon Judgement found Legacy Horizon to be 'not remotely robust', even pre-action correspondence of July 2016 revealed POL's acknowledgement of Horizon's potential for creating errors (152). **How was the departmental Accounting Officer so mistaken in his assessment of the likelihood of POL's success at the High Court?**

Was this because of the department's failure to independently verify POL's word and to take account of the heavy commercial bias of its narrative?

Does the department's Accounting Officer consider POL's legal costs (estimated to be £100-£120m) in defence of a case which resoundingly failed and arguably ought never to have been undertaken represents 'value for money'?

In the post-judgement landscape does BEIS consider a prolongation of litigation through the Court of Appeal represents 'value for money' should POL contest the allegation of its 'abuse of process'?

The new Framework Document stipulates that quarterly updates be given to the Shareholder on any active litigation.

What was the regularity of reporting from the outset of Post Office's action at the High Court? Were the protocols which guided the appropriate frequency and detail of reporting adequate? Who was responsible for reviewing these protocols?

Was the department given accurate and transparent projections of POL's legal costs during the course of the litigation and how they might impact on the overall company financial forecasts? What assurances was BEIS's Accounting Officer able to give his department that POL could access the necessary level of funding in the event of it losing at the High Court? Will the department be passing correspondence between itself and POL pertaining to the costs of litigation to the Public Accounts Committee for its scrutiny? Was BEIS satisfied that POL's risk parameters were compatible with its own risk appetite and at what it point, if at all, did risks pertaining to POL's litigation feature on the risk matrix of BEIS (153)?

What was the level of BEIS's forewarning of POL's attempt to remove the judge mid-trial on account of alleged bias, a strategy costing an estimated £500k? Was the department's permission sought before such liberal, reputationally damaging and ultimately futile expenditure? Ought it to have been? Or was the department party to the cost/benefit discussions regarding this decision? Given the application for the Judge to recuse himself was dismissed by Lord Justice Coulson as 'misconceived', 'fatally flawed', 'untenable', 'absurd' and 'never had any substance' does the department consider this to have been a reasonable use of resources (154)?

Based on the estimated quantum losses of cases examined under the original mediation scheme was BEIS given, or did it seek, estimates of potential compensation costs of the group litigants in 2016/17/18/19? What assurance did the department seek that POL had learned lessons from POL's material understatement of compensation owed through the network transformation programme which in 2015 triggered shareholder intervention (155)?

An average figure of £700k damages per head was estimated during the 2013-2015 mediation scheme regarding Horizon. This represents a figure of £389m when multiplied by the number of Claimants in the Group Litigation.

How regularly were estimates of potential damages updated 2016 - 2019 and did POL give any indication of how many SPMs might come forward in a second wave of complainants if it were to lose at the High Court? Were estimates of this figure sought by BEIS on the basis of known number of convictions by POL of sub-postmasters for branch discrepancies since the roll out of Horizon in 2000 (Now estimated by POL to be in excess of 900)?

Was the Accounting Officer of BEIS satisfied that in 2017 the impending High Court Litigation posed 'no material threat' to POL, as declared in its 2015-16 and 2016-17 Annual Reports and the final Annual Report of its parent company before liquidation (156)? How did the department go about independently verifying this evaluation?

How concerned is the department that costs arising from POL's Historical Shortfall Scheme and potential damages relating to 918 historic prosecutions under review will have serious impact on POL's financial forecasts? What does it estimate these costs to be? By how many years could this set back the department's strategic vision, delaying plans for the commercial sustainability of POL and the BEIS's aspirations for a dividend policy?

Future cases brought by affected sub-postmasters will receive, in all probability, proportionally far more compensation than the Group Litigants, because those eligible for the Historic Shortfall scheme will not rely on costly third-party funding structures.

Does BEIS agree that inalcitrant denials of its partner organisation and the 'institutional obstinacy or refusal to consider any possible alternatives to their view of Horizon'(157) which the department failed to curtail, left innocent sub-postmasters no option to but to resort to funding whose costs were so high most will not recover even the sums of their phantom shortfalls?

Does the department believe justice has been done and that the Claimants have received fair recompense for their suffering?

3: DID BEIS FAIL TO BRING FORMAL CLARITY TO THE PARTNERSHIP?

'Nearly all government departments sponsor arm's length bodies for which they take ultimate responsibility whilst allowing a degree of (or sometimes considerable) independence. Effective relationships and partnership working between departments and arm's length bodies, a mutual understanding of risk, and a proportionate approach to monitoring and reporting are critical. The Principle Accounting Officer should consider the organisation's overall risk profile, including the risk management within arm's length bodies, who should have their own robust and aligned arrangements in place. Informative and transparent management information should enable departments and arm's length bodies to promote transparency and understanding in achieving the effective management of risks, including the timely escalation of risks, as necessary, based on agreed criteria' (158).

[For definitions of the term 'Arm's Length Body' see Appendix].

This HM Treasury document sets out the essential nature of departmental oversight of arm's-length bodies including those, like POL, which enjoy 'considerable independence'. It is echoed in BEIS's own Accounting Officer System Statement of 2017:

'For each partner organisation, as well as the regular financial and delivery reporting through BEIS's performance management framework, there will be an ongoing relationship with the Department. This relationship is owned by named sponsors within BEIS to lead on discussions of relevant policy development and governance of the partner organisation itself. Interaction with the wider Department, either at a day-to-day administrative level with finance teams or strategically with senior management and ministers *is driven according to need and the level of risk to which the partner organisation and department is exposed*' [Emphasis added](159).

Questions must now be addressed regarding the levels of the department's own governance and risk monitoring capabilities during Post Office's Horizon controversy, in particular during the transition from BIS to BEIS, the Machinery of Government Programme, and the department's own Transformation Programme aimed at bringing BEIS's partner organisation governance in line with Cabinet Office Codes of Good Practice of 2017.

Even before this time the department was undergoing Partner Organisation reform under the wider BIS 2020 Transformation Programme, aspiring to 'embed reforms to improve the governance and efficiency of our portfolio of Partner Organisations' (160).

Reviewing the effectiveness of its own governance and risk management, BEIS's 2017-18 Annual Report acknowledged weaknesses of the previous year which had identified the 'need to develop a risk management framework' and 'implement a new methodology to engage and work with partner organisations' (161). As a result, it claims, 'Work has begun and will be continued over 2018/19 to strengthen the process and quality of partner organisations' risk assessments' (162).

During the 2017-18 financial year GIAA rated BEIS's corporate governance as 'Moderate', (and at which it remains) a level it defines as: 'some improvements are required to enhance the adequacy and effectiveness of the framework of governance, risk management and control' (163). It was only after establishing a risk framework and a single departmental risk register that in 2017-18, BEIS was considered to have 'a clearer view of the risks to the Department' (164). The complexities of transition meant it 'faced a considerable challenge in setting a consistent, core internal control environment' (165).

'Over the coming year the leadership team will focus on a greater degree of consistency across: risk management; internal controls; and partner organisation relations. This is clearly in line with the recognised need to embed newly introduced systems, *improve the line of sight into partner organisations...*' [Emphasis added] (166).

