

Witness name: Gareth Davies
Statement No.: WITN11020100
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POST OFFICE HORIZON IT INQUIRY

FIRST WITNESS STATEMENT OF GARETH DAVIES

INTRODUCTION

1. I Gareth Davies, Permanent Secretary of the Department for Business and Trade, Old Admiralty Building, Admiralty Place, London SW1A 2DY, will state as follows.
2. I make this statement in response to the Inquiry's request for evidence dated 8 December 2023, in order to assist the Inquiry in relation to the role of the Department for Business and Trade ("**DBT**" or "**the department**") and its predecessor departments¹ in the Post Office's corporate structure in the period between 1 January 1999 and 1 June 2021.
3. As Permanent Secretary, I am the Civil Service head of the department. I was appointed to the position of Permanent Secretary in the Department for International Trade in January 2023, and then the Department for Business and Trade in February 2023 following the Machinery of Government change. With

¹ The Department for Business, Energy and Industrial Strategy ("**BEIS**"), the Department for Business, Innovation and Skills ("**BIS**"), the Department for Business, Enterprise and Regulatory Reform ("**BERR**") and the Department for Trade and Industry ("**DTI**").

my senior team, I am responsible for the overall leadership and management of DBT. Our primary aims are to support our ministers in the achievement of their objectives and to oversee the effective day-to-day running of the department. In addition, as Principal Accounting Officer I am personally responsible to Parliament for the effective stewardship of the department's resources and for ensuring value for money. As a member of the wider Permanent Secretary team, including the Civil Service Board, I am also part of the collective leadership of the Civil Service. I have previously held a number of senior civil service roles including from 2015 to May 2019 as a Director General in DBT's predecessor departments².

4. I make this statement on behalf of the department. I have been assisted in its preparation by officials within my department, as well as the Government Legal Department and counsel. The information set out in this statement is not known to me personally, and I have therefore drawn and relied upon extensive input from colleagues³. It is in that sense a 'corporate statement'. Its contents are true to the best of my knowledge and belief.
5. I am authorised by the Secretary of State for Business and Trade to make this statement.

OVERVIEW

² The Department for Business, Innovation and Skills (to July 2016) and the Department for Business, Energy and Industrial Strategy.

³ This statement also draws extensively on previous responses made by the Department to the Inquiry, including its response to the Inquiry's Call for Evidence and its responses (prepared jointly with UKGI) to the Inquiry's "batch requests".

6. Post Office Limited (“**POL**”) is a private limited company which was incorporated at Companies House on 13 August 1987. Prior to this, the Post Office existed as a statutory corporation: a corporate public authority created by Act of Parliament, the Post Office Act 1969. The private limited company formed in August 1987 was initially called Post Office Counters Limited (“**POCL**”) before being renamed as Post Office Limited on 1 October 2001. Upon the incorporation of POCL / POL in 1987, its controlling shareholder was the Post Office (the statutory corporation)⁴.

7. As a statutory corporation, the Post Office was a separate and distinct public authority with functions and powers limited to those conferred by statute. Under section 11 of the Post Office Act 1969⁵, the Secretary of State and Minister for Postal Services were given powers concerning the control and supervision of the Post Office in exercising its statutory functions.

8. The Post Office (the statutory corporation) continued as POCL’s controlling shareholder until 25 March 2001, when all but one of the shares in POCL⁶ were transferred to a new holding company (initially called Consignia plc)⁷, in which the Government was the ultimate sole shareholder⁸.

9. Though the precise corporate and ownership structure has changed over time, the Government has been POCL / POL’s ultimate controlling shareholder at all

⁴ It held 49,999 of the 50,000 shares. The remaining share was allocated to Sir Ronald Dearing, the chairman and chief executive of the new company.

⁵ The powers in section 13 were repealed in 1981.

⁶ The other being held by Anthony Roberts, chief executive.

⁷ The old Post Office statutory corporation was formally abolished with effect from 1 May 2007 by the Dissolution of the Post Office Order 2007.

⁸ Through its shareholding in Consignia Holdings plc, Consignia plc’s holding company.

relevant times. Since 10 September 2013, the Secretary of State for Business and Trade (and its predecessor departments) has been ultimate sole shareholder in POL on behalf of the Government. Prior to this, the Secretary of State was one of the ultimate shareholders of POCL / POL on behalf of the Government, but not the only one⁹.

