

**POST OFFICE HORIZON IT INQUIRY**

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**CLOSING SUBMISSIONS ON BEHALF OF  
UK GOVERNMENT INVESTMENTS**

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## OVERVIEW

1. UK Government Investments (“UKGI”) as an institution, and those witnesses from the Shareholder Executive (“ShEx”)/UKGI who have given evidence, are profoundly and painfully conscious of the enduring human suffering of the postmasters<sup>1</sup>, their families and all those affected by the issues raised during the Inquiry.
2. UKGI’s approach throughout this Inquiry has been one of full and pro-active co-operation, through the provision of witness statements, disclosure, and Opening and Closing Submissions that are intended to explain the role of ShEx/UKGI<sup>2</sup> in the relevant events and reflect on areas where different approaches might have resulted in earlier recognition of the failings in the Horizon IT system (“Horizon”) and Post Office Limited (“POL” or “the Company”) that caused so much harm. The purpose has been two-fold. First, to provide the Inquiry, the postmasters, and the public with the information that they need to understand what happened. Second, to help ensure that the appropriate lessons are learned so that this tragedy cannot be repeated.
3. These Closing Submissions should be read in conjunction with UKGI’s detailed Opening Submissions (**SUBS0000006**) which provided an account of the involvement of ShEx/UKGI in the key aspects of the chronology and set out the organisation’s reflections as they stood at that stage.<sup>3</sup> In general terms, the reflections identified in those Opening Submissions have been reinforced during the course of this Inquiry. Having considered all of the evidence shared by the Inquiry, it is clear that there were governance failures in which ShEx/UKGI played a part. The evidence has shown that ShEx/UKGI was at times too trusting of the persistent narrative from the POL Executive, Fujitsu Services Limited (“Fujitsu”) and reports of independent assurance exercises that there were no problems with Horizon. At

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<sup>1</sup> In these Closing Submissions, the term “postmaster” also includes “sub-postmaster”.

<sup>2</sup> The Inquiry will be aware that ShEx was established as part of the Cabinet Office in 2003, was transferred to the (then) Department of Trade and Industry in 2004 and remained in existence until the transfer of its functions to UKGI in April 2016. Where possible (and to the extent that it does not cause confusion) these submissions refer to ShEx in respect of the period to April 2016 and to UKGI thereafter.

<sup>3</sup> The Opening Submissions were informed to a significant degree by the UKGI ‘Internal Review’, the preliminary internal review commissioned by the UKGI Board in September 2020 (as described in the Witness Statement of Robert Swannell (**WITN10800100**, §§137-140)), as well as substantial further work undertaken by UKGI following the Internal Review for the purpose of preparing its Opening Submissions.

critical junctures, we should have provided more robust challenge and, had we shown more curiosity, the legitimate concerns raised by postmasters and their representatives may have been given more weight. For these failures, we apologise unreservedly.

4. The Opening Submissions sought to provide a chronological and thematic framework that would assist the Inquiry in understanding the role of ShEx/UKGI in the relevant events. It identified the moments of maximum opportunity for different paths to have been taken and invited analysis of ShEx/UKGI's actions at those points. These Closing Submissions do not repeat that exercise and do not attempt to rehearse all the relevant evidence the Inquiry has now heard. It seeks instead to offer the Inquiry an analysis of that evidence, insofar as it relates to UKGI, structured as follows:

- I. **THE LEVELS OF GOVERNANCE: THE ROLE OF THE EXECUTIVE, BOARD AND SHAREHOLDER:** UKGI's experience of the Horizon scandal, and its participation in this Inquiry, have demonstrated the nature and extent of the challenges that arise at the shareholder level, in the context of a large and complex organisation such as POL, when its Executive is unable and/or unwilling to provide its Board and the Shareholder with an accurate account of the risks facing the Company. It is important, therefore, that the analysis of the involvement of ShEx/UKGI proceeds from a clear understanding of the respective roles of the Shareholder organisation, the Board, and the Executive when it comes to identifying and dealing with risks facing the Company.

- II. **SHEX/UKGI PURPOSE, ROLE AND EVOLUTION OVER TIME:** The analysis of the performance of ShEX/UKGI in the governance of POL must include a clear understanding of the nature of government-owned Arm's Length Bodies ("ALBs"), how ShEx/UKGI and its approach to corporate governance has evolved over the period with which the Inquiry is concerned,<sup>4</sup> and how the model applies to the delivery of corporate governance to an ALB such as POL. In particular, it is necessary to address the linked questions of

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<sup>4</sup> For example, when considering an issue such as the provision of advice to Ministers, it is important to be clear as to whether, at the relevant point in the chronology, the Shareholder Representative Non-Executive Director ("SNED") was involved in this process and, if so, whether the remit for such advice included policy as well as shareholder issues.

how Ministerial objectives are communicated and delivered within this model, and how a balance is struck between commercial freedom and the social purpose of the business.

- III. **OVERVIEW OF FACTUAL CONTEXT AND CHRONOLOGY:** One of the particular challenges posed by this Inquiry is the extended timeframe over which the relevant events occurred. From the perspective of ShEx/UKGI, it is important that individual points in the chronology are assessed in the context of both ShEx/UKGI's organisational structure as it pertained at the time, and the investigation(s) into Horizon that were ongoing at that point. The answer to the straightforward question of 'What more should have been done?' will depend on a clear understanding of ShEx/UKGI's role at that point in the chronology and the events that were transpiring at that time. To assist with that analysis, the key eight-year timeline has been divided into six distinct periods, and a summary provided of the central aspects of each period.
- IV. **UKGI DEVELOPMENTS AND IMPROVEMENTS:** Since the establishment of ShEx in 2003, ShEx/UKGI's corporate governance practices have constantly evolved, responding to the increasing demands that Government has placed on it, significant enhancements in corporate governance best practice, and the experiences of organisations for which it has corporate governance responsibilities. In particular, UKGI has engaged in a process of reflection, enhancement and improvement since 2019, much of which has been driven by the lessons learned from Horizon. An account is given of the developments and changes within UKGI that have been made to meet the contemporary challenges of fulfilling the Shareholder role regarding POL and the wider assets in its portfolio, with particular focus on those areas likely to be of most direct concern to the Inquiry in light of the evidence given in Phases 5 and 6.
- V. **POL TODAY:** The lessons learned and changes made by UKGI as a result of its reflections on Horizon are, for the most part, of general application and are focussed on ensuring, as far as possible, that a tragedy of this sort does not happen again within the assets in its portfolio. However, UKGI is conscious that postmasters continue to live with the consequences of the events with

which this Inquiry is concerned, and that Phase 7 has focussed on POL's current position. Accordingly, UKGI has provided its reflections on the governance of POL as matters stand today and the relationships between the Company, UKGI and the Shareholder, the Department for Business and Trade.<sup>5</sup>

5. The principal purpose of the approach taken in these closing submissions is to assist the Inquiry in identifying appropriate recommendations as part of the shared endeavour of ensuring that there is no repeat of a tragedy of this nature. Consequently, these Closing Submissions are primarily forward-looking, and as such deal with the evidence adduced at the Inquiry to the extent necessary to identify the key issues and explain how they have been or could be addressed. UKGI recognises that others will have different perspectives, and their closing submissions will be read with care and reflection.
6. UKGI, and ShEx before it, operates as the centre of expertise for corporate governance within the Government. In the performance of its shareholder role across a portfolio of large, complex and commercial assets, UKGI seeks to promote the establishment of good corporate governance foundations and practices within its assets and that these take account of changes to wider corporate governance standards. UKGI's role also extends to monitoring financial performance and promoting strong corporate capability and effective leadership within those assets. UKGI has a role in monitoring whether significant risks/issues are properly identified and addressed by an asset's Board and/or escalated to the Department if necessary.
7. As an organisation, ShEx/UKGI did not fully appreciate the scale and significance of the Horizon problem until it was exposed during the litigation before Mr Justice Fraser (particularly the Common Issues Judgment "CIJ" in March 2019). During parts of the chronology, ShEx/UKGI and POL's Board could and should have done more to challenge and interrogate POL's steadfast defence of Horizon and encourage a process of thorough, independent investigation capable of producing a

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<sup>5</sup> For ease of reference, these Closing Submissions adopt the terms 'the Shareholder' and 'the Department' to refer to the Department for Business and Trade and its predecessors.

definitive answer of the type belatedly delivered by the litigation. This, in the assessment of UKGI, is the fundamental lesson to be learned from the analysis of the evidence relating to the role of ShEx/UKGI in the matters with which the Inquiry is concerned: curiosity and challenge (particularly by an asset's board) are fundamental requirements of effective corporate governance, and assurances given by the executive must be tested, and not necessarily taken at face value.

8. In addition to this fundamental lack of curiosity, there were times when ShEx/UKGI were insufficiently objective and open-minded, were too ready to believe POL assurances and too ready to dismiss postmaster concerns. There were also points when ShEx/UKGI were too fatalistic about litigation being the only realistic solution, and too quick to accept POL's position that alternatives to resolving the dispute had been exhausted. ShEx/UKGI provided and supported Shareholder Representative Non-Executive Directors ("SNEDs") who were part of a POL Board that was, at points, insufficiently curious and insufficiently rigorous in following up lines of enquiry. ShEx/UKGI take responsibility for its part in those failings and apologise for them. That apology is made to the public and, most importantly, to the postmasters and their families.
  
9. Those failings, significant though they were, resulted from errors and misjudgements, not from any deliberate intention to victimise postmasters or hide the truth. There is no evidence whatsoever of any ShEx/UKGI employee being aware of defects with Horizon that they sought to conceal, deny or obfuscate. There is no evidence whatsoever of any UKGI/ShEx employee being aware of a wrongful conviction that they sought to conceal, deny or obfuscate. No such allegations have been put to any of the ShEx/UKGI witnesses and there is no support for them in any of the tens of thousands of pages of evidence that the Inquiry has forensically examined. ShEx/UKGI itself has found no evidence for such suggestions. The answer to the question of whether ShEx/UKGI should have reached a better understanding of the nature, scale and implications of the Horizon scandal sooner is, undoubtedly, 'Yes'. The answer to the question of whether ShEx/UKGI or any of its employees deliberately sought to suppress evidence of that scandal is, unequivocally, 'No'.

10. The evidence considered by the Inquiry in Phases 5 and 6 has reinforced UKGI's view, as reflected in the changes to UKGI's policies and procedures implemented since 2019 (outlined below at paragraphs 106-200 below) that there were aspects of the ShEx/UKGI shareholder model as it stood during the period 2012-2019 that would have benefitted from development and enhancement. For example, the organisation identified that it would benefit from a clearer, more comprehensive and more accessible set of principles and guidance underpinning the performance and delivery of the shareholder role; from a more developed and structured training and professional development programme provided to SNEDs , including in respect of whistleblowing, litigation and culture; and from more thought being given to the management of tensions and/or conflicts as between interests of the shareholder and the company. Whilst there had previously been procedures and/or processes in place for addressing these areas, UKGI has identified scope for improvement in respect of all of them and, although care must be taken in making general statements in respect of a picture that developed and improved over an eight-year period, the evidence heard by the Inquiry concerning the Phases 5 and 6 period confirms that it was correct to do so.
  
11. Accordingly, UKGI has made extensive progress since 2019 in a number of areas likely to be of concern to the Inquiry, including the ones summarised above. That progress is set out in detail in the witness statements of the current Chief Executive, Charles Donald (**WITN10770100**, **WITN10770200**, **WITN10770300**, **WITN10770400**), and in the statement of the current SNED on the POL Board, Lorna Gratton (**WITN11310100**). It is also summarised in these Closing Submissions. UKGI is now a more effective organisation, better placed to support assets within its portfolio in dealing with difficult issues/risks properly, successfully and timeously. Many of these developments have been made in response to the Horizon tragedy and have been informed by the evidence collected by Inquiry. Put simply, UKGI has sought to learn lessons with the intention of doing everything we are able to limit the chance that similar corporate governance failings could reoccur.

**THE LEVELS OF GOVERNANCE: THE ROLES OF THE EXECUTIVE, BOARD AND SHAREHOLDER**



12. The evidence heard by the Inquiry in Phases 5 and 6 has demonstrated the very considerable corporate governance challenges that arise in a company whose executive do not provide a full, accurate and reliable account of the risks facing that company. Numerous witnesses, including the Inquiry's Corporate Governance Experts, have made plain that the effective identification and communication of risk by the executive to the board and to the shareholders is the first and most fundamental stage of effective corporate governance. The point is accurately summarised in the first expert report: "*Risk is a fundamental and necessary part of Executive responsibilities. The identification, analysis and management of risk lies at the very heart of running a company, contributing directly to effective management and corporate performance... It is an Executive's responsibility to build an integrated and dynamic understanding of the company's risk profile which is effectively communicated to the Board and to shareholders*" (EXPG0000006\_R §4.2.1). Accordingly, if the executive reports on a risk to its board, the Department and/or UKGI, all recipients of that report should be able to trust that they are being given a frank, full and balanced picture.
13. The POL Executive failed to discharge this fundamental obligation in relation to Horizon. The risks were not accurately identified to the POL Board or the Shareholder. There was obfuscation and a pervasive lack of clarity. Whenever information was brought to the attention of the POL Board or the Shareholder that might indicate the existence of a significant risk, it was downplayed, and accompanied by detailed and unequivocal assertions on the part of the POL Executive that the system was robust, and the concerns were baseless. The first stage in the delivery of effective corporate governance was wholly absent during the entirety of the period covered by Phases 5 and 6.
14. The importance of the failure of the first level of corporate governance to understanding why the Horizon scandal was able to persist for so long cannot be overstated. Many, if not most, of the former POL Directors that served on the POL Board were extremely experienced with long records of service on the boards of large and complex companies. Despite this, it was not until the outcome of the CIJ in 2019 that the POL Board even began to obtain a full and accurate understanding of the true position relating to Horizon, the scale of the risks it posed to the Company

and the extent of the damage it had done to postmasters. The starting point of any effective system of corporate governance has to be the existence of a culture of honest, accurate and reliable reporting by the executive of a company. If that does not exist, the ability to identify and act on potential issues at other levels of corporate governance is greatly diminished.