The 2017-18 BEIS Annual Report details the areas of divergence from Cabinet Office guidance on Corporate Governance which had been identified in the previous financial year to have included: 'the absence of risk appetite/tolerance levels from the Board'. Regarding this non-compliance it explained:

'The BEIS Departmental Board agreed when it was formed in 2016 that risk appetite and tolerance levels would emerge through the early decisions on major strategic issues rather than an explicit exercise to define risk appetite in itself' (167).

This failing meant that in 2016-17, BEIS did not even attain 'Moderate' for its internal audit review of framework of governance, risk management and control, judged instead to have achieved only a 'Limited' rating (168).

Internal audit that year identified 'a number of areas of weakness across the Department reflecting a limited number of areas of poor control design and operation and weak operational frameworks' (169).

In 2016-17 it was stipulated improvements would be gained from 'developing the relationship model to reinforce the lines of accountability so that there is *clear authority to take action when required; and ensuring framework documents, memoranda of understanding and similar documents are up-to-date, accurate and reviewed regularly*' [Emphasis added] (170).

The 2016-17 Annual Report goes on: 'The Internal Audit process has identified several gaps in policies and internal controls as well as instances of non-compliance that will require leadership action to rectify. This has led to BEIS having a limited level of control over the reporting period. *The Machinery of Government (MoG) Change has also had an impact on the overall quality of governance over the reporting period, leading to short-term challenges linked to risks and governance. ... looking to the future there is a recognition of:...the need to improve risk management in line with the 'new framework'* [Emphasis added] (171).

'Limited' assurance rating is defined as having '*significant weaknesses in the framework of governance, risk management and control such that it could be or could become inadequate and ineffective*' [Emphasis added] (172).

What evidence can BEIS provide to prove that its oversight of POL was not a casualty of the department's transition period? Was POL's crisis 'lost in transition', neglected by 'inadequate' and 'ineffective' governance? Was it the result of a failure to implement the new methodology to effectively engage and work with Partner Organisations in a timely fashion? Does the department concede that, had it addressed the Horizon issue at its pre-litigation zenith, when the collapse of the mediation scheme prompted calls for an inquiry, a more active Shareholder stance could have avoided the expense and humiliation of the High Court?

Does the confusion of departmental transition go some way toward explaining how POL's Horizon controversy and its fatally flawed defence fell, undetected, through layer upon layer of risk management for so many years? Did it simply never hit the scale of departmental intervention because the triggers had never been calibrated or ratified in a formal agreement and in any event BEIS's Board had agreed to set itself no upper limit with regard to risk tolerance, whilst choosing to 'focus elsewhere' (173)?

Was this a contributing factor to its partner organisations' immense risk-taking and entire suspension of reason in the way in which it conducted its legal affairs? Can BEIS prove that its own shortcomings did not play a role in the finale of the largest miscarriage of justice in British legal history?

3.1: 'IMPROVING THE LINE OF SIGHT INTO PARTNER ORGANISATIONS' (BEIS, 2018, (174))

The Shareholder Relationship Framework Document between BEIS, its representative UKGI, and POL was brought into effect on 1st April 2020 (175). At long last it clarifies departmental responsibilities and powers, setting out channels for their appropriate and timely execution in the way specified as far back as 2014- 2015. **Why was no such foundation laid before this date in accordance with HM Treasury guidance, BEIS's own policy and governance guidelines of UKGI (176)?**

'Each partner organisation is overseen by a sponsor team in the core Department which agrees and captures the organisation's remit in a framework document. The sponsor also monitors and challenges performance and works with the partner organisation or wider network body to support its high level aims. All partner organisations are established with governance arrangements that are appropriate to both their mission and legal form, and with processes for engagement with the Department that allow them to function and deliver with the appropriate balance of autonomy and accountability' (177).

Had such protocols been formalised earlier to clarify the ownership of risk and to cover exactly the eventualities which framework agreements are designed to pre-empt, might BEIS have exercised more meaningful oversight in the years leading up to the Horizon controversy? Would it have prevented the department from being 'misled'? Could a more active and intelligent shareholder stance along the lines now drawn up have averted POL's crisis?

Who initiated the drawing up of this agreement, BEIS, UKGI or POL?

To what extent has BEIS's belated Framework Document been shaped by the effects of failures in departmental oversight of POL, an absence which BEIS must recognise yet publicly refuses to acknowledge? Does it concede this agreement makes visible strategies of sound governance which the department might have deployed all along through the channels which already existed?

BEIS: SUMMARY QUESTIONS

Is BEIS's over-simple explanation of its over-trusting POL adequate acquittal for those who's lives were left in ruin as a consequence?

Given its internal presence in POL, does the department accept it must bear some responsibility for validating the reliability and integrity of the information it received and upon which decisions of far-reaching consequence were based?

Does it accept that, when the risk-management function in relation to Horizon was not given adequate weight in company-wide decisions, it was symptomatic of a failure of the governance system within POL?

BEIS was embedded in that governance structure via its UKGI representative. Does it agree its position at ARC Committee and Board level rendered it perfectly positioned to monitor, evaluate and communicate company-wide risks between senior management, executive and government levels?

Whether BEIS undertook that role actively or passively was a question of its own choosing. And the repercussions of its choice are that BEIS as sole shareholder failed to grasp that POL's world-view was conspicuously founded on, in the Judge's words, 'bare assertions and denials that ignore what has actually occurred', 'maintained regardless of the weight of factual evidence to the contrary' and 'the 21st century equivalent of maintaining that the earth is flat' (178).

If the department failed to identify that POL's mindset was itself a risk factor, it was as much the result of BEIS's own inertia as it was of being misled. It was result of weaknesses in its own approach to leadership - identified by its own reviews - in a relationship owned by the department . It was a consequence of the department's persistent reliance on the biased view of a single party, despite the gravity and longevity of a dispute which begged a second opinion at every turn.

The department's blinkers against all things 'operational' were worn with an irrational obstinacy matched only by its partner organisation.

Does BEIS accept its passive approach to oversight was a tool in the armoury of POL's oppressive reign allowing it to victimise sub-postmasters unchecked for two decades?

What has been the ultimate cost?

Who has borne the ultimate cost?

A measure of the impact on hundreds of the Claimants lives is to be found in the rationale issued by their legal team itemising fifteen different categories of loss used to calculate their claims:

'Shortfalls, Loss of Appointment, Loss of Earnings during suspension, Contractual Notice Losses, Handicap on the open labour market, Stigma/Reputational Damage, Personal Injury, Bankruptcy expenses, Harassment, Legal Fees for civil proceedings, Legal Fees incurred, Professional fees, Staff redundancy costs (for Subpostmasters who were terminated or forced to resign), Loss of value in the business premises, Loss of residential home (for example, where repossessed), Loss of value in any other personal/tangible property' (179).

The department was the silent passenger on what it has referred to as POL's 'adventure' (180). **If its back-seat approach to governance rendered it incapable of detecting weak governance, malpractice and IT obsolescence at the core of POL's operations, can BEIS explain why it is innocent sub-postmasters who must pay the heavy price of corporate and departmental failings?**

For it is the victims' endeavours at the High Court, their efforts and their £46m expense over and above this appalling litany of damages, which has given POL the platform from which to regenerate its entire business model, its contracts, its investigations and its ethical practices. And it is upon this platform which the successful delivery of BEIS'S strategic vision depends.