10. As shareholder, the Secretary of State has at all times had powers – whether direct or indirect – in relation to the Post Office’s corporate governance structure. Amongst these were powers in relation to appointments to the POL board and to amend POL’s Articles of Association (“**Articles**”). Before 2017, these powers arose only indirectly because, as explained, whilst the Secretary of State was a direct shareholder in the Post Office’s holding company, she was not a direct shareholder in POL itself. In addition, POL’s Articles, which were amended over time, gave the Secretary of State certain rights and powers in relation to POL itself, which as time progressed including in relation to appointments and removals from POL’s board.

11. From 1 April 2012, a single POL board member was appointed in order to represent the Secretary of State’s (and, in turn, the Government’s) interests on the POL board, and to report relevant matters back to departmental civil servants. This non-executive director (“**shareholder NED**”) appointment was filled by a civil servant expert in corporate governance from within the Government’s specialist corporate governance function. Initially this function was known as the Shareholder Executive (“**ShEx**”), which was created in 2003

⁹ The other shareholders have at various times included the serving chief executive of POCL / POL and the Solicitor for HM Treasury.

and formed part of DBT's predecessor department BIS¹⁰. On 1 April 2016, this body – together with its staff – was transferred to the new UK Government Investments Ltd (“**UKGI**”), an Arm's Length Body (“**ALB**”) of which the sole shareholder was the Solicitor for HM Treasury.

12. It is perhaps obvious, but nevertheless important to note, it is not the role of the Secretary of State, departmental ministers or officials to run a corporate entity of the size and complexity of the Post Office. The day-to-day corporate issues are overseen by the Post Office board. The role of Ministers and the Civil Service was and remains to set the overall policy framework, with specialists appointed to represent the department's interests and to seek to ensure that the department's policy aims are pursued at the Post Office corporate level. An important part of the shareholder NED role therefore was and remains to draw the department's attention to any concerns that the Post Office board might not be acting in accordance with the Secretary of State's interests and wishes, or otherwise to draw important matters to the department's attention, so that departmental officials could decide whether those matters required escalation within the civil service and/or to ministers or the Secretary of State.

THE POST OFFICE'S STATUS AS A PUBLIC CORPORATION

13. POL has sometimes been referred to as an Arm's Length Body, as this is occasionally used as an informal term for all public bodies which are not central government departments. However, formally POL is classified as a Public Non-

¹⁰ And, before this, within the Cabinet Office.

Financial Corporation (“Public Corporation”) by the Office for National Statistics’ national account system.

14. Public Corporations are designed to operate at arm’s length from ministers and Government, with accountability placed with the board and executive team, who are appointed based on their expertise and specialisms, to run the company. This devolved governance model is designed to promote more effective and efficient delivery of public services. The Post Office therefore had and continues to have substantial independence from central government. It was, and remains, a separate institution.

15. As a Public Corporation, the board of directors of POL and POCL before it (the “**Post Office Board**”) was responsible for the corporate operations of the Post Office. The Secretary of State as shareholder does not, and did not, have any involvement in the day-to-day operations of POL or in the management of its network of post offices and staff.

16. However, whilst the Post Office Board retains operational control, it is accountable to the Secretary of State as sole shareholder for the performance of POL and is required to seek her consent for certain matters, as set out in its Articles. As detailed below, POCL’s / POL’s Articles were occasionally amended or replaced during the period with which this statement is concerned.

17. POL’s chief executive (who is also a member of POL’s board) is designated as Accountable Officer. The Shareholder Relationship Framework Document¹¹

¹¹ Post Office Limited: Shareholder Relationship Framework Document
<https://assets.publishing.service.gov.uk/media/5e74fe04e90e073e313755cc/post-office-limited-shareholder-relationship-framework-part-1.pdf>

sets out the POL Accountable Officer as being “personally responsible for safeguarding all funds for which he or she has charge; for ensuring propriety, regularity, value for money and feasibility in the handling of those funds; and for the day-to-day operations and management of POL. In addition, he or she should ensure that POL is run on the basis of the standards of governance, decision-making and financial management set out in Managing Public Money¹², as well as ensuring that POL uses internal and external audit to improve its internal controls and performance.”