15. The second level of effective corporate governance, as explained by the Corporate Governance Experts, consists of oversight by the board. It is the responsibility of the board to apply challenge and curiosity to risk reporting such that it is satisfied it has a proper understanding of the nature and extent of the risks facing the company. Whilst there should be a relationship of trust between the executive and the board, the board must apply an approach of professional curiosity and not merely act as the passive recipient of information taken at face value. There are a variety of means by which it can do this, including requiring further information to be provided by the executive and, if necessary, commissioning its own investigation. The Board, often through or with the support of its Audit and Risk Committee (“ARC”), implementing best practice on risk management, will be central to this scrutiny. If the board lacks expertise in the area in question, or if it considers it necessary to obtain independent assurance of information provided by the executive it should commission external reporting.
16. It appears that, at certain points, the POL Board failed to provide a sufficiently curious mindset when considering the information it was given regarding Horizon and/or failed to subject that information to sufficiently robust challenge. In addition, it appears that on occasion – and the Deloitte LLP report and the review undertaken by Tim Parker (“the Parker Review”) are obvious examples – the POL Board failed to follow through thoroughly on relevant investigations.
17. If the first and second levels of corporate governance do not identify the true nature and extent of a risk facing the company, then the challenge faced at the third level by the shareholder (whether ShEx/UKGI or the Department in the case of POL) will be very substantial. In the case of POL, there is visibility of the risk through the SNED’s seat on the POL Board and ARC, and through interaction with the

Company at other levels, but the extent of that visibility will inevitably be limited and reliant on the information flow from the Company.

18. This observation is not made by way of excuse on the part of UKGI. The relevance, for present purposes, of the difficulty in picking up risk at the third level of corporate governance which has gone unidentified at the first and second levels is twofold. It demonstrates, firstly, how assiduous and self-critical UKGI has to be in order to ensure that it extracts the maximum possible learning from the Horizon scandal and its participation in this Inquiry. Secondly, it demonstrates how that exercise of learning lessons has to be directed not just at the identification of risk at the third level but at how UKGI can seek to promote the effectiveness of levels one and two, through seeking to promote the importance of a healthy Executive culture and an effective, curious and testing Board within POL.
19. These reflections have informed UKGI's approach from the outset, including its approach to this Inquiry. It recognises the challenge in delivering shareholder oversight in this context and the scale of the task of ensuring, as far as possible, that nothing like the Horizon scandal is permitted to happen again in one of the assets in its portfolio. It has sought to be rigorously and objectively self-critical, from the Internal Review, through to its Opening Submissions and its evidence to the Inquiry. It recognises that, whilst lessons have been learned and significant improvements made (as summarised below), it must remain open-minded to the identification of further lessons and improvements and must recognise that performing a shareholder role across a wide and diverse portfolio of assets requires constant improvement and evolution and a commitment to being a learning organisation.
20. Much has been done by UKGI since 2019, and it is important that the Inquiry has a full and accurate account of that work, as set out in the witness evidence of Charles Donald, and summarised below. However, UKGI wishes to make clear, at the outset, that it recognises that it must continue to develop and improve its corporate governance processes – both in relation to POL and more generally. These processes continue to evolve in line with best practice within both government and the private sector. UKGI looks forward to any recommendations the Inquiry may make in this

regard, and it remains ready to assist the Inquiry with anything further it may require to formulate such recommendations.

21. These Closing Submissions are unsparingly focussed on UKGI, on what it got wrong and what it has done to learn lessons and implement improvements to prevent the recurrence of such failings. That is deliberate and UKGI has not sought to pass comment on the actions or inactions of other Core Participants, who will no doubt provide the Inquiry with their own reflections and account of lessons learned. UKGI is also aware that the Inquiry will now be very familiar with the nature of UKGI's role in the relevant corporate governance structure, and the how that role intersects with POL (including its Board) the Department and Ministers. In particular, the Inquiry will note that the SNED appointed by ShEx/UKGI to the POL Board was only ever one of a number of Non Executive Directors ("NED") and only occupied one seat on the Board. Similarly, although the Shareholder Team provided an important channel of information between the Company and the Department, the Department and Ministers interacted directly with the Company at a variety of different levels and we address the relationship and responsibilities further below.

## **SHEX/UKGI PURPOSE, ROLE AND EVOLUTION OVER TIME**

### *The ALB model*

22. To understand the purpose and evolution of UKGI's role in respect of performing a shareholder role for ALBs such as POL, it is essential to first understand the purpose of the ALB model at a high level, why successive governments have considered it appropriate to deliver services (including commercial services) via ALBs, and how corporate governance is typically delivered under the ALB model for complex commercial entities such as POL.
23. ALBs have been a necessary part of the landscape of government in the UK for over half a century. There are around 300 such bodies and, as Sir Stephen Lovegrove explained, they perform a vital function across a number of departments (15 July 2024, 117-118).<sup>6</sup> They are used to deliver services where the alternatives (i.e. delivery

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<sup>6</sup> There were 295 ALBs in 2020, the latest date for which such published data is available: see **RLIT0000434** and

through a central Government department, or outsourcing to the private sector) are considered impossible, impractical or undesirable (**WITN00800100**, §§12-21; **WITN11010100**, §§18-23). Two features are common to the vast majority of ALBs engaged in complex delivery tasks: the use of specialist management teams (not typically available from within the Civil Service) and operational freedoms.

24. Government's best practice for ALBs, such as POL, is for them to adopt governance regimes similar to those of private sector companies. Key to this is the use of boards to oversee the work of the ALB's executive and to hold them to account on behalf of the sponsoring Secretary of State. The executive, overseen by the board, are responsible for managing and operating the company in a way to meet the objectives of Government and in accordance with national and international standards of good governance. Through the selection of high quality members, boards have the capacity, experience, and time to effectively oversee the (often highly complex) delivery activity of an ALB in a way that government ministers and departmental officials cannot. This perspective also means that boards can assess the capability and suitability of executive management teams more effectively than departments/ministers.
25. As the shareholding department and Secretary of State ultimately remain accountable to Parliament for the operation of a Government owned entity, the ALB model requires an effective interface between the relevant department (through both Ministers and the Permanent Secretary<sup>7</sup>) and the ALB. The nature of the interface and the wider application of the ALB model will vary depending on the needs and circumstances of the ALB in question. In essence, the 'length of the arm' may increase or decrease depending on the freedoms required, or when a department considers that it should be more closely involved. That relationship will also be affected by the level of trust between the department and the ALB .
26. In terms of the exercise of Ministerial power to direct and influence ALBs, Ministers typically have a suite of 'hard' and 'soft' powers ranging from shareholder approval rights enshrined in constitutional documents to softer influencing powers by virtue

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**RLIT0000435.**

<sup>7</sup> It should be noted the Permanent Secretary for the shareholder Department is typically appointed as the Principal Accounting Officer for the ALB in accordance with Managing Public Money (**POL00363159**).

of being a 100 percent shareholder. Ministers must exercise their powers with care given the risk of long-term destabilisation of a publicly owned ALB if it is seen to be subject to excessive political interference (**WITN11010100**, §§40-41). The ALB model, and UKGI's role within it, provides the best opportunity for Ministers to do this. It is UKGI's view that Ministers have the powers they need to exercise appropriate oversight, should they be willing to use them. UKGI does not consider there to be a need for further legislation to fill a non-existent gap in this regard (10 July 2024, 185/16-24; see also 9 July 2024, p116-121 ; 9 July 2024, 182/5-23).

27. The frameworks associated with the ALB cannot alone guarantee good governance and outcomes. Whether that is achieved will be down to the combined efforts and interactions of the ALB's executive, board and the relevant department (**WITN00800100**, §21). That is a feature of the ALB model, not a flaw. The model exists to allow ALBs the necessary freedoms to operate effectively while exercising oversight by departments in the public interest. The conception and application of the ALB model will continue to evolve. However, it is a practical, empirical and tested approach to managing complex activities and relationships. As the Inquiry has heard, it is valued across government, and from our understanding no viable alternative has been proposed.<sup>8</sup>

#### *The Establishment of ShEx/UKGI*

28. ShEx was established as part of the Cabinet Office in 2003 before it became a Directorate of the Department of Trade and Industry (and its successor departments) in 2004. ShEx's principal purpose was to ensure that Government was an effective and intelligent shareholder of its largest commercial assets, working with the boards and management teams of Government-owned businesses to ensure that they were being run in a way that was commercially effective but that was also within the clear confines of the Government's policy objectives (**WITN11010100**, §17). ShEx was set up partly in response to criticisms from the National Audit Office ("NAO") and Public Accounts Committee on the Government's shareholding of assets. This was subsequently summarised in the NAO report on The Shareholder

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<sup>8</sup> Alan Johnson, for instance, has given evidence that he agrees with the reasons set out in Mark Russell's statement as to why an ALB model is suitable for organisations like POL (**WITN03380200**, §63).

Executive and Public Sector Businesses (28 February 2007) (RLIT0000197) which commented that *“there was a general lack of staff with relevant commercial and financial experience; and government’s approach was fragmented because responsibility for looking after the public shareholder interest lay with individual departments. In the absence of a central co-ordinating body, this arrangement inhibited the spread of existing good practice.”*

29. On 1 April 2016, the functions and operations of ShEx were transferred to UKGI, a new Government company owned by HM Treasury (“HMT”). The creation of ShEx/UKGI was a response to the desire to have its functions as central Government functions, not tied to any specific department. The creation in 2016 of UKGI as a separate company, with an arm’s-length relationship with the Treasury, was seen as important to prevent departments considering UKGI staff as Treasury staff. It remains important that UKGI continues to have an arms-length relationship with the Treasury so that departments feel able to use UKGI staff in a similar manner to its own staff (WITN00800100, §33).
  
30. By the standards of Whitehall, ShEx/UKGI is a new organisation, and it has evolved rapidly, meaningfully and markedly since it was established. When Sir Stephen Lovegrove joined ShEx in 2004 there were seven or eight other civil servants within the team (WITN11010100, §63). Today, UKGI employs around 150 people and performs the shareholder function for 25 assets. Unsurprisingly given this growth, the structures and approaches adopted by ShEx/UKGI have changed with its increased responsibilities and the institutional experience and memory gained from its work over time. Its expansion reflects the high regard in which its work is held in Government.
  
31. The ShEx Board came into existence in 2009, initially meeting six times per year and comprising three Executive Directors and six NEDs. As ShEx was a Directorate of the Department, not a company, this was not a corporate board, and the Directors did not have fiduciary duties under the Companies Act 2006. The establishment of UKGI in 2016 as a company saw the creation of a fiduciary Board, with Directors collectively having the responsibilities of a corporate Board. The ShEx Board was expanded to ten, with at least one Executive Director (to include the Chief Executive), and a majority of NEDs (to include the Chair). Since inception, UKGI has

had permanent secretaries from HMT and the Department on its Board, providing the Board with proximity to the perspectives of senior leaders at the heart of government departments.<sup>9</sup>

32. The Executive team at ShEx/UKGI has always been led by a Chief Executive. The Inquiry has heard from the last three permanent Chief Executives: Sir Stephen Lovegrove, who was in that post from June 2007 to January 2013 (**WITN11010100**, Oral Evidence 15 July 2024); Mark Russell, who succeeded Sir Stephen Lovegrove and remained in post until 2019 (**WITN00800100**, Oral evidence 9 July 2024); and Charles Donald, who has been in post since March 2020 (after a short period in which Justin Manson held the position of interim Chief Executive) (**WITN10770100**, **WITN10770200**, **WITN10770300**, **WITN10770400**, Oral Evidence 8 November 2024). The Chief Executive was (and is) assisted by the UKGI Executive Committee (“UKGI ExCo”), which comprises senior officials and is concerned with the day to day running of the organisation.

*The role of UKGI as Shareholder Representative*

33. UKGI’s role (and ShEx before it) in the ALB model is to act as a shareholder representative on behalf of departments across a portfolio of particularly complex and commercially focused assets. ShEx/UKGI’s portfolio has at points, ranged from large logistics firms (Royal Mail) to media organisations (Channel 4), to banking and investment (the Green Investment Bank), to highly specialist organisations of strategic importance to the UK (the Nuclear Decommissioning Authority (“NDA”), Urenco). Each of those assets present their own distinct challenges for the relevant shareholder team and require greater or lesser degrees of involvement from the UKGI Board, the UKGI Chief Executive, and the wider ShEx/UKGI team.
34. UKGI’s role is to support Government’s effective ownership of its assets, enhancing departments’ ability to effectively discharge their responsibilities in relation to their assets and promoting their successful organisational performance. UKGI’s principal purpose is to ensure that Government acts as an effective and intelligent

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<sup>9</sup> Between 7 February 2023 and 31 March 2024 the UKGI Board also included the Permanent Secretary from the Department of Science, Innovation and Technology. The Permanent Secretary for Department for Energy Security and Net Zero is due to join the Board in January 2025.



shareholder, working with the boards and management teams of government-owned businesses to ensure that they are being run in a way that is commercially effective but that is also consistent with the Government's policy objectives.

35. At a more granular level, UKGI's delivery of the shareholder function includes:
- a. Working with the asset and its sponsor department to establish fit for purpose corporate and government governance frameworks in line with best practice;
  - b. Supporting and challenging assets to produce fit for purpose business plans, performance metrics and reporting;
  - c. Challenging and monitoring the asset's internal systems and processes, and promoting effective internal governance, culture and organisational health of the asset;
  - d. In conjunction with the asset Chair and Board, ensuring effective recruitment and remuneration processes, including succession planning;
  - e. Facilitating effective, pragmatic and transparent relationships between the asset and government, through formal and informal interactions between the asset Executive, the asset Board and Ministers; and
  - f. Providing advice and support to Ministers on the performance of the asset Board and the delivery of the organisation's objective.