Does the department concede it is the victims who have effectively exercised its function of oversight through twenty tortuous years?

Does it accept that it is they, not the sponsor department, who have effectively sponsored POL's rejuvenation and it is the victims, not the government, who have effected good governance?

REFERENCES

1: Horizon Issues Judgement p7, para 18:

<https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-judgment.pdf>

2: UKGI ANNUAL REPORT 2015-16 p13, 8.

<https://www.gov.uk/government/publications/ukgi-annual-report-and-accounts-2015-16>

3: Susannah Storey was the government appointed ShEx representative at POL from July 2012.

She is named as a company director in the 2011-12 POL ANNUAL RETURN:

<https://beta.companieshouse.gov.uk/company/02154540>

4: UKGI ANNUAL REPORT 2015-16 p6, para 2:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535869/UKGI_2015_16_annual_accounts.pdf

5: Farncombe Post Office in Surrey was audited in October 2017 and found to have an alleged £57k shortfall. It had not at that point been updated to the HNG-A version of Horizon said to have been implemented in April 2017.

6: Horizon Issues Judgement, December 2019 p302, para 975 & 976:

<https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-judgment.pdf>

7: POL ANNUAL REPORT for 2016-17 indicate UKGI's Richard Callard attended 7/7 ARC Committee meetings (p26), POL ANNUAL REPORT for 2017-18 show Callard attended 5/5 ARC Committee meetings (p20) and

POL ANNUAL REPORT for 2018-19 show the new UKGI representative, Tom Cooper, attended 5/5 ARC Committee meetings (p18).

POL ANNUAL REPORT 2016-17:

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzE5NDU2ODgzMGFkaXF6a2N4/document?format=pdf&download=0>

POL ANNUAL REPORT 2017-18:

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzIxNzA2NjQ5MGFkaXF6a2N4/document?format=pdf&download=0>

POL ANNUAL REPORT 2018/19:

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzI0NzMwNTUyOWFkaXF6a2N4/document?format=pdf&download=0>

8: The 2012-13 POL ANNUAL REPORT indicates that ShEx's Susannah Storey attended 3/3 ARC Committee meetings in this financial year (p41 & 44):

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzA4NDMyMzM3NmFkaXF6a2N4/document?format=pdf&download=0>

9: Lord Duncan Springbank, All Lords debate 4th February 2020:

'We have a non-executive director who is responsible for representing the department and the Government. His role has evolved from a perhaps more passive approach to a much more active one going forward'.

<https://www.theyworkforyou.com/lords/?id=2020-02-04b.1709.0>

10: Horizon Trial Judgement Technical Appendix, December 2019

p112, para 444:

<https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-appendix-1.pdf>

11: Technical Appendix see ref 10, p110, para 434.

- 12: Horizon Issues Judgement (see link ref 6) p178-179, para 604-606.
- 13: Horizon Issues Judgement (see link ref 6) p180, para 610.
- 14: Technical Appendix (see link ref 10) p110, para 434.
- 15: Horizon Issues Judgement (see link ref 6) p302, para 971.
- 16: Internal document cited in a summary of Day 1 of the Horizon Trial, posted on Nick Wallis's site 'Post Office Trial' which includes court transcripts:
<https://www.postofficetrial.com/2019/03/horizon-trial-day-1-post-office-it-not.html>
- 17: Horizon Issues Judgement (see link ref 6) quoting from a Technology Strategy Update Decision Paper of January 2017 p297, para 953.
- 18: The Update Decision Paper was quoted further in a summary of Day 1 of the Horizon Trial, posted on Nick Wallis's site 'Post Office Trial' which includes court transcripts:
<https://www.postofficetrial.com/2019/03/horizon-trial-day-1-post-office-it-not.html>
- 19: UKGI ANNUAL REPORT 2018-19 p38:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817665/UKGI_Annual_Report_and_Accounts_2018-19_WEB.pdf
- 20: Horizon Issues Judgement (see link ref 6) p110-112, para 369-374.
- 21: Horizon Issues Judgement (see link ref 6) p161, para 536.
- 22: Horizon Issues Judgement (see link ref 6) p217, para 690.
- 23: Horizon Issues Judgement (see link ref 6) p218, para 692.
- 24: Horizon Issues Judgement (see link ref 6) p218, para 694.
- 25: Horizon Issues Judgement (see link ref 6) p118, para 393-394.
- 26: Horizon Issues Judgement (see link ref 6) p70, para 219.
- 27: Horizon Issues Judgement (see link ref 6) p283, para 906.
- 28: Horizon Issues Judgement (see link ref 6) p285, para 911 & p283, para 905.
- 29: Horizon Issues Judgement (see link ref 6) p74, para 229.3.
- 30: Horizon Issues Judgement (see link ref 6) p289, para 923.
- 31: Judge Stewart's summing up, Day 7 of Seema Misra trial p60-61, October 2010:
<https://journals.sas.ac.uk/deeslr/https://journals.sas.ac.uk/deeslr/article/view/2217article/view/2217>
- 32: Horizon Issues Judgement (see link ref 6) p307, para 1000.
- 33: Horizon Issues Judgement (see link ref 6) p288, para 922.
- 34: Horizon Issues Judgement (see link ref 6) p60, para 180.
- 35: Horizon Issues Judgement (see link ref 6) p76-77, para 236-237.
- 36: POL Audit, Risk and Compliance Committee Terms of Reference used to be published on [Corporate.postoffice.co.uk](http://corporate.postoffice.co.uk) under 'Our Leadership'. This quote is from p5, point 24. The document is no longer publicly available, being superseded by the revised POL Audit, Risk and Compliance Committee Terms of Reference, which cites its authority to:
'Obtain, at the company's expense, independent legal, accounting or other professional advice on any matter if it believes it necessary to do so' p7, D 55:
http://corporate.postoffice.co.uk/media/47095/20200409_pol_arc_termsofreference_approved.pdf
- 37: Horizon Issues Judgement (see link ref 6) p136, para 447-449.

38: Horizon Issues Judgement Technical Appendix (see link ref 10) p42-44, para 163-171

39: Horizon Issues Judgement (see link ref 6) p76, para 234.

40: Common Issues Judgement March 2019 p132, para 471:

<https://www.judiciary.uk/wp-content/uploads/2019/03/bates-v-post-office-judgment-no3-15-mar-19.pdf>

41: References to the reports of external auditors Ernst and Young occur in the Horizon Trial Judgement (see link ref 6) in the following paragraphs: 264, 393-394, 504-505, 689, 789-790, 791, 869, 914-915. See also BEIS questions 'Ernst and Young: An Independent View' p21-23

42: Paula Vennells, Post Office Whistleblowing Policy (2016-17) p3:

<https://www.whatdotheyknow.com/request/376630/response/919953/attach/html/5/Post%20Office%20Whistleblowing%20Policy%20Redacted.pdf.html>

43. Postal Services Holding Company ANNUAL REPORT 2015-16, Companies House:

<https://beta.companieshouse.gov.uk/company/04074919/filing-history/MzE2NjY3MjgwNGFkaXF6a2N4/document?format=pdf&download=0>

44: Postal Services Holding Company ANNUAL REPORT 2015-16 see ref 43, p8.