18. The Secretary of State for Business and Trade is now – and has been since 2017 – the sole shareholder of POL. The department sets the policy framework for POL and, since 2018, has had a dedicated policy team overseeing POL from a policy perspective.¹³ By way of example as to the kind of overall policy framework or strategic aim which the Government would set for POL, this would include maintaining a minimum number of branches and a level of accessibility that its network provides, to ensure presence in every community. These requirements are linked to the funding that the Government provides to POL.

19. POL's Articles set out the formal approval rights of the shareholder (i.e. the Secretary of State). Further controls applied by Government to POL are contained in other relevant governance documentation (for example, the Shareholder Relationship Framework Document and Funding Agreement). POL is also required to have regard to relevant Government-wide corporate

¹² <https://www.gov.uk/government/publications/managing-public-money>

¹³ As noted below, in the period from its creation in 2016 until 2018, UKGI was also responsible for overseeing POL from a Government policy perspective. Shareholder Executive (ShEx) oversaw POL prior to this.

guidance. As is the case with any Public Corporation, the Government requires POL to create and manage its own corporate processes and ensure good corporate governance.

20. As part of the model described above, the Secretary of State delegated (and continues to delegate) the day-to-day exercise of her rights as shareholder in POL and/or its holding companies to UKGI, a wholly owned subsidiary of HM Treasury which carries out the Government's corporate governance and corporate finance functions.

THE PLACE OF POST OFFICE POLICY WITHIN THE DEPARTMENT

21. DBT and each of its predecessor departments have and had a wide range of responsibilities, which included postal services. As in the majority of ministerial departments, the Secretary of State is responsible for leading on overall departmental strategy and delivery of the department's responsibilities. The department's responsibilities are divided into Junior Ministers' portfolios. In line with this model, throughout the relevant period a Junior Minister had day-to-day responsibility for postal services, with the Secretary of State providing higher-level direction and support where necessary, including in overseeing public appointments.

22. The department's civil servants are ultimately overseen by the Permanent Secretary and are involved in carrying forward the day-to-day work required to deliver according to the wishes and priorities of Government and ministers.

23. From its incorporation in April 2016, UKGI has been responsible for oversight of POL's corporate governance on behalf of the Secretary of State. As

explained, this function was previously fulfilled by ShEx. Upon its creation, UKGI effectively subsumed ShEx and, at the same time, ShEx's documentation and the majority of its personnel were transferred to UKGI.¹⁴

24. From April 2016 to August 2018, UKGI was also responsible for oversight of POL policy issues from a Government perspective. Work in BEIS to improve relationships with Partner Organisations such as POL was initiated following Alex Chisholm's appointment as Permanent Secretary in 2016. This work culminated in the introduction of a new sponsorship model for BEIS Partner Organisations.

25. As a result, in August 2018 the Post Office Policy Sponsor function was established in BEIS and since then BEIS (and subsequently DBT) has acted as POL's policy sponsor within Government. This means that BEIS, and now DBT, has set the policy direction for the Post Office in the way described above. DBT is responsible for setting the Government policy framework for POL, for example, in safeguarding the Post Office's social purpose. The policy sponsor also ensured that POL's activity was consistent with the wider Government policy framework, facilitating POL's access to Government as required and responding to parliamentary scrutiny and reporting requirements.

26. UKGI retained responsibility for corporate governance and financial advice.

27. Currently, the Post Office Policy team in DBT is overseen by two Deputy Director posts, reporting to the Director of Business Resilience who reports to the Director General of Business Sectors. The Director of Business Resilience

¹⁴ <https://www.ukgi.org.uk/2015/05/20/machinery-government-shareholder-executive-uk-financial-investments/>

oversees the policy for POL and is delegated Budget Holder for Post Office Investment Funding and Subsidy. The Director General reports to the department's Permanent Secretary. This set up has evolved gradually based on resourcing requirements since summer 2018 when the team was formed.

THE RELATIONSHIP BETWEEN POL, THE DEPARTMENT AND UKGI / SHEX

28. UKGI performs the shareholder role on behalf of the department and the relationship between the department and UKGI is set out in a Memorandum of Understanding ("**MOU**") [BEIS0000578]. It performs this for a number of departments for different partner bodies.