*The role of the UKGI SNED and Shareholder Team*

36. In the performance of its shareholder role, UKGI (and ShEx before it) has typically appointed a UKGI SNED to the asset's board. For example, UKGI appointed its first SNED to the POL Board in 2012.<sup>10</sup> The SNED appointment is an important lever in how UKGI delivers its shareholder role. It provides the relevant department with enhanced visibility on the performance of the asset, including the functioning of the asset's Board and the relationship of the Board and Executive. The SNED will meet regularly with department officials and Ministers, providing useful context on the operation of the asset's Board as well as insight into the quality of the Board and management in the performance of their functions. Unlike the other NEDs, the

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<sup>10</sup> Susannah Storey (WITN00920100, Oral evidence 30 July 2024), was the SNED on POL from April 2012 to March 2014. She was succeeded by Richard Callard (WITN00140100, Oral evidence 12 July 2024), who was on the POL Board until March 2018, when he was replaced by Tom Cooper (WITN00200100, Oral evidence 10 July 2024). Tom Cooper was in turn succeeded by Lorna Gratton in May 2023 (WITN11310100, Oral evidence 7 November 2024). The Inquiry has detailed written statements and has heard oral evidence from all four SNEDs.

SNED is not appointed to provide subject matter expertise on specific topics (i.e. commercial experience, HR experience etc). Rather, the SNED brings a government perspective to aid the Board's decision-making and is a conduit to convey the views and perspectives of Ministers and the Department to the Board of the asset.

37. In addition to the appointment of a SNED, ShEx/UKGI's shareholder representative role for POL (and other assets in its portfolio) is/was conducted by a Shareholder Team. The Shareholder Team comprised individuals drawn from the civil service and those recruited to ShEx from the private sector who brought specialist skills – notably in financial management and reporting. The Shareholder Team reported upwards to the Director within ShEx with responsibility for POL. Since the appointment of Tom Cooper, the Director within ShEx responsible for the POL Shareholder Team has also held the position as the POL SNED.<sup>11</sup>
38. These structures are important in understanding the work of ShEx/UKGI, but they must be understood in the context of an organisation that intentionally avoids the more rigid hierarchies that may apply elsewhere in Whitehall (WITN00800100, §40, §106). ShEx/UKGI encouraged a collegiate approach to the work, combining a delegation of authority to shareholder teams working with the assets with an open culture that allowed all members of those teams to raise matters with senior colleagues, including the Chief Executive and, where appropriate, Chair (WITN00800100, §40). Formal structures evolved over time to allow for regular review of the activities and performance of shareholder teams for each asset in its portfolio by peers and more senior officials within ShEx/UKGI, through asset-specific reviews, and ShEx/UKGI-wide bodies such as the UKGI Risk Committee (later the Audit and Risk Committee), UKGI ExCo and the UKGI Board.

*The role of the SNED and Shareholder Team today*

39. As mentioned above, UKGI is the central resource of corporate governance expertise within Government. This means that it is well placed to recruit individuals from

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<sup>11</sup> The structure and remit of the POL Shareholder Team went through various iterations in the period with which the Inquiry is concerned, with major change coming in March 2014 when the role of SNED was combined with the leadership of the Shareholder Team under Richard Callard as set out below in paragraphs 46-47, an arrangement which continued under Tom Cooper and Lorna Gratton.

both the private and public sector who have the relevant skills and experience to become company directors. The cumulative experience and corporate memory that UKGI has developed through providing SNEDs to a wide variety of assets within its portfolio over many years means that it is also best placed to train SNEDs and support them when in post, as is described in Lorna Gratton's Witness Statement (WITN11310100, §§60-62) and Charles Donald's Fourth Witness Statement (WITN10770400).

40. Further, UKGI provides experienced and expert shareholder teams to assist the SNED and to perform the shareholder role on behalf of the department, given its ability to recruit and retain staff from the civil service and the private sector, creating a 'critical mass' of corporate finance, corporate governance and civil service expertise (WITN11010100, §§109-110). The role of the shareholder team is not to 'man mark' the asset Board or Executive and considerable reliance will always have to be placed on the asset to provide full, accurate and timely information about the company to the team. However, UKGI's position as a central repository for such resource allows for training, peer support, and the development and application of standards of best practice that are drawn from and applied across a wide portfolio of diverse assets, as well as those outside of the Government. Issues and concerns can be escalated within UKGI to utilise the experiences of those who have worked on a range of assets, and major government and private sector projects. The SNED and shareholder teams also have access to the UKGI legal department, senior leadership team and Board, who collectively have a deep and broad understanding of corporate governance and the challenges posed by complex, publicly-owned organisations. UKGI continues to work on developing and improving the shareholder role it performs for departments, including how SNED and shareholder teams are recruited and trained. The improvements that have been made in these areas in recent years are discussed later in these Closing Submissions at paragraphs 106-200.
41. Several suggestions have been floated by witnesses at different points during the Phases 5 and 6 hearings as to how UKGI's shareholder model might be reconfigured, including reflections on the role of the SNED. These have included the suggestion that it might be better if shareholder representation on the boards of public corporations such as POL were changed from that of a NED to some form of

'observer' status; and the suggestion that the shareholder representative on the Board should be a senior civil servant from the relevant department, rather than a member of a specialist corporate governance organisation such as UKGI. Suggestions of this nature merit careful consideration by the Inquiry but it is difficult to see how they would have had a significant impact on the fundamental failure, on the part of the POL Board and/or the Shareholder Team, to adequately grasp the true nature and extent of the Horizon issues.

42. UKGI notes that, as matters stand, this is not an issue which has been addressed by the Inquiry's Corporate Governance Experts in either of their reports, nor was it an issue explored during the evidence of Charles Donald, UKGI's current Chief Executive, in the course of either the request for written evidence or during his appearance before the Inquiry on 8 November 2024. In those circumstances, UKGI has not sought to lengthen these Closing Submissions with an analysis of the various suggestions made by individual witnesses during the course of Phases 5 and 6. However, UKGI stands ready to assist the Inquiry with any further submissions it may require in relation to UKGI's operating model or configuration.

*The evolution of the UKGI's shareholder role in respect of POL*

43. As noted at paragraph 28 above, ShEx/UKGI has performed a shareholder role for POL since 2004 and appointed a SNED to the POL Board from 2012 onwards. The way in which ShEx/UKGI has provided this role for POL has changed over time, reflecting the development of best practice within ShEx/UKGI as well as evolving corporate governance standards, and the changing relationship between ShEx/UKGI and POL. A description of the shareholder role performed by ShEx for POL in the pre-2012 period is contained in **WITN11010100** §57 and **WITN11740100** §18-21. The submissions below shall focus on the shareholder role performed by ShEx/UKGI for POL from 2012 onwards.
44. Although POL was a newly separated company in 2012 it inherited aspects of Royal Mail Group's ("RMG") culture and were 'at the more reluctant end' of the spectrum of engagement with ShEx. An example of this can be seen in their initial reluctance to accept the appointment of a SNED (**WITN00920100**, §46-50). This did not

dissuade the then Secretary of State, Sir Vince Cable, from confirming his decision that such a SNED should be appointed (WITN11010100, §§91-96). The relationship had to be developed incrementally, given POL's reticence to what it perceived to be a new level of Government interference. As Sir Stephen Lovegrove has explained, this was not unusual in this period, during which many government ALBs that had previously enjoyed high degrees of autonomy were adjusting to closer oversight from their shareholders and from ShEx (WITN11010100, §40). ShEx had to approach those situations "*carefully and diplomatically*" (WITN11010100, §41) in order to develop an effective and sustainable working relationship.

45. The ShEx/UKGI relationship with POL since 2012 can usefully be separated into three phases, though the transitions between them should be understood to be gradual rather than abrupt. The first came between POL's separation in 2012 and early 2014, when Susannah Storey was the SNED (WITN00920100, Oral evidence 30 July 2024). This period was marked by the incremental development of the ShEx/POL relationship. The SNED in this period was not the head of the Shareholder Team and was restricted in sharing POL Board papers with ShEx (WITN00920100, §50-51). Susannah Storey was also physically separated from the Shareholder Team first by maternity leave and then her move to a different Government department, though she put in place steps to ensure that she continued to communicate with her colleagues in ShEx (WITN00920100, §32, §§52-54). Nor was the SNED involved directly in briefing Government ministers, this being done by the Shareholder Team (WITN00920100, §54). The period saw the new POL Board developing its own structures and culture, and a gradual acceptance of the role of the positive role a SNED could play (WITN00920100, §42, WITN11010100, §§99-102). At this time, the Shareholder Team held responsibility for both the Shareholder function (i.e., oversight of the asset on behalf of the Shareholder) and the policy function (i.e., setting and monitoring the policy outcomes that the Shareholder expected the asset to achieve).
46. The second phase covers the period between early 2014 and 2018, when Richard Callard was SNED (WITN00140100, Oral evidence 12 July 2024). With his appointment, the roles of head of the Shareholder Team and SNED were combined and he was physically co-located with that team. The SNED was therefore involved

in the day-to-day work of ShEx/UKGI on POL and in providing briefings to Ministers. The Shareholder Team continued to be responsible for both the shareholder and the policy function. Internal UKGI reviews recognised this as a departure from UKGI's preferred practice, but it was for the Department, not UKGI, to create a separate policy team and, during this time, it chose not to do so. Mark Russell suspected that this was because the Department perceived the status quo to be working and, at a time of limited Departmental resource and tight public spending restrictions, because it had other priorities (Oral evidence 9 July 2024, 40-42). The period therefore saw a greater (though not full) application of the ShEx/UKGI model for governance, which resulted in an increased concentration of knowledge and resource within the Shareholder Team. However, it also posed challenges, particularly at the early stages where POL had to adjust to a position where the SNED was sharing documents such as board papers with the Shareholder Team.

47. The third phase commenced in 2018, when Tom Cooper became SNED (**WITN00200100**; Oral evidence 10 July 2024). He remained head of the Shareholder Team, but the focus shifted to a concentration on the shareholder function when a separate policy team was established within the Department. Whilst the creation of a separate policy function in the Department began in 2018, it took some time for it to be fully established. This represents the full application of what is now UKGI's preferred model: the shareholder function sitting with UKGI and the policy function exercised by a dedicated policy team within the Department (**WITN11310100**, §10, **WITN10770400**, §§57-61). That team is principally concerned with setting the policy objectives for the asset and measuring the extent to which they have been met. These structural arrangements remain in place with Lorna Gratton as SNED.

*Observations on POL's relationship with ShEx/UKGI*

48. Looking back, with the benefit of hindsight, on the relationship between POL and ShEx/UKGI over the past twenty years, several lessons can be drawn. The first is that the oversight that ShEx and the Department could maintain was very limited while POL was a subsidiary of RMG. This was due to the absence of a SNED on the Board of RMG or POL, the more limited role the Shareholder Team performed

(described above), and because of RMG's culture of autonomy and resistance to perceived 'interference'. As is clear from Sir Stephen Lovegrove's evidence and relevant contemporaneous documents, the relationship was tense and guarded on RMG's part. In those early years when ShEx was a small organisation still finding its role and approach, it was neither practical nor sensible for ShEx to seek to impose a new form of relationship on RMG and/or POL.

49. Second, the improvement in shareholder oversight came gradually and incrementally, with the separation of POL from RMG; the appointment of a SNED; and the development of the SNED's role as a conduit between the POL Board, ShEx/UKGI and the Department. These series of relationships understandably took time to mature.
50. Third, the separation of the shareholder and policy function was a welcome step that could, and arguably should, have taken place earlier. It allowed for greater clarity and distinction in understanding of the shareholder and policy functions, more precise analysis of the factors that affected each, and clearer delineation in advice about the tensions that may emerge between them.
51. Fourth, there is no single, final point of destination for the relationship between UKGI and an asset. The relationship will always be, and should always be, in balance to allow for the flexibility required to deal with changing circumstances. At points, the balance might tilt to more commercial freedom and less shareholder intervention - for example, to help the asset work towards long-term financial and efficiency goals. At other points, the balance may tilt towards more intervention, notably where there are significant policy objectives that need to be achieved or there are matters of serious public concern about the way in which the asset is operating. Opinions on where the balance should lie may differ and may do so reasonably given the different perspectives of those involved in a matter that is discussed further below.

*Operation of the Current UKGI Shareholder Model*

52. The evolution of the UKGI shareholder model, as summarised above, reflects the development of UKGI's application of best practice over time. The position, as it now stands, of a Shareholder Team headed by the SNED focussed solely on the shareholder role, is clearly very different from the one with which ShEx started in early 2012. UKGI recognises that the ShEx/UKGI shareholder model did not successfully deliver effective oversight of POL's handling of the Horizon issue during the period 2012-2019. UKGI has listened to concerns expressed by some witnesses as to the adequacy of the current ALB model applicable to POL and the shareholder role that UKGI performs for it. UKGI recognises that the Inquiry will wish to be satisfied that the current structures in place are capable of delivering effective shareholder oversight of an asset facing a difficult and complex issue, such as Horizon, particularly in relation to the identification and escalation of significant risks.
53. In order to address that question, it is necessary to identify how, in essential terms, the way in which the ALB model, and UKGI's shareholder role within it, is designed to work in identifying significant risk within an asset and ensuring that those risks are being adequately addressed by the company. We have set out below an example of how a significant risk would be escalated through the governance structure under the framework in place for POL today.
54. The first two elements of the corporate governance structure which are critical to risk identification and escalation are as set out in paragraphs 12-15 above. A culture of frank and accurate reporting by the executive and the exercise of rigorous, proactive professional curiosity and testing by the asset's Board – apply to all large companies and, if implemented correctly, should be effective in ensuring that risks are identified and properly addressed. UKGI is able to intervene if the governance is failing at these levels.
55. The third element of the governance structure, which is aimed at enhancing UKGI's understanding of risks and issues relevant from a shareholder perspective, is the obligation on the UKGI shareholder team to ensure that it has effective visibility of the asset and significant issues it is facing, through (i) the SNED and their involvement and engagement at the Board and (ii) through the frequent, multi-level



interaction with the asset's senior executive team. Reporting by the SNED and/or the sharing of asset Board papers is only one of the ways by which UKGI can obtain an understanding as to the nature of issues/risks. The ways in which this is currently being achieved with respect to POL is set out in the Witness Statements of Charles Donald (**WITN10770100, WITN10770200, WITN10770300, WITN10770400**) and Lorna Gratton (**WITN11310100**), which outline the extensive interaction between UKGI and POL and the multiple opportunities this provides to identify issues/risks and interrogate POL as to how those issues are being handled.