45: Technology Strategy Update Decision Paper cited in the Horizon Issues Judgement, (see link ref 17) p297, para 953.

46: POL ANNUAL REPORT 2015-16, p34:

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzE1NTIyNTM4NmFkaXF6a2N4/document?format=pdf&download=0>

47: UKGI ANNUAL REPORT 2015-16 p7, para 1:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535869/UKGI_2015_16_annual_accounts.pdf

48: POL ANNUAL REPORT 2015-16 see link ref 46, p22 & p25.

49: POL ANNUAL REPORT 2015-16 (see link ref 46) p74. PSHC Annual Report 2015-16 (see link ref 43) p47.

50: Common Issues Judgement March 2019 (see link ref 40) p287, para 1010.

51: Lord Arbuthnot has been a stalwart advocate for his constituent and former sub-postmistress, Jo Hamilton, since 2009 and was one of a number of MPs lobbying BIS from 2010 regarding POL's alleged miscarriages of justice.

52: POSTAL SERVICES ACT 2011, under point 56, General Restrictions on Disclosure of information:

'Disclosure is permitted ...

c) for the purpose of facilitating the carrying out by the Secretary of State, the Treasury or the [Competition and Marketing Authority] of any of their functions under this Act.

e) in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings.

f) for the purpose of any civil proceedings brought as a result of this Part or any prescribed enactment.

3) In subsection (2) 'prescribed' means prescribed by an order of the Secretary of State.

<http://www.legislation.gov.uk/ukpga/2011/5/contents>

53: POL's ARTICLES OF ASSOCIATION 2013 p16, can be found at:

<http://corporate.postoffice.co.uk/media/46791/pol-articles-of-association-12sep13.pdf>

'... the Special Shareholder shall be entitled to request such information in relation to the affairs of the group (or any particular member of the group) as it may consider necessary or desirable'.

'... the company shall, at the request of the Special Shareholder, procure that such specified or other relevant directors and senior managers of the company shall meet with the Special Shareholder (or its representatives) to discuss the affairs of the group (...) and the company shall release such directors or managers from any obligation of confidentiality owed to the company for the purpose of these discussions'.

54: PSHC ANNUAL REPORT 2015-16, (see link ref 43) p47.

55: POL ANNUAL REPORT 2015-16 (see link ref 46) p74. POL Annual Report 2016-17, p81:

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzE5NDU2ODgzMGFkaXF6a2N4/document?format=pdf&download=0>

56: Horizon Issues Judgement (see link ref 6) p167, para 558.

57: Horizon Issues Judgement (see link ref 6) p23, para 59.

58.1: Lord Henley, Under Secretary of State for BEIS, 12th November 2018:

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-11-12/HL11350/>

58.2: With reference to POL, Lord Arbutnot said: '...that commercial board has been accumulating vast debts and liability for damages, for which the government is liable'. See Computer Weekly, 26th November 2019: 'Peer calls for a clear-out of Post Office Board':

<https://www.computerweekly.com/news/252474583/Peer-suggests-clear-out-of-Post-Office-board-after-Court-of-Appeal-confirms-major-defeat-in-court?amp=1>

59: POST OFFICE LIMITED: SHAREHOLDER RELATIONSHIP FRAMEWORK DOCUMENT, April 2020, p19, 13.4:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874283/post-office-limited-shareholder-relationship-framework-part-1.pdf

60: Horizon Issues Judgement (see link ref 6) p293, para 938.

61: Common Issues Judgement, (see link ref 40) p6, para 14.

62: Horizon Issues Judgement (see link ref 6) p184, para 625.

63: UKGI website, 2018:

<https://www.ukgi.org.uk/what-we-do/governance/>

64: Common Issues Judgement (see link ref 40) p6, para 11.

65: Entrustment of Post Office Letter, April 2018, p3:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/731110/2018_04_16_Entrustment_Letter_FINAL.pdf

66: UKGI ANNUAL REPORT 2017-18, p27:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722207/UK_Government_Investments_Annual_Report_and_Accounts_2017-18_Web_optimised_version_.pdf

67: POST OFFICE LIMITED: SHAREHOLDER RELATIONSHIP FRAMEWORK DOCUMENT, April 2020 (see link ref 59).

68: UKGI/HM TREASURY FRAMEWORK DOCUMENT, April 2016, p9 point 5.10

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/534458/UKGI_Framework_Document_-_Formatted_-_PDF_FINAL.pdf

69: UKGI ANNUAL REPORT 2017-18, (see link ref 66) p27 s

70: see UKGI website, press release March 2018 (see link ref 63) penultimate paragraph.

71: UKGI ANNUAL REPORT 2015-16 (see link ref 2) p16.

72: UKGI ANNUAL REPORT 2016-17, p19

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/629354/UKGI_ARA_2017_for_web.pdf

73: UKGI ANNUAL REPORT 2017-18 (see link ref 66), p32

UKGI ANNUAL REPORT 2018-19 (see link ref 19), p33.

74: UKGI ANNUAL REPORT 2018-19 (see link ref 19), p38.

75: UKGI ANNUAL REPORT 2018-19 (see link ref 19), p33

76: See court transcript on Nick Wallis's site postofficetrial.com, Day 5 of Horizon Trial, 18th March 2019. Soon after a short break at 11.55am, mention is made of the Branch Support Programme Terms of Reference, referring to a programme established to address concerns raised by some sub-postmasters, Aug 2013.

77: For ALB definition by UKGI see Appendix. This passage is from UKGI's 'UK GOVERNMENT ARM'S LENGTH BODIES: THE CASE FOR THEM IN SPECIALISED DELIVERY AND HOW TO OPTIMISE THEIR USE' 2020, p12, vi):

<https://www.ukgi.org.uk/2020/01/23/ukgi-issues-paper-on-the-use-of-albs-for-specialised-delivery/>

78: UKGI's 'UK GOVERNMENT ARM'S LENGTH BODIES' (see link ref 77) p13.

79: UKGI's 'UK GOVERNMENT ARM'S LENGTH BODIES' (see link ref 77) p14 under 'Transparency, Management Information, Assurances and Risk'

80: POL Board Terms of Reference, July 2013 p1, para 1:

<https://www.yumpu.com/en/document/read/35496616/post-office-limited-board-terms-of-reference-including->

81: FUTURE OF THE POST OFFICE NETWORK, First Report of Session 2019-20, BEIS Committee, October 2019, p13, paras 23 & 22.

<https://publications.parliament.uk/pa/cm201920/cmselect/cmbeis/247/247.pdf>

82: BEIS's Under Secretary of State, Kelly Tolhurst, speaking during the 25th April 2019 Commons Debate:

<https://hansard.parliament.uk/Commons/2019-04-25/debates/05E15AAD-F67B-4631-BA29-FB0DF342D168/PostOfficeNetwork>

83: Common Issues Trial Judgement, March 2019, para 11:

<https://www.judiciary.uk/wp-content/uploads/2019/03/bates-v-post-office-judgment-no3-15-mar-19.pdf>

84: BEIS written evidence submitted to Select Committee, May 2020, under its inquiry into the Post Office and Horizon IT System, p6, point 8:

<https://committees.parliament.uk/work/97/post-office-and-horizon/publications/written-evidence/>

85: Postal Services Holding Company ANNUAL REPORT 2015-16. The STRATEGIC Report p 4-10 includes Legal and IT risks pertaining to its subsidiary POL including the potential risk that 'IT Transformation may not be delivered in full due to the level of complexity of replacing legacy IT', potential consequences of which 'could result in systems and infrastructure that are not fit for purpose, may add costs and lead to business interruption'. See ref 43 p 8.