29. I set out below a short summary of the way in which this relationship is designed to operate. UKGI will naturally be best placed to provide the Inquiry with closer detail as to how it – and its predecessor ShEx – fulfilled and fulfils its roles.

30. UKGI performs its role in two main ways: (a) via a dedicated shareholder team with appropriate expertise and experience (the "**Shareholder Team**"); and (b) by acting as Shareholder NED, through occupying a Non-Executive Director seat on the POL Board.

31. Key aspects of the shareholder role include:

- (a) Working with POL and the department to maintain appropriate and effective corporate governance arrangements which govern the department-POL relationship, through up-to-date and fit-for-purpose governance documents, including Framework Documents, the Articles and annual Chair's letter.

- (b) Reviewing and providing oversight of effective leadership (via boards and senior management). This includes, in practice, advising the Secretary of State as shareholder on the effectiveness of POL's board composition, the recruitment, remuneration and appointment processes for the POL Chair and CEO, and inputting into the annual appraisal of the POL Chair and POL Board effectiveness review.
- (c) Assessing and challenging POL's corporate objectives, POL's board-approved annual business plans and its three-year strategic plans. Monitoring performance against POL's business plans and compliance with funding arrangements from a shareholder perspective. UKGI also performs an essential role in monitoring POL's network reporting.
- (d) Encouraging strong corporate capability by providing high-level challenge to POL on the strength of its governance systems, predominantly via the Shareholder NED's presence on the Audit, Risk and Compliance Committee ("**ARC**"). Additionally, the Shareholder Team works to promote the efficacy of POL's internal risk management and control functions.
- (e) Supporting and supplementing the activities through the Shareholder NED function on the POL Board.

32. Additionally, in support of the Shareholder NED, the Shareholder Team briefs the Shareholder NED prior to POL Board and POL Board committee meetings. The Shareholder Team is able to draw on its knowledge from day-to-day interactions with POL, across a wide variety of areas (including regular engagement with POL's Head of Change, Risk and Assurance) to inform these

briefings. The department policy team participate in POL Board briefings and debriefings, giving the Shareholder NED, the Shareholder Team and the department policy team regular opportunities to raise concerns and to discuss issues.

33. The Shareholder NED also has a seat on the Audit, Risk and Compliance Committee and the Remuneration Committee (“**RemCo**”). The role of the Shareholder NED is an important governance lever in the performance of the shareholder role. The Shareholder NED’s attendance at the POL Board and sub-committees provides the Shareholder Team, and (through it) the department, with an important line of sight into developments at POL. Unlike the other POL non-executive directors (“**NEDs**”), the Shareholder NED is not appointed to the POL Board to provide specific subject matter expertise. Rather, the Shareholder NED brings a government perspective to aid the POL Board’s decision-making.

34. As a result, although the Shareholder NED has the same legal obligations and responsibilities to POL as do the other NEDs, their functional relationship with POL differs. The Shareholder NED regularly meets with departmental officials and, when appropriate, Ministers to discuss developments at POL and relevant Departmental / Ministerial interests. The Shareholder NED provides this relevant context and perspective to the POL Board to aid its decision-making. The Shareholder NED also provides the department with insight into the quality of the POL Board and management in the performance of their functions. In addition, the Shareholder NED also leads the Shareholder Team that interacts with POL and the department on a regular basis.

35. The establishment in August 2018 of the Post Office Policy team in BEIS marked a change in the division of roles and responsibilities between POL, UKGI and the department, as the Department took responsibility for overall high-level policy direction and accordingly became more actively involved in POL. The Director for Business Resilience was appointed in April 2019 and Deputy Directors who work solely on this area shortly after.
36. BEIS became DBT on 7 February 2023. The department's Post Office Policy team has remained unchanged throughout this Machinery of Government change.
37. Through UKGI, and ShEx before it, DBT and its predecessor departments have monitored POL's performance, in particular its compliance with minimum network access criteria and provision of specified services. DBT approves the appointment of all non-executive directors (as well as the Chair and the CEO) to the Board and typically has appointed a UKGI / ShEx employee for this purpose since 2012 (the Shareholder NED).
38. On 1 April 2020, the Shareholder Relationship Framework Document, codifying the relationship between POL, BEIS and UKGI came into effect. This document provides clarity to all parties as to how Government oversees POL by Government is to be conducted, sets expectations between the parties and outlines the governance standards which POL must observe.