56. If interaction and reporting above identifies significant issues/risks within the asset and/or concerns as to how those issues/risks are being addressed then the fourth element in the structure is the escalation of the shareholder team's view of the issue/risk (and any associated concerns) for discussion within UKGI and, most importantly, to the shareholding department, informally and/or formally. Charles Donald explains the various formal reporting structures in place in this regard along with the regular less formal dialogue within UKGI in his Fourth Witness Statement (**WITN10770400**) and if there is a concern that a risk is not being adequately dealt with by an asset that concern can be escalated to the UKGI Chief Executive, UKGI ExCo and the UKGI Board. If the UKGI Chief Executive and/or the UKGI Board are concerned that the asset is failing adequately to address an issue/risk then that concern can be raised directly with the asset, either at asset Board or Executive level, and, if necessary, invite the further involvement of the department.
57. The fifth element of the governance framework is the interaction between the asset and its shareholding department, including appropriate contact at the level of the responsible Minister, the Secretary of State, the Permanent Secretary and/or Director General. There should be frequent interaction of this nature, including face-to-face meetings at which the key risks facing the company should be identified and discussed. UKGI's understanding of those risks can help to improve the quality of this dialogue. Interaction of this nature, provided it is conducted in a frank and open manner will allow for the department to have appropriate knowledge of the key risks and challenges the asset is facing, and to have an opportunity to exert direct influence or direction over the asset's strategic direction.<sup>12</sup>

58. The sixth element of the framework is the dedicated policy team within the department itself, which will be concerned with the policy function and will provide support to Ministers and the Permanent Secretary on policy issues. That team will work closely with the asset and UKGI's shareholder teams, but the distinction between the policy and shareholder functions should be recognised and, where that leads to different perspectives or advice on specific issues and risks the asset is facing, those should be made clear to Ministers so that they understand the trade-offs involved and can take an informed decision on where the balance should be struck.
59. The final element of the governance structure, which underpins the entire framework, is the Secretary of State's formal powers, which for POL are as set out in the Articles of Association (UKGI00043216, UKGI00043217) and the Framework Document (POL00362299). These includes powers of appointment of the Chair and Directors, shareholder reserved matters and rights of information and, since 2020 (and as is discussed further below) a right to give a direction to the POL Board. If, therefore, the process of dialogue and escalation outlined above is unsuccessful in ensuring that an issue or risk is properly addressed to the satisfaction of the Secretary of State, then powers of direction can be exercised to ensure that the appropriate action is taken.
60. The above sets out at a high level the governance structure that now exists for POL and specifically how difficult issues are identified and addressed within it.<sup>13</sup> The structure is a sophisticated one and whilst there are certain bespoke features of governance that are unique to POL as a 100 percent HMG-owned entity, many private equity companies, or those where a majority shareholder has representation on the board, would recognise the framework in place.

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<sup>12</sup> A key relationship in this process is that between the Principal Accounting Officer (the Department Permanent Secretary) and the Accountable Person (the Post Office CEO) who has delegated personal responsibility for running the organisation in accordance with the principles of regularity, propriety, value for money and feasibility set out within the government's "Managing Public Money" guidance.

<sup>13</sup> This governance framework is not only about to risk/issue escalation but other matters including whether objectives are being met by the asset, ongoing monitoring obligations and financial performance issues.

61. The governance structure, as it has now evolved, is a fundamentally sound one that is capable, if implemented correctly, of allowing effective governance oversight of an organisation such as POL. It must be acknowledged, however, that the system described above begins with the asset: the Executive being open and honest and the POL Board exercising proper scrutiny and curiosity, and both the POL Executive and POL Board running the asset to the highest standards of corporate governance and probity. UKGI and the Department have their own roles in exercising oversight, and this is now done more acutely because of the experience of the Horizon scandal, but it cannot replicate, and should not seek to replicate, the role of the POL Executive and POL Board. The emphasis must be on the asset and its leadership to act in accordance with their legal, corporate, and ethical responsibilities.
62. The governance structure referred to above is the structural framework within which UKGI SNEDs and shareholder teams now operate when delivering effective shareholder oversight of assets in its portfolio. The methodology by which they do this, namely the guidance and procedures they apply when undertaking this role, along with the improvements that have been made to them since the Phases 5 and 6 period are outlined in Section 5 below (paragraphs 106-200).

#### **OVERVIEW OF FACTUAL CONTEXT AND CHRONOLOGY**

63. UKGI sought to provide the Inquiry with an account of the key aspects of the chronology, insofar as it concerns UKGI, in its Opening Submissions. The Inquiry has since received and heard a very large body of evidence, including contemporaneous documentation, which provides further detail. These Closing Submissions do not seek to repeat the account already provided or attempt to set out a complete chronology. Even if that were possible, UKGI played only a relatively small part in the events with which the Inquiry is concerned, and the Inquiry will need to consider the complete picture. However, the length of the period covered by Phases 5 and 6 which, from UKGI's perspective, consists primarily of the eight-year period from 2012 to 2020, is such that it is important, when analysing the events that took place, to keep in mind the overarching context in which those events occurred. For example, it is important, when assessing the decision-making of the POL Board at various points, to keep in mind the nature and extent of the investigations into

Horizon that had been historically conducted and were being conducted at that point, and the extent to which those investigations appeared to have the support of the key stakeholders and the extent to which the POL Board had full visibility of the outcome of those investigations. Similarly, it is important to keep in mind the institutional structure within which UKGI was operating at each material point in the chronology, as this developed very significantly between 2012 and 2020, as summarised above.

64. Accordingly, UKGI considers that it is helpful, when assessing its role in the material events during the eight-year period covered by Phases 5 and 6 to break down that period into six distinct phases, as outlined below, so as to ensure that the analysis takes place within its proper institutional and structural context.
65. This account is restricted to Horizon-related issues and does not deal with the many other significant challenges that POL was facing at the time. These included establishment of POL as an independent company in a difficult commercial environment, the Network Transformation programme (which included branch closures), dealing with fraught industrial relations within the Crown Post Offices, the separation of pension liabilities as well as separation from RMG matters more broadly and negotiations with the Treasury and European Commission over the level and nature of POL's public subsidy amongst others. Those issues were complex and vital to the ongoing viability of POL and the individual Post Offices run by postmasters. Naturally and properly, they occupied a very substantial portion of the time and energy of the SNED and the Shareholder Team. It is right that this Inquiry maintains its focus on the causes and consequences of the Horizon scandal, but as it does so care must be taken to avoid creating a distorted picture. Horizon was one of many issues with which ShEx/UKGI had to grapple, several of which were of existential importance to the Company and postmasters.

#### *Pre-April 2012*

66. Prior to POL's separation from RMG, and as is discussed above, the ShEx-POL relationship was more limited (particularly with respect to governance) compared to what existed following privatisation of RMG. There was no SNED on the Board of either Royal Mail Holdings or POL. There was however a shareholder team for POL

and formal engagement with POL took place through a series of regular meetings with the Executive team and senior management team and through quarterly shareholder meetings. Notwithstanding these efforts, the role of ShEx with respect to POL was limited primarily to receiving information from RMG (including POL) and engaging with it on matters of policy and shareholder interest (WITN10770100, §21). This included engaging on the Company's financial performance, funding matters, strategic matters and investment spend. ShEx did have a substantive policy role with respect to POL on behalf of the Department and engaged on matters which had a policy impact such as closure programmes. However, ShEx did not have the broader shareholder role and corporate governance responsibilities for POL that it assumed later. As referenced earlier in paragraph 44, the culture of RMG was one of strident autonomy that did not welcome shareholder involvement which was often perceived as interference. This led to a difficult, and limited, relationship with ShEx (WITN11010100, §§76-79). During this period, submissions to Ministers on Horizon broadly reflected what ShEx was being told, in robust terms, by POL and RMG. Though the Shareholder Team did raise questions with POL on Horizon issues, it was reliant on the information with which it was being provided and which, on the face of it, seemed informed and plausible. ShEx officials expected the POL Executive to provide full, frank, and accurate information and POL was consistent in asserting strongly that there were no problems with Horizon: see, among many examples (UKGI00001385).

67. Although ShEx did not play a significant role in the corporate governance framework relating to POL during the pre-2012 period and, as a result, the evidence of the ShEx/UKGI witnesses has only touched lightly on this period, it is nonetheless important to keep in mind the context in which the POL Board came to be established. Prior to April 2012, POL was a subsidiary of RMG. The POL Board that was established in 2011 in anticipation of separation from RMG was brand new and, from April 2012, operated for the first time as the independent board of a separate company. The process of separation had been difficult and complex including issues of enormous significance to POL and its postmasters including separation of the pension schemes.

*April 2012 – Early 2014*

68. Following its separation from RMG on 31 March 2012, POL was established as a public corporation operating independently from Royal Mail with its own Board. Susannah Storey was appointed as the first SNED, which was at least in part driven by a desire for ShEx and the Department to have more visibility of the newly separate POL and for there to be better information flow. At this point, the SNED was not the head of the Shareholder Team. POL (including the Chair) was resistant to close collaboration between the SNED and the Shareholder Team during this period, but the SNED, Susannah Storey, and members of the Shareholder Team worked hard to maintain an effective dialogue.
69. The Horizon issue was first raised with the new POL Board (including the SNED) at the Board meeting in May 2012 at which the Chair and CEO reported that they had met James Arbuthnot MP and Oliver Letwin MP to discuss their concerns. The POL Board was told that POL took the concerns seriously and had engaged forensic accountants to *“give further comfort to those concerned about these cases”* (UKGI00019348). The appointment of Second Sight was presented by the POL Executive as a means of obtaining independent assurance of a system in which it had full confidence (POL00096692, POL00295355). The POL Board, including the SNED, regarded the appointment of independent specialist investigators to be appropriate. Although the full POL Board had not been consulted on the appointment, which would appear to have been agreed between the POL Executive and the POL Chair, the nature of the concerns being expressed, together with the fact that they related to an area where specialist expertise was likely to be necessary, supported the appointment of a specialist firm of forensic accountants to conduct an investigation.
70. Over the course of the next 12 months or so, the POL Board was updated to the effect that the investigation was ongoing; that it included a meeting between Second Sight and Mr Arbuthnot; that POL was considering JFSA’s (“Justice for Subpostmasters Alliance”) proposals for the identification of cases; that Second Sight were engaging with POL and the JFSA; and that there was *“to date no evidence to suggest fault”* (POL00021510). The POL Board directed that a written update on progress be provided by the General Counsel at the May 2013 Board meeting.

71. Instead of receiving a written update on progress the POL Board was informed, on 1 July 2013, that an interim report from Second Sight would be presented to MPs and published on 8 July 2013; that no systemic issues had been found with Horizon; that whilst two errors had been identified by POL, these were a "red herring" (POL00098878); that those who had suffered losses because of them had been recompensed; that a comprehensive audit had been performed to ensure there were no others, and that new procedures were being put in place to ensure such anomalies were spotted at an early stage. The POL Board was also informed that the report would be critical of POL in a number of respects, and that POL considered the report contained material inaccuracies. The Second Sight interim report was eventually provided to the POL Board and published on 8 July 2013.
72. The POL Board expressed profound concern in response to criticisms contained in the Second Sight report (POL00021516) and demanded prompt action. The observation made by the Inquiry's Corporate Governance Experts to the effect that the concerns of the POL Board in the period up to 16 July 2013 were initially focussed on the handling of the process by POL (EXPG0000010\_R, §§ 337), rather than the underlying substance of the issues identified by Second Sight, is noted but, as the Experts acknowledged, that observation was limited to the immediate aftermath of the publication of the report being sprung on the POL Board without warning. Thereafter, the focus of the POL Board shifted, firmly and rapidly, to the underlying issues identified by Second Sight and, in particular, the related questions of how the ongoing dispute between the Company and postmasters would be resolved and whether there needed to be a review of past prosecutions. The POL Board made clear that it expected prompt action to be taken on these issues.
73. That message was clearly received by the POL Executive and, by 26 July 2013, POL had formulated a plan including completing the review of cases started as part of the Second Sight investigation with the aim of seeking some form of resolution and the commencement of a review of cases that had been subject to criminal prosecution. The former became the Mediation Scheme overseen by the independent working group, and the latter became the Cartwright King LLP review overseen by Brian Altman KC.

74. Over the course of the next six months or so, the POL Board demanded, and received, regular updates on these workstreams. It set up a Board sub-committee specifically tasked with looking into the issues and the POL ARC Chair took a more direct role in oversight of the matter on behalf of the Board. Extensive work was being undertaken by POL, and the POL Executive appeared to be taking the issues seriously. It was repeatedly asserted that Second Sight had identified no systemic problems with Horizon. No indication was given that the prosecutions review had identified any issues of concern and neither the POL Board nor the UKGI Shareholder Team was provided with the Simon Clarke or Brian Altman advice, or otherwise informed that POL had historically relied on tainted expert evidence. Whilst UKGI does not possess any specialist expertise that would enable it to assist the Inquiry in determining whether POL in fact discharged its disclosure obligations as a prosecuting authority, and so does not seek to comment directly on that issue,<sup>14</sup> UKGI is clear that from a governance perspective those advices should have been disclosed to the POL Board at the earliest opportunity.
75. By January/February 2014 it was becoming apparent that the Mediation Scheme was running into significant difficulty. Progress was slow and there was no clear path to a resolution of the disputed issues. It was reported that there was an *"increasing expectation gap"* between the parties (**POL00027452**). The POL Board's first step in response, taken at the February 2014 Board meeting, was to commission its own advice from Linklaters LLP on the contractual relationship and extent of POL's liability for Horizon related losses to gain a better understanding of the issues. The Linklaters' LLP advice was considered at the March 2014 Board meeting, at which the POL Board decided to commission a further piece of work from Deloitte LLP to address integrity of the Horizon system, audits and tests carried out on the system, and the issues identified by Second Sight (factoring in that the report was interim and the Board wanted its own informed view).
76. Accordingly, the outline of the chronology of this period from April 2012 to March 2014, insofar as it relates to Horizon, can be shortly summarised. From April 2012 to

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<sup>14</sup> As to the point of principle, UKGI agrees that prosecutors were obliged to comply with the duty of disclosure as described in the case of *Numm, R (on the application of) v Chief Constable of Suffolk Constabulary* [2015] AC 225, from 1 January 2000 at the latest.