<https://beta.companieshouse.gov.uk/company/04074919>

86: POL ANNUAL REPORT 2016-17, p34: <https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzE5NDU2ODgzMGFkaXF6a2N4/document?format=pdf&download=0>

87: POL's 2013 ARTICLES OF ASSOCIATION p34-35, 6) & 7), Principles governing the Strategic Plan includes strategic response to resources including technology and 'high level financial and performance projections, at both the corporate and line-of business level, with sensitivity analyses of the major risks'. The same provision is

made in the 2020 Framework Document, see link ref 59, p8-9, e) & f). The 2013 Articles are no longer on Companies House website, they are superseded by those of April 2020, but can be found via:

<http://corporate.postoffice.co.uk/media/46791/pol-articles-of-association-12sep13.pdf>

88: Kevan Jones MP at the opening of the 19th March 2020 debate on the Horizon Settlement and the Future Governance of Post Office Ltd:

<https://hansard.parliament.uk/Commons/2020-03-19/debates/03E48E18-4B5E-4A42-84C3-684E6B58495D/HorizonSettlementFutureGovernanceOfPostOfficeLtd>

89: Common Issues Trial, March 2019 (see link ref 83) p156, para 523.

90: BEIS ACCOUNTING OFFICER SYSTEM STATEMENT 2018 p7, 2.10

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/726271/Department_for_Business_Energy_and_Industrial_Strategy_-_Accounting_Off....pdf

91: Alex Chisholm, Permanent Secretary for BEIS since September 2016 is a non-executive Director on the Board of UKGI, see UKGI ANNUAL REPORT 2018-19 p37:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817665/UKGI_Annual_Report_and_Accounts_2018-19_WEB.pdf

92: Mark Russell, CE of ShEx since 2013 and of UKGI until 2019 is confirmed as Board member of BIS in a press release of April 2013, para. 4.

<https://www.gov.uk/government/news/mark-russell-confirmed-as-chief-executive-of-shareholder-executive>

He continued in this role until at least 2015-16, see BIS ANNUAL REPORT 2015-16 p78:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/537425/bis-annual-report-accounts-2015-16-web.pdf

93: Mark Russell was a Director of PSHC, see GROUP OF COMPANIES ACCOUNTS 2015-16, p11. Russell was CE of ShEx, later UKGI since 2013, Deputy CE since 2008.

<https://beta.companieshouse.gov.uk/company/04074919/filing-history/MzE2NjY3MjgwNGFkaXF6a2N4/document?format=pdf&download=0>

Richard Lowe was a director of PSHC since 2013, see link 93 p10-11. This directorship terminated in August 2019, see Companies House Termination of employment. UKGI's Lowe and Russell signed the PSHC Declaration of Solvency, June 2017.

Richard Lowe's UKGI/ShEx role is at:

<https://www.gov.uk/government/people/roger-low>

94: Lord Callanan, BEIS Under-Secretary of State, speaking in a House of Lords Debate, 5th March 2020:

<https://www.theyworkforyou.com/lords/?id=2020-03-05a.717.3&p=10252>

95: Lord Callanan, BEIS Under-Secretary of State speaking in a Parliamentary debate, 25th February 2020:

<https://hansard.parliament.uk/Lords/2020-02-25/debates/4FBD0BEE-B7F2-4D9B-AC1D-5CD00C489248/PostOfficeHorizonAccountingSystem>

96: Horizon Issues Judgement, December 2019, respectively: (p258, para 819.7), (p259, para 819.9), (p259, para 819.9), (p262, para 826).

<https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-judgment.pdf>

97: BEIS ACCOUNTING OFFICER SYSTEM STATEMENT 2018 (see link, ref 90) p8-9, point 2.6.

98: Horizon Issues Judgement, December 2019, Judge Fraser cites a Technology Strategy Update Decision Paper of January 2018 which in turn refers to a previous IT Strategy of July 2016, p297, para 953.

<https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-judgment.pdf>

99: Horizon Issues Judgement, December 2019 (see link ref 98) p298, para 957.

100: Horizon Issues Judgement, December 2019 (see link ref 98) p139, para 460.

101: Horizon Issues Judgement, December 2019 (see link ref 98) p80, para 246-247.

102: Susannah Storey, departmental representative on POL's Board, attended all ARC Committee meetings in the 2012-13 financial year (POL ANNUAL REPORT 2012-13 p44) but attended no ARC Committee meetings in the 2013-14 financial year (POL ANNUAL REPORT 2013-14 p54). From March 2014, Richard Callard replaced her as government representative on the POL Board but according to the 2014-15 ANNUAL REPORT was not a member of the ARC Committee (p33 & 36). He joined this committee part way through the next financial year, attending 2/5 ARC Committee meetings according to the 2015-2016 POL ANNUAL REPORT (p22 & 25).

POL ANNUAL REPORT 2012-13

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzA4NDMyMzM3NmFkaXF6a2N4/document?format=pdf&download=0>

POL ANNUAL REPORT 2013-14

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzExMzc1MjA2NGFkaXF6a2N4/document?format=pdf&download=0>

POL ANNUAL REPORT 2014-15

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzEyOTIzNDUyM2FkaXF6a2N4/document?format=pdf&download=0>

POL ANNUAL REPORT 2015-16

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzE1NTIyNTM4NmFkaXF6a2N4/document?format=pdf&download=0>

103: At a Parliamentary Debate, June 2015, BIS Under Secretary of State, George Freeman claimed:

'Second Sight produced two independent reports - one in 2013 and the other earlier this year - both of which found there was no evidence of systemic flaws in the system'.

Written evidence submitted to this committee by Second Sight states: 'Our first report in 2013 identified evidence of flaws and bugs in Horizon', p1, point 1.1, see link ref 104

In fact, the question had never been one of 'systemic failure' but of the occurrence of rare and intermittent events in Horizon which, if undetected, could in a small percentage of cases wreak catastrophic consequences in branch accounts. Freeman's de-contextualised and unsubstantiated phrasing purposely implies that, because there are apparently 'no systemic faults', Horizon is perfectly reliable. In doing so he misrepresented the reports whose conclusions demonstrate that nothing could be further from the truth. Freeman's reference originated from the out-dated – but by then updated - 2013 Interim Report which makes clear its conclusions will need updating in the light of ongoing investigations. The full report of 2015 identified multiple inadequacies in Horizon and in POL's failure to thoroughly investigate shortfalls or to improve error repellency.

The June 2015 debate can be read at:

<https://hansard.parliament.uk/Commons/2015-06-29/debates/1506308000001/PostOfficeHorizonSystem>

Second Sight's INTERIM and BRIEFING REPORT PART TWO can be found at:

<https://www.jfsa.org.uk/documentation.html>

104: BEIS Written Statement for BEIS Select Committee Inquiry into the Post Office and Horizon, May 2020, p7.