CHRONOLOGY

39. I set out below an overview of the relevant corporate and governance structures as they existed throughout the period with which this statement is concerned (i.e. between 1 January 1999 and 1 June 2021).

1 January 1999

40. As at 1 January 1999, all but one of POCL's shares were held by the statutory corporation known as the Post Office (the remaining share being held by POCL's chief executive and chair). DBT's predecessor departments held no direct or indirect shareholding at this time.

41. The Post Office Act 1969¹⁵ conferred on the "Secretary of State" powers of control and supervision of the Post Office (the statutory corporation), including a power to issue certain directions; these powers were, in practice, exercised by the Secretary of State for Trade and Industry.

42. As at 1 January 1999, POCL's original unamended Articles [BEIS0000579] remained in force. Amongst other provisions, paragraph 11.01 gave the Post Office (the statutory corporation) the power to appoint and remove Directors and paragraph 13.02 gave the Post Office to power to issue directions to POCL.

25 March 2001

43. On 25 March 2001, all but one share in POCL was transferred to Consignia plc¹⁶ (the other being held by Anthony Roberts, chief executive). Consignia Holdings plc¹⁷ held all but one of the shares in Consignia plc, with the other share being held by Jonathan Evans (company secretary).

¹⁵ Principally s.11

¹⁶ Now known as Royal Mail Group Ltd

¹⁷ Now known as Postal Services Holding Company Ltd

44. The Secretary of State was controlling shareholder, and holder of the single “Special” redeemable preference share, in Consignia Holdings plc¹⁸. The other share was held by the Solicitor for HM Treasury. Consignia Holdings plc’s Articles, passed on 4 January 2001, [BEIS0000580] conferred on the Secretary of State particular rights over the company as a result of this shareholding.

45. Through this corporate structure, the Secretary of State was the ultimate controlling shareholder of POCL.

4 October 2001

46. On 4 October 2001, the by-then renamed POL adopted new Articles [BEIS0000581]. These provided (at articles 11 and 78) that POL’s parent company – Consignia plc – could issue directions to and/or appoint or remove members of POL’s board.

20 December 2002

47. On 20 December 2002, Royal Mail Group plc (“**RMG**”, the new name for Consignia plc) adopted new Articles [BEIS0000582]. These conferred new rights on RMG’s parent Royal Mail Holdings plc (“**RMH**”, the new name for Consignia Holdings plc), including in relation to matters requiring RMH’s consent, the provision of information to RMH, and (at Article 79) appointments to and removal from RMG’s board of directors. They also conferred some modest rights on the Special Shareholder (i.e. the Secretary of State), such as

¹⁸ Under Consignia Holding plc’s Articles, the “Special Share” may only be issued to the Secretary of State: article 11.

the right to access certain advice to RMH, where RMH requests this (at Article 128).

48. On the same day, POL also adopted new Articles [BEIS0000583]. Articles 11 and 78 remained essentially as before, though a new power to veto the POCL chief executive was given to POL's parent (RMG); and provision for engagement by the Special Shareholder with POL.

23 January 2003

49. On 23 January 2003, RMH adopted new Articles [BEIS0000584]. These included provision for the Special Shareholder to be consulted in relation to certain "Relevant Issues", and to appoint and remove RMH board members.

7 August 2007

50. On 7 August 2007, POL's Articles were amended [BEIS0000585], though no substantial changes to the corporate governance framework were made.

2008-2009

51. Between 3 June 2008 and 3 June 2009, RMG became POL's sole shareholder.

10 March 2009 and 8 December 2011

52. On 10 March 2009, POL, RMG¹⁹ and RMH all amended their Articles [BEIS0000586, BEIS0000587 and BEIS0000588]. RMH's Articles were

¹⁹ Which had become a private limited company, Royal Mail Group Ltd, on 16 March 2007.
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amended again on 8 December 2011 [BEIS0000589]. No substantial changes were made to the corporate governance arrangements in any company.