July 2013 the Second Sight investigation was underway, with no indication being given by POL that it had identified anything of concern. The POL Board's demand for a written update in May 2013 was superseded by production of the Second Sight interim report in July 2013. The interim report, and the concern expressed by the POL Board, precipitated a period of concerted activity on the part of POL to establish a mediation scheme and a past prosecutions review, both subject to independent oversight. When it became apparent that these measures, and the Mediation Scheme in particular, were proving unsuccessful in resolving the issue, the POL Board took proactive steps to commission its own specialist advice as to the legal/contractual position and in particular, as to the integrity of the system itself.

77. The position from the perspective of the UKGI Shareholder Team was broadly the same, in that it knew that POL had commissioned an investigation to obtain assurance about a system in which it had full confidence and, when the interim report of that investigation identified concerns, an extensive programme of work was undertaken to review past prosecutions and bring the dispute with postmasters to a resolution through an independent mediation process.

*March 2014 – April 2016*

78. From the perspective of the SNED and the Shareholder Team, and with a specific focus on Horizon, the period from late March 2014, when Richard Callard took over from Susannah Storey as SNED, to April 2016 when the Group Litigation Order (“GLO”) was commenced, can be divided into two principal parts.
79. The first, which runs until around August 2015, is primarily concerned with the future of the Mediation Scheme and whether it might realistically deliver a resolution for individual claimants to their dispute concerning Horizon, along with the completion of the Second Sight investigation leading to the production of the final, or ‘thematic’ report. As for the mediation, the picture was not a promising one when Richard Callard took his seat on the POL Board. POL’s position by that point, as expressed to both the Shareholder Team and the POL Board, was clear and consistent: Horizon was used by 78,000 people across 11,500 branches handling 6 million transactions every day and, after two years of thorough investigation

(including by Second Sight), no systemic problems with Horizon had been identified (POL00210906). It was equally clear that numerous postmasters continued to attribute errors and shortfalls in branch accounts to defects with Horizon, and that the mediation process, which had been operating for over 6 months had largely failed to bring the parties any closer to a resolution.

80. POL remained unequivocal and steadfast in its assertions that there were no systemic problems with Horizon to the Minister (POL00210906) to Parliament (UKGI00003231), to the public via its website (UKGI00002984, UKGI00002985) and to the Board (POL00351871). At various points, these assertions were supported by detailed documentary analyses such as those produced in response to the Westminster Hall debate (UKGI00002985), to the Second Sight thematic report (UKGI00000018) and to Panorama (UKGI00005717). It was also asserted that the Mediation Scheme had not identified any concerns about faults with Horizon or the safety of past convictions (POL00210906). Whilst the SNED and the Shareholder Team did not engage in specific cases (bearing in mind this would not be the responsibility of NEDs or the Shareholder), they were being consistently informed by POL that there were delays in cases being progressed to mediation and this was primarily because of Second Sight's capacity. The Shareholder Team's focus therefore turned to trying to assist POL with considering how best to speed up the process.
81. The position of postmasters as advanced (primarily) by the JFSA was equally clear and as early as March 2014 the view that was being expressed was that the Mediation Scheme was unlikely to work, and litigation might well be the only realistic route to a resolution (UKGI00002264).
82. Although the prospects of the Mediation Scheme delivering satisfactory resolution to the dispute became increasingly unlikely, particularly after the withdrawal of support by Lord Arbuthnot in December 2014 at the time of the Westminster Hall debate, and the negative reaction to the reconfiguration of the scheme in March 2015 (presented as the 'sacking' of Second Sight) the scheme continued to operate into Autumn 2015 with both POL (UKGI00000035) and the Centre for Effective Dispute Resolution ("CEDR") indicating that there remained scope for a constructive

dialogue between POL and postmasters (**UKGI00005251**, **POL00119531**). The predominant view of the Shareholder Team and the SNED was that the independent Mediation Scheme should be left to run its course, but that it was becoming increasingly difficult to see any outcome which did not involve litigation given the entrenched positions of the parties.

83. With the benefit of hindsight, it is possible to identify points in the chronology of this period where a more proactive, enquiring and curious approach could have been taken. The Deloitte LLP 'emerging findings' summary report (April 2014) and POL Board Briefing (June 2014), the Second Sight thematic report (April 2015), and the Panorama broadcast (August 2015) are all potentially significant milestones in the chronology and were identified and analysed in UKGI's Opening Submissions. The references to the possibility of remote access in the Deloitte LLP reporting, in particular, which was provided to the POL Board by emails in late April 2014 (**POL00203586**, **POL00203587**) and early June 2014 (**POL00138401**, **POL00138401**) now looks to have been a significant missed opportunity on the part of the POL Board to commission a more extensive investigation of its own into the integrity of Horizon. Whether that would have resulted in a different outcome, and avoided the litigation which followed, is of course a different matter.
84. This was the position when the new Minister, Baroness Neville-Rolfe, was appointed in May 2015. The Mediation Scheme had lost the confidence of the postmasters, POL continued robustly to assert that extensive investigation of Horizon over several years had failed to identify any faults which might explain branch errors or shortfalls, and that there was no basis for concern as to the safety of historic convictions. Whilst these assertions now appear superficial and unconvincing it is important to keep in mind that, at the time, they were being made to a Board and a Shareholder Team that had not been provided with the Simon Clarke and Brian Altman KC advices, or the Helen Rose report; and each time a basis for concern was raised, it was met with a detailed and unequivocal refutation. Almost two years on from the establishment of the Mediation Scheme the parties appeared to be no closer to a resolution of the dispute and litigation looked increasingly likely.

85. Taking into account the fact that Second Sight's thematic report had not given a definitive answer as to whether or not there were systemic flaws in the Horizon system and the fact that the Mediation Scheme had failed to resolve the dispute, from the summer of 2015 the focus switched to attempting a resolution of the issue by a different means, which ultimately came to be the review undertaken by Tim Parker, the new Chair. From the perspective of the SNED and the Shareholder Team, this marked the second part of the period outlined above.
86. By this stage the Minister had expressed understandable concern about the situation shortly after her appointment and, by July 2015 the SNED and the Shareholder Team were engaged in drawing up options as to next steps for her consideration (UKGI00000007, UKGI00019300). At a meeting in early August 2015, it was decided that the Minister would commission Tim Parker, as the newly appointed POL Chair, to conduct a 'fresh eyes' review of the Horizon issues, including into claims that postmasters had been wrongly prosecuted as a result of faults in the system (UKGI00019366, UKGI00006250). Tim Parker agreed and confirmed that he would instruct a KC to assist him (UKGI00010326).
87. Approximately six months after the original commission, Tim Parker sent a letter to Baroness Neville-Rolfe, in March 2016 in which he provided a reassuring summary account of the findings of the review (UKGI00008800). In summary, the letter stated that POL had complied with its duties as prosecutor, including in respect of disclosure, no evidence had emerged to suggest that a technical fault in Horizon resulted in a postmaster being held liable for a loss, and some limited further investigation was required in order to reach final conclusions. The February 2016 report prepared by Jonathan Swift KC was not provided to the Minister, the POL Board or the Shareholder Team. Instead, Tim Parker produced a letter purporting to summarise Jonathan Swift KC's conclusions, which failed to convey the significant issues of concern highlighted in the report and creating a degree of false reassurance.
88. The latter stages of Tim Parker's review overlapped with the instigation of what was to become the GLO. The JFSA announced that a claim was being prepared in November 2015 and in February 2016 the SNED was informed by POL of reports

that funding had been secured. The letter of claim was received by POL on 13 April 2016. POL's position in response to the litigation was clear. First, the claim was without merit and raised nothing new (UKGI00006959). Second, the appropriate mechanism for resolving the outstanding issues covered by the Parker Review was the litigation (POL00103225).

89. UKGI has reflected carefully on this period of approximately two years between March 2014 and April 2016 and the extent to which it contained missed opportunities, on the part of the POL Board, the Shareholder Team and/or the Department, to adopt a more challenging and proactive approach to the investigation of concerns regarding Horizon and, potentially, identify the problems that were ultimately revealed in the course of the litigation. These reflections are set out in the Opening Submissions and the witness evidence of the relevant individuals. The Inquiry may well consider that more could have been done and/or that a more sceptical approach should have been taken to POL's assurances. However, it is important to keep in mind that, for the entirety of this period, some form of investigation was being undertaken into the concerns regarding Horizon. For the first part of the period, to the Summer of 2015, that took the form of the independently overseen Mediation Scheme and the ongoing Second Sight investigations which culminated in the thematic report. Thereafter, it took the form of the review undertaken by Tim Parker, which presented the findings of Jonathan Swift KC in a reassuring manner.

*April 2016 – March 2018*

90. The period of approximately two years from the start of the GLO to when Richard Callard stepped down as SNED in early 2018 and was replaced by Tom Cooper can be briefly summarised, from the perspective of the SNED and the Shareholder Team, as being a period in which there was very little in the way of material developments relating to Horizon, which had now moved to a litigation footing. According to periodic updates from (primarily) POL's General Counsel (Jane MacLeod), the procedural progress of the GLO was conventional and no causes for concern had

been identified in the course of the litigation thus far (**POL00027188**, **UKGI00042836**). For a substantial part of this period, the SNED and Shareholder Team were told that the Claimants' case had not been pleaded in detail and very few new allegations had been made; to the extent they were, POL was able to provide a rebuttal. To the extent that interlocutory issues arose from time to time, POL reported that it was generally pleased with their outcome (**POL00103333**), and that any negative comment about its approach to the case was unfair and/or ill-informed.

91. Nor did there appear to be any significant developments in relation to the issue of historic prosecutions. When Richard Callard took up post in early 2014, he was informed that there had been a review of past prosecutions by Cartwright King LLP, overseen by Brian Altman KC, which had provided reassurance as to POL's past conduct as a prosecutor. Richard Callard, like his predecessor Susannah Storey, was not provided with a copy of either of their advices, nor were either of them provided with any indication that the prosecution review exercise had identified a concern regarding tainted expert evidence. There had also been a review of POL's prosecutions policy with the result that very few prosecutions were now being conducted. In early January 2015 the POL Board was informed by the POL Executive that a review was being undertaken by the Criminal Case Review Commission ("CCRC") and that POL was co-operating fully with that review. The Shareholder Team also cooperated with that review, providing documents the CCRC requested of it in Autumn 2016.
92. The view from then on, supported by the Department's legal advisers, was that the CCRC should be left to conduct its review as the appropriate independent body to consider past prosecutions. No indication was given during this period that the CCRC had identified concerns regarding the conduct of past prosecutions and there was no suggestion from the lawyers dealing with the GLO on behalf of POL that the issues in the civil litigation were material to the conduct of past prosecutions. Indeed, it was not until Tom Cooper began asking questions to that effect in November 2018 (**UKGI00008614**, **UKGI00008619**), and again in May 2019 (**UKGI00009793**) that anyone seems to have identified that potential link.

*Early 2018 – March 2019*

93. The period from March 2018, when Tom Cooper was appointed as SNED, to March 2019 when the CIJ was handed down was dominated, as far as the Horizon issues are concerned, by the litigation. After two years or so of slow and largely procedural progress, the start of the Common Issues trial was only around 7 months away and the focus of the SNED and the Shareholder Team, as far as the litigation was concerned, was on issues including the merits of claims, POL's contingency planning if it were to lose, POL's approach to resolving the litigation (including settlement) and the general litigation strategy (including whether there was scope for narrowing the issues).
94. Proper consideration of these issues clearly required a detailed understanding of the legal position, including access to privileged material. Prior to formally taking up his position as SNED, Tom Cooper received a briefing from UKGI's General Counsel, Elizabeth O'Neill, concerning the effective oversight of large-scale litigation, which included the lessons learned from the recently concluded Magnox Inquiry. The importance of effective information exchange (including privileged material), obtaining clear merits advice, and contingency planning for adverse outcomes were all emphasised. Accordingly, UKGI's immediate priority was to come to an arrangement with POL to enable that privileged material to be shared, given the concerns POL had raised about a loss of privilege if the external legal advice it had received was shared too widely. It took some time for POL to agree to this arrangement, however in June 2018 a litigation protocol was eventually agreed with POL whereby privileged material could be shared with the SNED, the Shareholder Team and identified individuals within the Department. In addition, the POL Board established a litigation sub-committee to exercise oversight of the litigation, which met for the first time in late March 2018.
95. As to the merits of the claim, POL's position remained that it had the better of the arguments and was confident of success in relation to all claims. It was also asserted that the claims were 'unsettleable' until after the Common Issues and Horizon issues had been determined, not least because the claims were unquantified (POL00006754).