<https://committees.parliament.uk/work/97/post-office-and-horizon/publications/written-evidence/>

105: References to the reports of external auditors Ernst and Young occur in the Horizon Trial Judgement (see link ref 98) in the following paragraphs: 264, 393-394, 504-505, 689, 789-790, 791, 869, 914-915.

106: Horizon Issues Judgement, December 2019 (see link ref 98) p101, para 394.

107: Horizon Issues Judgement, December 2019 (see link ref 98), independent IT expert, Jason Coyne, on the E&Y Management Letter of 2011, p246, para 789.

108: Horizon Issues Judgement, December 2019 (see link ref 98), p101, para 394.

109: Horizon Issues Judgement, December 2019 (see link ref 98) p212, para 687, Third Joint Statement, Issue 3, point 3.

110: Horizon Issues Judgement, December 2019 (see link ref 98) p84, para 264.

111: Horizon Issues Judgement, December 2019 (see link ref 98) p286, para 915.

112: Horizon Issues Judgement, December 2019 (see link ref 98) p247, para 791.

113: Horizon Issues Judgement, December 2019 (see link ref 98) p150, para 505.

114: CIVIL SERVICE (2014) 'INTRODUCTION TO SPONSORSHIP' p17, para 4.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686713/Introduction_to_Sponsorship_An_Induction_Handbook_for_New_Sponsors_of_Arms_Length_Bodies.pdf

115: BEIS MAIN ESTIMATE 2018-2019 identifies Alex Chisholm, Departmental Accounting Officer as AO of Postal Services Holding Company, p15. It also classifies PSHC as an Arm's Length Body of the department.

<https://www.parliament.uk/documents/commons-committees/business-energy-and-industrial-strategy/BEIS-ME2018-19.pdf>

BEIS ANNUAL REPORT 2018-19, p223 categorises PSHC as included in the consolidated Departmental Group Accounts:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/824924/beis-annual-report-accounts-2018-2019-web.pdf

116: WHOLE OF GOVERNMENT ACCOUNTS, 2017-18, HM Treasury, p102

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803751/WGA_2017-18_WEB_1.pdf

117: Second Sight's 'BRIEFING REPORT PART TWO' of April 2015, p5-6, points 2.18-2.19, see link ref 103:

'...at each year end substantial unreconciled balances existed on many of the individual suspense accounts. These unreconciled balances for the 2014 financial year were approximately £96 million in respect of Bank of Ireland ATMs and approximately £66 million in respect of Santander...We have not been able to investigate these items but we remain concerned that these unreconciled balances may include transactions that ultimately should be credited back to individual branch accounts'.

Written evidence submitted by Second Sight to this committee, published May 2020, p4, 7.2 see link ref 104:

‘Well run companies ensure that their suspense accounts are rigorously controlled and that entries are not allowed to remain un-investigated for more than a few days. We established that the centrally held suspense accounts of Post Office regularly held millions of pounds of unreconciled transactions for many months. Post Office prevented Second Sight from investigating those accounts, even though some of the funds eventually found their way into its own Profit and Loss Account’.

118: Horizon Issues Judgement, December 2019 (see link ref 98) p257, 818.

119: Horizon Issues Judgement, December 2019 (see link ref 98) p257, 817.

120: BIS Under Secretary of State, George Freeman, during a June 29th 2015 Commons debate on the Post Office Horizon System:

<https://hansard.parliament.uk/Commons/2015-06-29/debates/1506308000001/PostOfficeHorizonSystem>

121: Letters between Departmental AO Alex Chisholm and POL CEO Paula Vennells were revealed via a FOI request and can be found at Whatdotheyknow.com, search for Funding Post Office Legal Costs.

122: BEIS ANNUAL REPORT 2017-2018 p41:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725808/BEIS_Web_accessible_Annual_Report_and_Accounts_2017_18.pdf

123: ACCOUNTING OFFICER’S SURVIVAL GUIDE, HM Treasury, December 2015, p10, 55.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486677/AOs_survival_guide_Dec_2015_.pdf

124: ACCOUNTING OFFICER’S SURVIVAL GUIDE, HM Treasury, December 2015 (see link ref 123) p10, 53-54.

125: HM TREASURY CLASS (2013) 1: SECTOR CLASSIFICATION, p14, 3.31

126: UKGI’s ‘UK GOVERNMENTS ARM’S LENGTH BODIES’ January 2020, p12, C(i):

‘There must be a clear division of sponsorship responsibilities within government - with different functions explicitly representing government’s interests as each of: shareholder, policy sponsor, customer and funder...Each sponsor’s role and responsibilities should be set out, for example in the FWD’.

https://www.ukgi.org.uk/wp-content/uploads/2020/03/UK-Government-Arms-Length-Bodies-A-View-from-Practitioners-January-2020_WEB.pdf

127: Approval for appointments, POL ARTICLES OF ASSOCIATION, March 2020, p4, Ai), ii), iii).

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzI2MjMyOTc4MWFkaXF6a2N4/document?format=pdf&download=0>

POL ARTICLES OF ASSOCIATION, September 2013, p9, J(a), p13 (T)

<http://corporate.postoffice.co.uk/media/46791/pol-articles-of-association-12sep13.pdf>

128: Shareholder Direction, POL ARTICLES OF ASSOCIATION 2020 (see link ref 127) p4, F:

‘In the event that the Special Shareholder shall give directions to the company or any member of the Group, then for such time as the company remains wholly-owned by the Crown the company shall take all steps within its power to do what those directions require to be done by the company...within the timeframe so required’.

POL ARTICLES OF ASSOCIATION 2013 (see link ref 127) p7, F.

129: Access to Information, POL ARTICLES OF ASSOCIATION 2020, (see link ref 127) p9, 9.1 & 9.2

POL ARTICLES OF ASSOCIATION 2013 (see link ref 127) p16.

130: Financial Approval for transactions or liabilities in excess of £50m, POL ARTICLES OF ASSOCIATION 2020 (see link ref 127)p6 (X).

POL ARTICLES OF ASSOCIATION 2013 (see link ref 127) p9 (O).

131: BEIS's Parliamentary Under-Secretary of State, Lord Duncan, speaking in a House of Lords Debate February 4th, 2020:

<https://hansard.parliament.uk/Lords/2020-02-04/debates/8BAA52F6-3153-46D4-A6BD-8BEA22B6A782/PostOfficeProsecutionPowers>

132: POL Board Terms of Reference, 2013 see ref 80. The new Board Terms of Reference are available on Post Office's Corporate website, under Useful Links, Matters Reserved To The Board see link ref 136. They make no differentiation in responsibility between the Shareholder representative and other Board members.

133: 2006 COMPANIES ACT, Chapter 2, 170: General Duties of Directors:

<http://www.legislation.gov.uk/ukpga/2006/46/part/10/chapter/2>

134: UKGI's 'UK GOVERNMENT ARM'S LENGTH BODIES' 2020 (see link ref 77) p13, makes reference to the Financial Reporting Council's 'The UK Corporate Governance Code' 2018.