1 and 2 April 2012

53. On 1 April 2012, RMG's entire shareholding in POL were transferred to RMH, which as a result become direct sole shareholder in POL. A shareholder NED was also appointed on this date to represent the Secretary of State's interests on the POL board.

54. On 2 April 2012, a single redeemable preference share in POL was issued and allocated to the Secretary of State.

55. Therefore, as at 2 April 2012, the Secretary of State held all but one ordinary share and was the holder of the only Special Share in RMH, which in turn held all the ordinary shares in POL; and the Secretary of State was the holder of the sole redeemable preference share in POL.

56. On that same day (2 April 2012), POL adopted new Articles [BEIS0000590]. This conferred additional rights and powers on the Secretary of State (as Special Shareholder), including the right to attend and speak at POL general meetings (article 10(b)), and set out matters requiring prior consultation with the Secretary of State (including in relation to the constitution of POL's board) (article 11).

10 and 12 September 2013

57. On 10 September 2013, RMH's name changed to Postal Services Holding Company plc ("**PSHC**"), and it adopted new Articles [BEIS0000591]. On 12 September 2013, POL also adopted new Articles [BEIS0000592]. No material corporate governance changes were made.

1 April 2016

58. On 1 April 2016, ShEx was transferred to form part of UKGI, with UKGI taking over the POL corporate governance role from ShEx on behalf of the Government. UKGI also took on policy sponsorship of POL.

12 June 2017

59. On 12 June 2017, all of PSHC's shares in POL were transferred to the Secretary of State, who therefore became – and has remained – the direct sole shareholder in POL.

2018

60. In the summer of 2018, the Post Office Policy team was established in BEIS, taking responsibility for policy sponsorship of the Post Office (which had previously sat with UKGI). UKGI continued to act as the corporate governance sponsor.

19 March 2020

61. On 19 March 2020, POL adopted new Articles [BEIS0000593], which amongst other things made provision for additional circumstances in which the Special Shareholder's prior consent was required, including in relation to development

of the Group Strategic Plan, and contained a power to issue directions: articles 7, 9 and 46.

1 April 2020

62. On 1 April 2020, the "*Post Office Limited: Shareholder Relationship Framework Document*", to which I refer in paragraph 38 above, came into effect. It was published by BEIS the previous month.

Statement of Truth

I believe the content of this statement to be true.

Signed:

GRO

Dated: 02/02/2024

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No.	Document Description	URN	Control Number
01	Memorandum of Understanding between the Department for Business, Energy and Industrial Strategy and UK Government Investments Limited, 12 December 2019	BEIS0000578	BEIS0000578
02	Post Office Counters Limited's Articles of Association, 29 July 1987	BEIS0000579	BEIS0000579
03	Consignia Holdings plc's Articles of Association, 4 January 2001	BEIS0000580	BEIS0000580
04	Post Office Limited's Articles of Association, 4 October 2001	BEIS0000581	BEIS0000581
05	Royal Mail Group plc's Articles of Association, 20 December 2002	BEIS0000582	BEIS0000582
06	Post Office Limited's Articles of Association, 20 December 2002	BEIS0000583	BEIS0000583
07	Royal Mail Holdings plc's Articles of Association, 23 January 2003	BEIS0000584	BEIS0000584
08	Post Office Limited's Articles of Association, 7 August 2007	BEIS0000585	BEIS0000585
09	Post Office Limited's Articles of Association, 10 March 2009	BEIS0000586	BEIS0000586
10	Royal Mail Group Limited's Articles of Association, 10 March 2009	BEIS0000587	BEIS0000587
11	Royal Mail Holdings plc's Articles of Association, 10 March 2009	BEIS0000588	BEIS0000588
12	Royal Mail Holdings plc's Articles of Association, 8 December 2011	BEIS0000589	BEIS0000589
13	Post Office Limited's Articles of Association, 2 April 2012	BEIS0000590	BEIS0000590
14	Postal Services Holding Company plc's Articles of Association, 10 September 2013	BEIS0000591	BEIS0000591
15	Post Office Limited's Articles of Association, 12 September 2013	BEIS0000592	BEIS0000592
16	Post Office Limited's Articles of Association, 19 March 2020	BEIS0000593	BEIS0000593