96. As the contemporaneous documents make clear (**POL00023941**), the SNED, in particular, developed significant concerns about the merits of POL's position on at least some of the Common Issues once access to the privileged material had been provided. POL's position was supported by lengthy legal advice from David Cavender KC which suggested that there were important points of principle that required determination by the court. The SNED also developed significant concern about the apparent lack of contingency planning on the part of POL. In the limited time available, and bearing in mind the fact that the challenge expressed by the SNED on certain contractual points being contested had resulted in little enthusiasm from POL or its external lawyers to change strategy, efforts were focussed on the latter. These efforts included organising a meeting between the POL Executive and the Minister that eventually took place in October 2018. This meeting was intended to prompt the POL executive to recognise the need for contingency planning and prioritise it accordingly. The SNED became increasingly concerned that the risk of losing some of the contractual points was fundamental to how POL operated its business and that POL had not been properly considering the impact of how its contractual terms operated in practice, for example with respect to the ability of postmasters to dispute losses. Efforts were also made to better understand the facts of the lead cases as the impression the SNED was developing was that a very technical legal approach was being taken in the Common Issues trial without consideration of the factual background in individual cases. In the event, the meeting was not successful in achieving this objective and very little was done in relation to contingency planning prior to the judgment other than a general intention on POL's part to appeal in the event of an adverse outcome.
97. The comments of the Judge at the hearing in October 2018, when POL attempted to exclude the Claimants' evidence, were ominous but there was, by that stage, very little time before the start of the trial. The POL Board (including the SNED) raised concerns about the Judge's comments and were assured by Paula Vennells that POL's General Counsel had confirmed there would be a change of tack (**UKGI00008549**). During the trial itself, the reports made to the POL Board were to the effect that although there might be some criticism of POL's conduct (and some negative publicity) POL remained confident on the merits. Similar confidence was



expressed in POL's position in relation to the Horizon Issues trial (POL00006753) which was in the final stages of preparation.

*March 2019 – November 2019*

98. The outcome of the Common Issues trial came as an unpleasant surprise when it was sent to the SNED on 8 March 2019, and the extent of the Judge's criticism of POL was shocking. There immediately followed a period of intensive activity during which the POL Board was presented with papers and legal advice (both internal and external) regarding the options of appeal and recusal. The scope of the appeal was subject to extensive discussion by the POL Board following advice from POL's new legal team. As regards recusal, the SNED received legal advice from the Department's legal advisers that he should play no role in the decision making as it would not be appropriate for Government to be seen to be involved in a course of action which sought to suggest that a member of the judiciary was biased. In accordance with the legal advice he had received, the SNED took part in the POL Board meetings when the recusal application was discussed and satisfied himself that the POL Board understood the negative consequences should the recusal application not be granted, albeit he recused himself from the decision making on the matter. In the event, the application was dismissed.
99. From the perspective of the SNED and the Shareholder Team, the focus after the CIJ was handed down was on encouraging POL to acknowledge and accept the substance of the judgment, most importantly the findings of fact that had been made by Mr Justice Fraser, both in respect of the contractual issues addressed in the CIJ and the likely outcome of the Horizon Issues Judgment ("HIJ"), to bring the litigation to an end. In practical terms, this meant the agreement of a settlement. The SNED played a leading role in the replacement of POL's legal team and, with the support of the Shareholder Team, the establishment of a working group within Government to obtain the necessary approvals to make binding offers of settlement. Advice was put up to the Secretary of State in June 2019 on how the litigation could be brought to a "*swift and satisfactory conclusion, ensuring postmasters who had been treated unfairly were appropriately compensated*" (UKGI00019351). The litigation sub-committee oversaw the development of proposals for a mediation and, after the

process had been agreed, provided the necessary authorisations to POL's legal team to make offers of settlement to the Claimant. The mediation concluded and the cases were settled in December.

*December 2019 Onwards*

100. The settlement of the GLO brought the litigation to an end but it was clear that it represented the start of what would inevitably be a long and challenging process of restoring the relationship between POL and postmasters. It was also clear that the CIJ and the HIJ had demonstrated that there were deep-seated and pervasive deficiencies in POL's corporate culture and its relationship with postmasters; and that the governance framework within which POL has operated for many years had been inadequate in identifying those deficiencies until it was much too late.
101. Compensation has been a significant part of the remediation process, and this is an area that the Inquiry has considered in detail. The witness statements of Tom Cooper (**WITN00200300** §§ 3-46) and Lorna Gratton (**WITN11310100** §§ 175-208) have described the role that UKGI has played in seeking to facilitate the process of assessing and paying compensation to postmasters since the conclusion of the GLO.
102. In the early stages, the SNED and the Shareholder Team played a direct role on behalf of the Department in the funding, monitoring and oversight of the compensation arrangements for the Horizon Shortfall Scheme ("HSS")<sup>15</sup> and the Overturned Convictions process (which later became a scheme) ("OCS")<sup>16</sup>. The SNED sat on the Remediation Committee ("RC"),<sup>17</sup> a sub-committee of the POL Board, and was involved in decision making at that level. In the period prior to the introduction of the Post Office (Horizon System) Offences Act 2024, through the SNED's role on the POL Board and RC, the SNED participated in decision-making as to whether POL should support or oppose appeals by convicted postmasters seeking to have their convictions overturned.

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<sup>15</sup> Previously named the Historical Shortfall Scheme.

<sup>16</sup> Previously referred to as Overturned Historical Convictions or Overturned Criminal Convictions.

<sup>17</sup> Previously named the Historical Remediation Committee.

103. The SNED was a proponent of accelerating the HSS and OCS and provided constructive challenge to POL management in order to assist the Company in its decision making on a wide range of remediation issues. At the early stage, the SNED and Shareholder Team put forward an alternative option to POL handling the compensation in-house of creating a separate company owned by the Department dedicated to handling claims from postmasters and the payment to them of compensation. POL management decided its preferred option was to create a ring-fenced unit within POL for this purpose and recommended this to the POL Board, which it approved.
104. As mentioned above, the Shareholder Team has also provided substantial support to the Department, first to enable funding to be secured for the HSS and OCS schemes and second to support the Department in its oversight and governance of the schemes. It has helped the Department prepare business cases for funding, make decisions on significant matters including the approval of legal principles for the HSS, the approach to test cases for both schemes and provided support where the Department considered a policy change (including changes to remedy unfairness in the tax treatment of HSS compensation payments and the introduction of a fixed sum offer to OCS claimants).
105. Following increased capacity and capability from POL and more settled governance arrangements for the schemes, from Autumn 2022 and with the agreement of the Department, UKGI began to step back from its direct involvement in compensation matters, with a corresponding increase in involvement on the part of the Department, an arrangement which was formalised by September 2023 (**UKGI00049042**). From this point the focus of UKGI's involvement was more strategic and, over time, became more limited to monitoring POL's performance against its objectives and budget. The SNED remains part of the POL's RC and has actively promoted steps to accelerate compensation and to improve the schemes.

#### **UKGI DEVELOPMENTS AND IMPROVEMENTS**

106. Although processes and practices have evolved ever since the creation of ShEx, from early 2019, UKGI has undertaken a wide-ranging and extensive process of reflection

and review regarding the way in which it discharges its corporate governance function in respect of complex organisations such as POL. The detail of the work that has been done in that regard is set out primarily in the four witness statements of UKGI's current Chief Executive, Charles Donald (**WITN10770100**, **WITN10770200**, **WITN10770300**, **WITN10770400**), and the aspects of most direct relevance to the issues under consideration by the Inquiry are summarised below. Some of that work was commenced independently of the Horizon judgments and the evidence considered by this Inquiry but, as explained by Charles Donald, UKGI has sought to incorporate the lessons learned from Horizon into work that was already underway. In particular, since the CIJ, the impetus of this work has been to develop our processes and practices in an effort to ensure there can never be a recurrence of such a major corporate governance failing within UKGI's portfolio. These lessons are now integral to the way in which UKGI discharges its functions across its portfolio.

107. The systems, processes, training, guidance and structures within which UKGI now operates when discharging its shareholder role for assets in its portfolio were developing during the period the Inquiry has been examining in Phases 5 and 6 (as were general corporate governance standards and practices) and have been developed significantly since then. The current position, as set out below, reflects a rigorous and self-critical process of reflection undertaken by the organisation since 2019, driven by the UKGI Board and the successive Chief Executives and UKGI's Executive.
108. The process by which UKGI sought to enhance its processes to take into account of Horizon-related issues started after the conclusion of the GLO at the end of 2019 when the UKGI Board commissioned UKGI's General Counsel to undertake an Internal Review, the various iterations of which have been disclosed to the Inquiry. As set out by Robert Swannell in his witness statement (**WITN10800100**), it was of paramount importance to the UKGI Board that even at this very early stage, UKGI should seek to learn lessons and seek to enhance its portfolio practices proactively. The UKGI Board, and specifically a dedicated Board working group led by the Chair, ensured that the Internal Review was conducted in a frank and self-critical manner. The Internal Review, presented to the UKGI Board and Board working

group on multiple occasions in 2021, was preliminary in nature: it could not take into account the extensive evidence-gathering process undertaken by the Inquiry and it was based on material held by UKGI at the time. However, the intention of the UKGI Board, even at that stage, was for a detailed and rigorous exercise to be conducted as soon as possible, which would seek to identify the key corporate governance themes arising from the information UKGI held at the time in order to enable UKGI to reflect on lessons applicable to the performance of its shareholder role. The UKGI Board maintained close involvement with the exercise and its progress was regularly reviewed to ensure that it was being carried out in a thorough and self-critical manner.

109. The key themes identified in the Internal Review were: (i) ALB independence and Board composition; (ii) whistleblowing; (iii) organisational culture; (iv) litigation oversight; and (v) the dual shareholder/policy role. The preliminary process of analysis and reflection started by the Internal Review developed into the detailed Opening Submissions provided by UKGI at the start of the Inquiry's hearings in October 2022 (**SUBS0000006**). As explained at the time, UKGI's intention was to provide the Inquiry, at the earliest opportunity, with its reflections at that time on key aspects of the chronology relating to Horizon and lessons it had learned as result. In addition, as explained by Charles Donald in his Fourth Witness Statement (**WITN10770400**, §§9-12) a further workstream was endorsed by the UKGI Board and UKGI Chief Executive in November 2021 to commence updating UKGI's portfolio practices, procedures and training to operationalise and embed the preliminary lessons learned in the Internal Review. UKGI continues to reflect on the evidence emerging from the Inquiry in assessing whether there are further lessons that can be learned, and improvements made to the way in the way that it exercises its shareholder role across its portfolio.
110. The purpose of this section of UKGI's Closing Submissions is to provide an overview of the way in which the internal practices and guidance underpinning UKGI's shareholder operating model has been enhanced. A more detailed account, which explains the improvements UKGI has made since 2019, is set out in Charles Donald's Fourth Witness Statement (**WITN10770400**).

111. Before turning to those specific areas there are two overarching points which it is important to keep in mind. SNEDs and shareholder teams, however proactive, will only ever have a partial picture of the day-to-day operations of the business and will always be, at least to some extent, dependent on what they are told by the Executive. The SNED and shareholder team must be professionally curious, challenging where necessary, and prepared to drill down into the detail of the information with which they are provided. They must be appropriately trained and provided with the necessary tools in the form of operating principles and best practice guidance. We set out below how UKGI seeks to ensure that all this is done.
112. However, UKGI SNEDs and shareholder teams do not exist to run assets such as POL. UKGI exists to provide an effective additional layer of corporate governance to companies such as POL and it is essential that it discharges that function effectively. But it is important when assessing the measures described below to keep in mind what they are intended to achieve. UKGI, its SNEDs and shareholder teams, do not act as shadow executives or shadow boards. The operating principles, training, guidance and evaluation set out below is not designed to equip SNEDs and shareholder teams to run assets or second-guess the asset's Executive, but to put them in the best position to assess the performance and culture of the company, identify difficult issues facing the company if required, and support the company in dealing with those issues effectively and appropriately. The successful implementation of UKGI's model is dependent on the first and second of layers of governance within assets functioning effectively, as set out in paragraphs 12-17 above.
113. Finally, UKGI would wish to emphasise that although the programme of reflection, lesson-learning and the implementation of improvements has undoubtedly been extensive and detailed, it is not suggested that it is complete. As referenced above, UKGI is very conscious of the need to ensure that it remains a learning organisation, and that there is more work to do, whether informed by this Inquiry or otherwise.

*Portfolio Operating Principles ("POPs")*

114. Exercising effective shareholder-level oversight over large and complex assets is a complex and challenging task. As explained by Charles Donald (**WITN10770400**, §§15-20), UKGI recognised, prior to the handing down of the CIJ, further enhancements to its portfolio practices were required and an intensive workstream to enhance UKGI's internal guidance was commenced. As a result of this workstream, the relevant guidance<sup>18</sup> provided by UKGI to its shareholder teams to assist them in this task was considerably enhanced by the introduction of the POPs in July 2020.
115. POPs provide a suite of clear, comprehensive, and accessible guidance to assist shareholder teams in the delivery of their shareholder role by setting out the guidance relevant to UKGI's target shareholder operating model. The POPs have been updated iteratively over time to reflect, for example, updated corporate governance best practice guidance and learnings from issues in respect of specific assets. The Internal Review, for instance, prompted significant changes to the POPs, and the key lessons identified in that exercise are reflected in the most recent iteration (version 4.4, (**UKGI00049040**) published internally in March 2024). The POPs have been exhibited to Charles Donald's Fourth Witness Statement (**WITN10770400**) and speak for themselves. In short, they identify the six core principles, broken down into 40 specific activities that underpin UKGI's target operating model for its shareholder role across assets in its portfolio, and incorporate around 60 (internal and external) guidance documents identifying best practice in particular areas.
116. The POPs are kept regularly updated; all new joiners to the corporate governance team in UKGI are trained in their use; and each shareholder team regularly assesses how the activities they are performing for their respective assets align with UKGI's target shareholder operating model as part of UKGI's portfolio review process. Accordingly, the POPs provide a readily accessible set of principles and operational guidance addressing all the significant aspects of UKGI's shareholder role and responsibilities, enabling shareholder teams and SNEDs to identify how the various aspects of their functions should be discharged and the best practice guidance

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<sup>18</sup> ShEx/UKGI guidance has evolved throughout the period, as referred to in **WITN10770300** and at the time POPs was introduced the main guidance was the UKGI Principles of Corporate Governance.

available to help them discharge them effectively. They also provide an objective set of principles against which shareholder teams can assess how closely key activities are being performed against UKGI's target shareholder operating model. As Charles Donald explains in his Fourth Witness Statement (**WITN10770400**, §29), shareholder teams now annually assess how their performance varies from POPs, enabling UKGI to consider where there are specific areas for improvement or whether further risk mitigation is required.<sup>19</sup>

117. The specific aspects of POPs of most direct relevance to the issues of likely concern to the Inquiry are addressed below but the overarching point is that, to the extent that the shareholder team and/or SNED would have benefitted from additional internal corporate governance guidance, that deficiency has now been addressed. The POPs contain operating principles, and associated guidance dealing with issues such as major litigation, whistleblowing, organisational culture, board composition and expertise, commissioning independent assurance and information sharing.