135: NEDonboard.com

<https://www.nedonboard.com/what-are-the-potential-liabilities-for-a-ned/>

136: POL's Arc Terms of Reference, p5, point 24, no longer in the public domain. It has been superseded by an updated ARC Terms of Reference on POL's corporate website which state that the ARC Committee is authorised to:

'Seek any information it requires from any employee of the Company in order to perform its duties.

Obtain, at the company's expense, independent legal, accounting or other professional advice on any matter if it believes it necessary to do so' p7, D54-55

http://corporate.postoffice.co.uk/media/47095/20200409_pol_arc_termsofreference_approved.pdf

137: BEIS Written Statement for BEIS Select Committee Inquiry into the Post Office and Horizon IT System, May 2020, p7, see link ref 104. (In fact, Tim Parker, did not assume the POL Chair until October 2015).

<https://committees.parliament.uk/work/97/post-office-and-horizon/publications/written-evidence/>

138: Commons Debate, 15th June 2015 during which both Kevan Jones, MP and Andrew Bridgen, MP call for a judicial inquiry amidst debate on Horizon and POL's failed mediation scheme.

<https://hansard.parliament.uk/Commons/2015-06-29/debates/1506308000001/PostOfficeHorizonSystem>

139: BIS Under-Secretary of State, George Freeman, speaking during the 15th June Commons Debate, see link ref 138.

140: Early Day Motion 427, Post Office Horizon Computer System, tabled 10th of September 2015:

<https://edm.parliament.uk/early-day-motion/48208/post-office-horizon-computer-system>

141: POST OFFICE LIMITED: SHAREHOLDER RELATIONSHIP FRAMEWORK DOCUMENT between POL, BEIS and its representative UKGI, March 2020 p18, 12.1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874283/post-office-limited-shareholder-relationship-framework-part-1.pdf

142: UK GOVERNMENT ARM'S-LENGTH BODIES, UKGI, January 2020, p14, Fi

https://www.ukgi.org.uk/wp-content/uploads/2020/03/UK-Government-Arms-Length-Bodies-A-View-from-Practitioners-January-2020_WEB.pdf

143: The Secretary of State for BIS/BEIS is holder of the Special Share in POL as enshrined in its ARTICLES OF ASSOCIATION of 2013, p16.

<http://corporate.postoffice.co.uk/media/46791/pol-articles-of-association-12sep13.pdf>

The same rights are to be found in the 2020 POL ARTICLES OF ASSOCIATION , p9, 9.1:

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzI2MjMyOTc4MWFkaXF6a2N4/document?format=pdf&download=0>

144: POSTAL SERVICES ACT 2011, Under Point 56, General Restriction on Disclosure:

<http://www.legislation.gov.uk/ukpga/2011/5/contents>

145: Horizon Issues Judgement, December 2019 (see link ref 98) p296, para 946.

146: Horizon Issues Judgement, December 2019 (see link ref 98) p184, para 625.

147: : Baroness Neville-Rolfe, Post Office Minister for BIS July 2014-June 2016, addressing the Lords during a 4th February 2020 debate:

<https://hansard.parliament.uk/Lords/2020-02-04/debates/8BAA52F6-3153-46D4-A6BD-8BEA22B6A782/PostOfficeProsecutionPowers>

148: Westminster Adjournment Debate, 17th December 2014, attended by BIS Chair My Bailey:

<https://hansard.parliament.uk/Commons/2014-12-17/debates/14121741000002/PostOfficeMediationScheme>

149: Helen Pitcher, chairman of the Criminal Case Review Commission, interviewed by Karl Flinders of Computer Weekly, 27th March 2020

https://www.computerweekly.com/news/252480745/How-Subpostmasters-made-legal-history-with-biggest-referral-of-potential-miscarriages-of-justice?amp=1&_twitter_impression=true

150: 2015 Letter from Paula Vennells to BIS's Under Secretary of State, George Freeman, in preparation for the June 2015 Parliamentary debate. Source JFSA.

151: Horizon Issues Judgement, December 2019 (see link ref 98) p162, para 539

152: Horizon Issues Judgement, December 2019 (see link ref 98) p 12, para 30, 24.2-24.3.

153: HM TREASURY: ASSURANCE FRAMEWORKS, December 2012, p10, 4.4:

'Where significant areas of responsibility and/or funds flow are handled by an arm's length body, or other delivery partner, the associated risks should also feature at a high level in the departmental assurance map, with linkages to more detailed risk and assurance mapping in the related body. The related body or delivery partner should in turn be encouraged to follow the guidance within this document. Similar governance and control arrangements, proportionate to managing the delegated risks, should operate by nature of local risk and assurance frameworks, with suitable reporting and escalation processes in place. This should be reviewed as part of the sponsorship and other oversight arrangements put in place on behalf of the Accounting Officer and Board'.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270485/assurance_frameworks_191212.pdf

154: See Nick Wallis's write up of legal proceedings on his site 'Post Office Trial', 11th May 2019. The Order in which Lord Justice Coulson refuses POL's application to appeal Judge Fraser's refusal to accuse himself is also on this page:

https://www.postofficetrial.com/2019_05_11_archive.html?m=1

155: BEIS ANNUAL REPORT 2015-16 p95-96, para 6.6.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/537425/bis-annual-report-accounts-2015-16-web.pdf

156: According to the 2016-17 POL ANNUAL REPORT, 'The Directors do not currently consider whether, but continue to keep under review, the outcome of any claim will have a material adverse impact on the consolidated position of the Group', p79.

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzE5NDU2ODgzMGFkaXF6a2N4/document?format=pdf&download=0>

The same claim was made in the POL ANNUAL REPORT of 2015-2016, p74:

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzE1NTlyNTM4NmFkaXF6a2N4/document?format=pdf&download=0>

and in the 2015-16 ANNUAL REPORT of PSHC, p47:

<https://beta.companieshouse.gov.uk/company/04074919/filing-history/MzE2NjY3MjgwNGFkaXF6a2N4/document?format=pdf&download=0>

157: Horizon Issues Judgement, December 2019 (see link ref 98) p290, para 928

158: THE ORANGE BOOK, 2013 (updated 2020), p15, C2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866117/6.6_266_HMT_Orange_Book_Update_v6_WEB.PDF

159: BEIS ACCOUNTING OFFICER SYSTEM STATEMENT, 2017, p4, para 2.5

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649557/BEIS_Accounting_Officer_System_Statement.pdf

160: BIS ANNUAL REPORT, 2015-16, p91, para 6:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/537425/bis-annual-report-accounts-2015-16-web.pdf

161: BEIS ANNUAL REPORT 2017-18 p72, para 2:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725808/BEIS_Web_accessible_Annual_Report_and_Accounts_2017_18.pdf

162: BEIS ANNUAL REPORT 2017-18, see link ref 161, p72, para 7.

163: BEIS ANNUAL REPORT 2017-2018, see link ref 161, p66 (at bottom of page, ref 16).

164: BEIS ANNUAL RRPORT 2017-18, see link ref 161, p69, para 1.

165: BEIS ANNUAL REPORT 2017-18, see link ref 161, p69, para 4.

166: BEIS ANNUAL REPORT 2017/18, see link ref 161, p72, para 8.

167: BEIS ANNUAL REPORT 2017-18, see link ref 161, p66, para 1&5.

168: BEIS ANNUAL REPORT 2017-18, see link ref 161, p66, para 9 and reference 17 at bottom of page.

169: BEIS ANNUAL REPORT 2016-17, p73, para 2:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/641623/beis-annual-report-accounts-2016-17-update-2-web.pdf

170: BEIS ANNUAL REPORT 2016-17, see link ref 169, p67, para 5.

171: BEIS ANNUAL REPORT 2016-17, see link ref 169, p69, para 3 & p70, para 1.

172: BEIS ANNUAL REPORT 2017-18, see link ref 161 for definition of 'Limited'. Confirmation of this status is to be found in the BEIS ANNUAL REPORT 2016-17, see link ref 168, p73, para 1.

173: BEIS ANNUAL REPORT 2017-18, see link ref 161, p66, para 3.

174: BEIS ANNUAL REPORT 2017-18 see ref 166

175: POST OFFICE LIMITED: SHAREHOLDER RELATIONSHIP FRAMEWORK DOCUMENT, formal agreement between BEIS, its representative (UKGI), and POL, April 2020.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874283/post-office-limited-shareholder-relationship-framework-part-1.pdf

176:

i) 'WHO'S ACCOUNTABLE? RELATIONSHIPS BETWEEN GOVERNMENT AND ARM'S LENGTH BODIES' 2014-15, p17, point 27: The document makes early reference to the formal agreements which enable relationships between all Departments and their ALBs, to be regularly updated and publicly available:

'Accountability arrangements are set out in documents known as 'framework agreements' or 'framework documents' and in 'Accountability System Statements' or 'Statements of Accounting Officer's' responsibilities'.

<https://publications.parliament.uk/pa/cm201415/cmselect/cmpublic/110/110.pdf>

ii) HM TREASURY 'MANAGING PUBLIC MONEY' Appendix A, p184-199

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835558/Managing_Public_Money_MPM_with_annexes_2019.pdf

iii) BIS ANNUAL REPORT 2015-16, p91, para 6:

'Each Partner Organisation is overseen by a sponsor team in BIS which agrees and captures the organisation's remit in a Framework Document'

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/537425/bis-annual-report-accounts-2015-16-web.pdf

iv) UKGI GOVERNMENT: ARM'S LENGTH BODIES, 2020, p11 point i), p12 point viii) & C i)

https://www.ukgi.org.uk/wp-content/uploads/2020/03/UK-Government-Arms-Length-Bodies-A-View-from-Practitioners-January-2020_WEB.pdf

177: BEIS ACCOUNTING OFFICER SYSTEM STATEMENT 2017, p9, point 3.3 see link ref 159.

178: Horizon Issues Judgement, December 2019 (see link ref 98) p290-291, para 928-929.

179: Details of the rationale sent to Claimants by Freeths, titled 'Post Office Group Litigation: Methodology Underpinning Preparation of the Claim Proceeds Account', at Nick Wallis's site:

<https://www.postofficetrial.com/2020/05/disquiet-and-anger-as-final-payments.html?m=1>

180: Lord Duncan Springbank, BEIS Parliamentary Under-Secretary of State, spoke during the 4th February 2020 House of Lords debate:

'I suspect that it will be quite some time before the Post Office embarks upon another adventure of this sort'
<https://hansard.parliament.uk/Lords/2020-02-04/debates/8BAA52F6-3153-46D4-A6BD-8BEA22B6A782/PostOfficeProsecutionPowers>

APPENDIX

The term 'Arm's Length Body' is used variously which adds confusion to an already blurred landscape of organisational structures within government. The term is used both as a specific technical definition and in more general application.

The 2020 UKGI Paper 'UKGI Government Arms Length Bodies', goes with the latter usage so when referring to this document, ALB is considered to include POL, a public corporation.

'Outside technical definitions, the term is commonly used to refer to a wide range of public bodies, including non-ministerial departments, executive agencies, and non-departmental public bodies, but also other public bodies such as public corporations, regulators and tribunals; this paper uses ALB in that wider sense', p5

https://www.ukgi.org.uk/wp-content/uploads/2020/03/UK-Government-Arms-Length-Bodies-A-View-from-Practitioners-January-2020_WEB.pdf

Actual categorisation of bodies by the ONS for the purpose of the national accounts uses a narrower definition, according to Marcus McAlister of UKGI:

'Thank you for your email of 15 May 2020 in relation to "UK Government Arm's Length Bodies: the case for them in specialised delivery and how to optimise their use" and the classification of Post Office Ltd (POL). Whilst POL does not fall under one of the three technical terms describing central government ALBs, as defined by The Cabinet Office, POL is considered an ALB in the wider sense of the definition regarding public bodies'.

I have not been able to identify the 'three technical terms' but I believe they are applicable to POL's parent company, PSHC, which is listed as an ALB in the BEIS Main Estimate 2018-19 see ref 115 It is a limited company owned by the government and part of the core department unlike POL which is considered part of the wider departmental group.

In a letter of April 2019 from Alex Chisholm to Mark Baker of the Communication Workers Union BEIS's Accounting Officer states:

'Finally, I can confirm that Post Office Limited does not fall within the Cabinet Office Guidance on Government Functional Standard for General Grants. This is because Post Office Limited is not classified as an Arm's Length Body (ALB) but rather as a Public Non- Financial Corporation under the Office for National Statistics (ONS) national account system and because grant monies paid by Post Office to the NFSP are not drawn from "Exchequer Funding". Nevertheless, Government always expects all public bodies to ensure value for money principles in their use of resources'

This is in apparent contradiction with the National Audit Office Report of July 2016 which identifies POL as an ALB of BIS, p16:

<https://www.nao.org.uk/wp-content/uploads/2016/05/Departments-oversight-of-arms-length-bodies-a-comparative-study.pdf>

And POL's own Annual Report of 2016-17 which states 'The Group trades with numerous Government bodies on an arm's length basis', p76.

<https://beta.companieshouse.gov.uk/company/02154540/filing-history/MzE5NDU2ODgzMGFkaXF6a2N4/document?format=pdf&download=0>

It may be that these two categories are not mutually exclusive or it may be that POL has been reclassified. But a change in status is not effected retrospectively; obligations of governance which are applicable to an ALB status will still be applicable to that body during the time it was classified as an ALB, even if it is no longer deemed to be so.

BEIS prefers the term 'partner organisation' which appears to be a nuance of terminology rather than a technically-defined category:

'Rather than use the term 'arm's length bodies', the network of organisations that BEIS Ministers answer in Parliament for are referred to instead as our 'partner organisations' Accounting Officer System Statement, Sept 2017 (p9, 3.1)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649557/BEIS_Accounting_Officer_System_Statement.pdf

This term, by inference, suggests a horizontal (equal to equal) relationship rather than a vertical (superior - subordinate) one.

In any event, 'Arms-Length' is, by definition, 'within reach' and the structures of governance and accountability which ought to have been used to exercise meaningful departmental oversight over POL and upon which its Framework Document rests, exist regardless of its status of ALB, Partner Organisation or otherwise.

June 2021