#### *Separation of Shareholder and Policy Role*

118. As noted above, the Shareholder Team performed a dual policy and shareholder role for POL until 2018. Given the range of issues that the Shareholder Team were focussed on at key moments in the Horizon chronology from 2012 onwards, ultimately it may have been the case that the Shareholder Team, at times, gave too great a prominence to the perceived wider policy/presentational considerations and did not sufficiently focus on the corporate governance red flags that were materialising.
119. From 2018 onwards the Department's team took responsibility for POL's overall policy direction (including agreeing POL's social purpose, responding to Parliamentary considerations, engaging with stakeholders, and advising Ministers on policy issues), allowing the Shareholder Team (including the SNED as head of that team) to focus specifically on matters that are core to UKGI's mandate as a shareholder representative such as the monitoring of financial performance and

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<sup>19</sup> These practices build upon the processes of monitoring and comparing assets in its portfolio introduced early in the life of ShEx and which continued to evolve throughout the Phase 5/6 period.



corporate governance matters. This division of responsibility is formally encapsulated in UKGI's Memorandum of Understanding with the Department dated 12 December 2019 (UKGI00013078).

120. UKGI has accepted, from the outset, that for part of the period considered during Phases 5 and 6, some of the submissions and advice put up to Ministers by the Shareholder Team lacked the necessary degree of balance and objectivity in relation to Horizon issues. The period between the Westminster Hall debate in December 2014 and the commencement by Tim Parker of his review in October 2015, which included the collapse of the Mediation Scheme, POL's response to the Panorama allegations, and an increasing belief that the issue was heading inevitably towards litigation, required the SNED and the Shareholder Team, who were responsible at that time for providing policy advice as well as the performance of the shareholder role, to strike a difficult balance between competing priorities and objectives (from their perspective). That balance was not always successfully reflected in the submissions drafted at the time.
  
121. As Richard Callard frankly accepted in the course of his evidence (WITN00140100, Oral Evidence 12 July 2024, 23-26), the need to provide policy advice to a Minister in the face of political and/or public pressure in relation to a controversial issue may have led him, as the SNED and head of the Shareholder Team, to promote a policy of distancing the Minister from the issue, in circumstances where that may not have been the best approach from a corporate governance perspective. The policy considerations (as interpreted by the Shareholder Team and reflecting the pre-existing position, as noted further below) were that these were operational issues for an entity that was arms-length from Government to address, given that they fundamentally arose from the operation of its IT system. It would therefore not be advisable for Ministers to get involved in an intractable dispute between POL and its stakeholders with no obvious solution, which underpinned the Shareholder Team's advice to that effect. With the benefit of hindsight, it would clearly have been desirable for the SNED and Shareholder Team to have framed their advice differently.

122. It is UKGI's view that the separation of the policy and shareholder functions, as reflected in the Memorandum of Understanding (**UKGI00013078**) and subsequently embedded in the relationship between UKGI, POL and the Department, is a positive development which allows the Shareholder Team to focus specifically on issues directly related to their mandate without the additional complexity of having to simultaneously advise Ministers on policy and presentational matters which can sometimes have competing or conflicting priorities. The separation of the roles also allows the Department and Ministers to benefit from advice from UKGI that is focussed on the shareholder role with increased clarity and focus.
123. Within this framework of separated functions, careful consideration has been given to the issue of how the balance should be struck between operational independence of the company and direct intervention on the part of the Shareholder. Those reflections have been further informed by the evidence given to the Inquiry, which has demonstrated clearly that there was scope for more direct intervention in relation to Horizon at various points in the chronology and that treating the issue as an operational matter for POL to address was inadequate.
124. The view that the dispute concerning the integrity of the Horizon system was an operational matter for the Company in which it would not be appropriate to intervene, particularly during the operation of the Mediation Scheme and, later, during the litigation, was not one held by the Shareholder Team in isolation, but rather reflected a broader view within the Department and Whitehall at the time. As Sir Alex Chisholm noted (**WITN00180100**, §31), the policy intent that POL as a public corporation should have operational independence was embedded in the 2016 edition of the Public Bodies Handbook, Classification of Public Bodies: Guidance for Departments. This guidance articulates that a public corporation, "*is controlled by central government, local government, or other public corporations, and it has substantial day to day operating independence so that it should be seen as an institutional unit separate from its parent department*"(**RLIT0000325**). There is clearly a need, therefore, for a careful reassessment of when, and in what circumstances, a degree of operational involvement would be appropriate, in response to indications that the asset is not dealing appropriately with an important issue.

125. UKGI has reviewed its in-house training and guidance for shareholder teams and SNEDs accordingly, noting that they should be ready and willing to challenge and intervene in operational matters within an asset in which red flag concerns are arising. Whilst the level and type of intervention is very subjective and will vary depending on the situation, UKGI does not consider that the ability of the shareholder team and SNED to respond will, or should be, static or dependent on the length of the arm at which the asset is operating.
126. For example, UKGI's POPs guidance, now states that the perceived operational independence of an asset should not prevent UKGI from intervening further: "*red-flag issues may require further escalation or intervention beyond our BAU practices and the normal parameters of the shareholder role. This should be done via the board initially, but if the response or engagement from the Asset is not adequate then shareholder teams should feel empowered to push matters further. Shareholder teams must not feel unable or unwilling to pursue their concerns because of the perceived operational independence of an Asset or, in the case of Shareholder NEDS, not wanting to overstep their non-executive role. In exceptional circumstances, UKGI should not feel constrained by its BAU shareholder or UKGI NED activities and should feel comfortable to undertake additional scrutiny and escalate matters where appropriate. In essence, the level and degree of challenge being provided by UKGI must remain under careful review in such situations.*" (UKGI00049040).
127. A number of witnesses gave insightful evidence on this issue which further highlighted the importance of a model which retains the benefits of operational independence whilst also leaving scope for direct intervention when required. Sarah Munby (WITN11520200, §§22-26) observed that it would be "*very hard to imagine*" a department running a company of the scale and complexity of POL and then cautioned that giving the Department too much scope for operational intervention would have "*a tendency to both politicise and to gum-up what should be operational decisions taken by properly qualified people*". Evidence as to the importance of POL's operational independence was also given by Lord Mandelson (WITN00600100, §§15, 19) and Pat McFadden MP (WITN10250100, §23). On the other hand, there needs to be an effective mechanism for ensuring that the Company does what Ministers want

it to do when an issue such as Horizon arises, and where the actions of the Company do not accord with the wishes of the shareholder.

128. The types of ‘hard’ and ‘soft’ power currently available to the shareholder for this purpose have been outlined above, and UKGI considers them to be effective. However, existence of powers of intervention does not address the issue of knowing when to use them and so it is important that the level and degree of challenge from UKGI and/or the Department remains under constant review notwithstanding the legal structure of business as usual (“BAU”) independence afforded to an ALB as a result of its classification. In any HMG-ALB relationship there may be a point where the information being received by UKGI raises concerns that favour greater shareholder interference and scrutiny: going forward UKGI must continuously challenge itself by asking whether that point has been reached.

#### *SNEDs and Managing Conflicts of Interest*

129. UKGI also recognises that the SNED it places on asset boards, including POL, may sometimes have to navigate the competing interests of assets and the shareholder which have the potential to create conflict of interests. It should be noted that, where a company is owned by a sole shareholder, substantive conflicts are likely to be rare as the views of the company and the shareholder are, more often than not, going to be aligned. Accordingly, UKGI does not think this requires, as the Chair of this Inquiry suggested, a “*super-charged person*” (23 July 2024, 161, 20), particularly now that there is a clear separation between policy and shareholder roles, but it certainly requires experience, skills and the training necessary to operate simultaneously as an effective company director and an effective public servant.
130. UKGI is cognisant of the difficulty the Chair correctly identified when asking Baroness Neville-Rolfe about the challenge for the SNED of distinguishing between “*his or her duties as a member of the Board, i.e. his or her duties to the company, and, at the same time, represent a shareholder who is not necessarily aligned with all the objectives of the company because the shareholder will have things like, for example, the social value of keeping post offices open in their head*” (23 July 2024, 161-162). An example of where

such a conflict might arise for the SNED is in relation to funding issues , where it is easy to see how the interests of the asset (put simply, to extract as much funding as possible from the shareholder) may be at odds with those of shareholder (for the asset to deliver its objectives as cost-effectively as possible). There may also be specific sub-issues, which raise potential conflicts, and Tom Cooper in his Second Witness Statement (**WITN00200200**) describes the approach he took to an issue of executive remuneration whilst on the POL Board's remuneration committee.

131. However, it is UKGI's view that whilst there is potential for conflicts of interest to arise for SNEDs these do not arise regularly and are very manageable when they do arise, in a variety of contexts in which there is a degree of shareholder representation on an asset's Board. For example, this is a challenge which is regularly grappled with by private sector companies and within the private equity model, where it is customary to place shareholder representatives on asset Boards. When conflicts do arise, this will not typically prohibit the SNED from conveying the views of the department to the asset's board so that the shareholder's perspective can be provided to the asset's board in their decision-making. In such circumstances, it is imperative that the SNED and their fellow asset board members understand that conflicts of interest can arise in certain situations and for there to be a range of options for dealing with these issues when they do arise, for example, if necessary the requirement for the SNED to recuse themselves from particular aspects of decision-making. As with private equity funds' companies, it is UKGI's view that the advantages of having shareholder representation on asset Boards (in terms of information flows and helping asset Boards understand the priorities of shareholders) generally significantly outweigh any potential disadvantages.
132. Managing potential and actual conflicts of interest also requires the board to understand that, unlike the other non-executive board members, the SNED is not an independent appointee and never represents being an independent NED. In considering the exercise of their directors' duties and particularly their Companies Act section 172 duties to act in the interests of the company and its members as a whole, the SNED will inevitably be factoring in a broader set of considerations including the views and concerns of the Department and Government into their decision-making. This is the perspective described by Lorna Gratton

(WITN11310100, §173). As she explains, this does not create a lack of clarity as to the role of the SNED, and nor does it give rise to a fundamental conflict of interest. It simply means that the SNED's approach to a particular issue will be influenced by the point of view of the shareholder and the SNED will take a position that seeks to promote the shareholder's objectives for the Company. In many cases there will be no material difference between the interests of the Company and the interests of the Shareholder, and in many cases those interests will be aligned, but if there is a tension there will need to be a process of collaborative dialogue to find a mutually acceptable way forward. That may require the SNED to facilitate discussion between the Company and the Department as shareholder so that each can fully understand the other's point of view and find a resolution or way forward. In extremis, the shareholder can elect to direct the board to take as certain action as per Article 7F of POL's Articles of Association (UKGI00044318) but would need to bear in mind the detrimental impact doing so could potentially have on the empowerment of the board, the negative reaction that may have and its oversight responsibilities.

133. The approach taken to the issue of the SNED's participation in the decision making relating to the application for recusal of Mr Justice Fraser was exceptional and does not demonstrate any inherent flaw in the SNED model. As the contemporaneous documentation shows, Tom Cooper refrained from participating in the recusal decision (but attended the discussion) because he received legal advice to that effect from (primarily) the Department's legal advisers, which reflected the particular sensitivities of a representative of the Government taking part in a decision as to whether to seek the recusal of a member of the judiciary. Tim Parker also refrained from participating in the decision due to the role he held with the Ministry of Justice. Recusal applications made in the midst of multi-stage group litigation are rare and raise very specific considerations and it would be incorrect to extrapolate from the handling of this unusual situation a conclusion that there is an unmanageable conflict of interest at the heart of the SNED role.
134. It would also be incorrect to conclude that, were such a situation to arise in the future, Ministers would be unable to make their position on the issue clear, or that they would not be able to exercise influence over the decision. As the chronology of events both before and after the Horizon judgments demonstrates, Ministers are

able, if necessary, to exercise considerable influence over the operational decision making of the Company, without the need to resort to the formal powers (such as the power to remove the Chair) provided under the Articles of Association. There are multiple levers available, from setting out the Minister's priorities via Chair letters to attaching conditions to funding or withholding funding where there are significant concerns with an operational matter. At a basic level, and as the evidence relating to other decisions demonstrates, it is always open to the Minister or their officials to speak directly to the CEO and/or Chair to make clear their position on a particular issue and their expectation as to how it will be dealt with by the Company.

*Recruitment and Training of SNEDs and shareholder teams*

135. The evidence the Inquiry has heard makes clear that the role of the UKGI SNED is a demanding and challenging one. It requires the combination of the skills necessary to be an effective NED of a large corporation discharging their obligations to the company, and – importantly – the skills necessary to be an effective public servant discharging their obligations to Ministers. That being so, UKGI has given careful consideration to its approach to recruitment and professional training and development of SNEDS, aspiring SNEDs and shareholder teams more broadly. This is in the context of the SNED being only one of several NEDs on an asset's board, most of whom will have been recruited for their board experience and subject matter expertise.
136. It is no reflection on any of the three SNEDs in post during the Phases 5 and 6 period to observe that, at that time, the SNED recruitment and development process operated by ShEx was more ad hoc given the smaller size of the organisation and its more limited resource base at the time. UKGI now seeks to put greater focus on the importance of recruiting staff with experience that includes previous corporate governance and/or board experience.
137. In considering NED appointments, UKGI takes into account a wide range of factors including previous NED experience, technical skillset, industry background, behavioural fit (including emotional intelligence) and an alignment with the values

of UKGI, the asset under consideration and the civil service more generally. Thought has been given to the professional development of SNEDs, with the practice being developed of first appointing SNEDs to less complex assets with UKGI's portfolio before moving them on to larger, complex assets such as POL. Further details of UKGI's SNED recruitment process are outlined in detail in Charles Donald's Fourth Witness Statement (**WITN10770400**).

138. The current approach taken by UKGI to identify SNEDs with the right balance of skills and experience is illustrated by the appointment of Lorna Gratton as SNED to the POL Board. Lorna Gratton was appointed to the POL Board in May 2023 having accrued, by that stage in her career, significant experience of both senior civil service and board membership. Her first UKGI SNED appointment was to the Board of Sheffield Forgemasters following its acquisition by the Ministry of Defence and before this she had served on the Board of Teach First. The mixture of skills and experience will vary from individual to individual but, in general terms, the recruitment and development process is now more structured, coherent and tailored to the demands of the role and the individual.
139. The Inquiry has heard some evidence that historically there may have been a perception of UKGI as being comprised largely of individuals with an investment banking background, focussed primarily on deal-making rather than corporate governance. UKGI does not consider that this perception, even historically, reflects the reality of the attitude and capability of the organisation. Whilst UKGI may have historically drawn a large proportion of its personnel from within the corporate finance sector, a background in investment banking does not preclude a rigorous focus on corporate governance, as the evidence relating to Tom Cooper's tenure as SNED demonstrates.
140. Whilst commercial and financial experience naturally remains a central pillar of UKGI's workforce, in keeping with the prevalence of commercial organisations in UKGI's portfolio, UKGI's current senior leadership team is deliberately staffed from a wide variety of backgrounds. Almost half of the most senior members of the organisation coming from a non-investment bank backgrounds, including corporate restructuring, the civil service and legal professions.<sup>20</sup> This broad church of



experience allows UKGI to draw on a range of skills and expertise discharge its role in supporting and challenging the performance of an asset.

141. The Inquiry has also sought to understand the nature and extent of training provided to the SNEDs and UKGI acknowledges that the answers given to those questions have demonstrated that, during the Phases 5 and 6 period, a greater level of training and induction would have been beneficial for those tasked with this demanding role. The position by early 2020 was that there was structured training, in the form of in-person training developed for UKGI and delivered by the Institute of Directors (“IoD”), and a detailed NED induction pack. Prior to this point, SNEDs were often encouraged to attend IoD courses but no bespoke (to UKGI) training courses were in place and it was largely left to the SNEDs themselves to provide handovers to their successors and to seek briefings to bring themselves up to speed.
142. As Charles Donald explains in his Fourth Witness Statement (**WITN10770400**) one of his key priorities on taking up post as Chief Executive in March 2020 was to address the issue of training for SNEDs and the shareholder teams. As he describes, an extensive programme of work has been undertaken to address this issue and the position is now significantly enhanced from the one that pertained in the 2012-2018 period. Under the direction of UKGI’s Learning and Development leader, UKGI now operates an extensive programme of formal training for SNEDs and shareholder teams comprising (primarily) the Shareholder NED Professional Development Programme, and the Corporate Governance Development Programme covering the full range of corporate governance issues including assessing and challenging organisational performance, ‘culture and crisis’, assessing the POL Board, effective risk management and whistleblowing. Lorna Gratton’s Witness Statement (**WITN11310100**, §§60-66), provides a description of the practical delivery and benefits of this training programme.
143. UKGI has also developed a number of training initiatives designed to provide SNEDs and shareholder teams with the benefit of the experience of senior business leaders in dealing with complex corporate governance issues in large companies.

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<sup>20</sup> Currently 23 of the 43 individuals within the top two layers of the organisation come from an investment banker background.

These are set out in the Fourth Witness Statement of Charles Donald (WITN10770400), but in summary include regular seminars from highly experienced external chairs, enhancements to the monthly forums that exist for SNEDs to share challenges and experiences (which started during the Phases 5 and 6 period), monthly corporate governance group meetings, and NED 'peer support' meetings to discuss SNED issues in a smaller group setting. In addition, UKGI has also developed in-house training and development pathways for more junior personnel, including developing an Aspiring Shareholder NED Development Programme for high-performing UKGI employees designed to identify those with the aptitude for future SNED appointment and equip them with the necessary skills.

144. In light of the evidence heard in Phases 5 and 6, there are two key aspects of these improvements in training and professional development that UKGI wish to emphasise. The first is that the range of resources available to assist a SNED in navigating a difficult issue in an asset in UKGI's portfolio, including identifying the applicable best practice approach to the issue in question, are substantially greater now that they were during the Phases 5 and 6 period. In addition to the POPs and the associated guidance, they will be able to draw on the structured training they have received, the knowledge gained from internal and external seminars and raising and discussing issues at multiple forums. UKGI recognises that creating opportunities for UKGI SNEDs to share experiences is a vital part of their development, noting that issues encountered are sometimes unique, as with the subject of this Inquiry.
145. The Inquiry will recall the evidence of those dealing with Horizon issues at particularly challenging points in the chronology, including 2015, to the effect that it was very difficult to see a solution, or an effective way forward, other than litigation. That generated a degree of frustration which had the potential to bleed into correspondence, submissions and the approach to the issues more generally. In light of that evidence the benefits of the suite of resources now available to a SNED and shareholder team in identifying best practice and testing their understanding of how best practice might be applied to the issue in question are obvious.

146. The second key benefit of this programme is the ongoing development by UKGI of a corporate memory and a repository of experience and expertise in dealing with difficult corporate governance issues in a range of government-owned assets. The fact that the SNEDs and shareholder teams who deal with the largest and most complex assets belong to the same organisation, rather than being split across multiple government departments and agencies, means the delivery of training, the sharing of experience and the pooling of expertise can be far more effective and comprehensive.
147. The development of UKGI as a repository of experience and expertise in the delivery of effective corporate governance to complex Government-owned assets is an ongoing one, and UKGI continues to look for ways to enhance its unique position of operating across Government in a wide range of different assets (as highlighted in paragraphs 33-42 above). This Inquiry and the lessons learned from it will inevitably form an important part of that process, just as the Magnox Inquiry added significantly to UKGI's development of best practice models for the management of large-scale litigation. As explained above, the POPs, and incorporated guidance, are living documents which are regularly updated to reflect lessons learned from specific cases and developing best practice generally.

#### *Oversight of Litigation*

148. The combined effect of the lessons learned from the Magnox litigation and the Horizon GLO means that UKGI is now much better placed to support its SNEDs and shareholder teams where its assets face large scale or otherwise significant litigation than was the case when the GLO was launched in early 2016. At that point there was limited institutional experience of litigation of that nature and scale, and it was also commonplace for Government departments, and accordingly ShEx/UKGI on their behalf, to adopt an arms-length approach to litigation conducted by assets within its portfolio. The approach of the Department, as described by Sir Alex Chisholm (**WITN00180100, UKGI00009137**), namely that "*the Department was a separate body that had not been party to POL's actions or decision making as it pertained to the litigation*", reflected the established position.

149. UKGI has reflected on the issue of litigation oversight, in light of both the Magnox Inquiry and the GLO and has considered how it can best use its resources to support assets in navigating the challenges posed by significant litigation. In particular, it has learned lessons around how it can constructively challenge its assets and assist asset Boards with understanding the legal and broader risks, set expectations and the required level of information the Board and Shareholder expect, understand how best to handle risks and concerns and the different options available where litigation is not being properly managed. The SNED and shareholder team are now better able to draw on best practice resources and UKGI's in-house legal team when navigating issues such as the sharing of privileged information and the degree of oversight that the POL Board and/or the Shareholder should seek to exercise over ongoing litigation being handled by a team of external lawyers. When the GLO began, UKGI did not have an in-house legal team and relied on the support of departmental lawyers and their assistance where assets faced significant risks.
150. Tom Cooper's evidence (**WITN00200100**) demonstrates that, by early 2018 when he came into post, the position had already developed to some extent in light of the internal lessons learned exercise conducted by UKGI in relation to the Magnox Inquiry, which had reported the previous year, and the process of internal reflection undertaken by UKGI as a result. He received a briefing from UKGI's General Counsel and promptly set about implementing the steps she identified, including the development of a litigation protocol for the sharing of privileged information, pressing for the provision of written merits advice, testing POL's approach to settlement and seeking to encourage contingency planning for an adverse result. Unfortunately, the nature of the dispute, the manner it was presented to the POL Board by POL's lawyers and Counsel and the timetable of the litigation meant that there was very little opportunity to change strategy or approach by this point.
151. However, if an asset in UKGI's portfolio were now to be subject to substantial litigation of a similar nature the best practice developed from the Magnox and Horizon litigation would be available for SNEDs and shareholder teams to deploy from the outset. In particular:

- (i) There is now template wording for inclusion in framework documents requiring assets in UKGI's portfolio to provide quarterly reporting of litigation risk.
- (ii) There is a requirement for ensuring legal risks are communicated to the shareholder and a requirement to enter into a litigation protocol (the specific provisions in the POL Framework Document are set out in Charles Donald's Second Witness Statement (**WITN10770200**, §28), and so a process for sharing privileged information would be established from the outset.
- (iii) POPs have been updated, at Activity 19.3, to include reference to the importance of assets reporting material litigation in a transparent and regular manner and a POPs Guidance Note ('Litigation Risks - Key Issues for Shareholder Teams to Consider') has been compiled and updated to ensure that it reflects the lessons from both Magnox and the Horizon GLO.
- (iv) UKGI's litigation guidance note outlines a number of expectations including:
  - i. The level of information the Board should expect where there is substantial litigation including the content of legal merits advice, details of strategy, an understanding of the process and procedure and an understanding of legal risks and how these are being mitigated.
  - ii. Advice on where litigation is likely to require greater engagement from the SNED and shareholder team, for example given the scale, the human impact, whether it gives rise to concerns around an asset's business model or where it has a broader government impact.
  - iii. How UKGI should handle scenarios where there are challenges in information flow and the importance of having direct access to legal and expert advice and regular substantive updates.
  - iv. The circumstances where additional steps may need to be taken if the UKGI shareholder team has concerns around how the litigation is being

handled including where an additional legal opinion may be necessary, where concerns need to be raised about the capability of the asset's legal team and where board specific litigation expertise is required.

- v. There is now specific training on the management of litigation for SNEDs and shareholder teams.

152. The combined effect of the lessons learned exercises conducted in the wake of the Magnox litigation and the Horizon GLO has been to generate a comprehensive and robust set of principles and guidance to be applied to the conduct of large-scale litigation conducted by assets in UKGI's portfolio. As Charles Donald has explained in his Fourth Witness Statement (**WITN10770400**), these principles and guidance have in fact been applied to litigation concerning assets in UKGI's portfolio since the GLO, to good effect, including:

- (i) In relation to an employment tribunal claim against POL relating to worker status of postmasters, UKGI encouraged POL to seek more than one legal opinion, including from a "*claimant friendly*" (**UKGI00044278**) legal counsel to ensure POL, the Shareholder Team and the Department properly understood the merits of POL's legal position and the risks of an unsuccessful defence. UKGI actively encouraged POL to carry out detailed contingency planning which addressed both the potential initial and ongoing cost to POL of various potential adverse outcomes, but also the operational implications of those outcomes and mitigation strategies to take into account the commercial and legal risks. The results of the contingency planning were shared with UKGI and the Department.
- (ii) UKGI has agreed litigation protocols with a number of assets involved in substantial litigation. This has facilitated the active sharing of legal advice between the asset, UKGI and the relevant Department, allowing for enhanced challenge (where necessary) by the shareholder team and department including in relation to merits advice and contingency planning.

153. Each piece of litigation will have its own characteristics and the response of the company will inevitably depend on the nature of the case, the merits of its position and the financial and/or reputational aspects of the litigation. The point for present purposes, is that were an asset within UKGI's portfolio to become engaged in significant litigation, UKGI would be proactively engaged at an early stage and would apply the suite of resources summarised above to the oversight and/or management of that litigation. It would set clear expectations regarding information flow, risk reporting, and contingency planning. There is no question of UKGI, through the SNED and/or the Shareholder Team, permitting a situation such as that which pertained from early 2016 to 2018 whereby the POL Board, the Shareholder Team and Departmental lawyers, received limited, oral updates from POL on the progress of the litigation, received nothing of substance in the way of documentation relating to the case, and acted largely as a passive recipient of information provided by the POL Executive.

#### *Culture*

154. The Phases 5 and 6 evidence has demonstrated the importance of a healthy corporate culture and the need for those responsible for the corporate governance of the company, primarily the POL Board, to carefully monitor its culture and act on any deficiencies. As emphasised above, the importance of a healthy corporate culture in ensuring full, accurate and reliable reporting of risks by the executive to the board and the shareholder is the first level of effective corporate governance and, if it is deficient, the corporate governance framework will be seriously undermined from the outset. Having carefully followed the evidence provided by numerous individuals working at a variety of levels within POL at the time, it is clear that with respect to Horizon there was an inherent lack of transparency within the organisation, stove-piped reporting structures and a tendency to overplay messages which supported POL's preferred narrative on Horizon whilst downplaying concerns raised by postmasters. The Inquiry will form its own view on the totality of the evidence it has considered but, from UKGI's perspective, the overall picture is one of an unhealthy corporate culture within POL, which was not fully recognised or adequately dealt with by the POL Executive. At critical moments in the chronology, there seems to have been insufficient challenge on the part of the POL

Board to the approach taken by POL towards the Horizon issue and its dealings with postmasters, despite the accumulating evidence of a defensive culture which was preventing an open and self-critical assessment of the concerns that were being raised.

155. UKGI recognises that it must be more attuned to such culture-related issues, both in POL and across assets in its portfolio. This was acknowledged as part of UKGI's Opening Submission (**SUBS0000006**) and has been reinforced by the evidence heard throughout the Inquiry. There is now a clear emphasis on the importance of corporate culture that runs through UKGI's training, guidance and operational processes, and UKGI's SNEDs and shareholder teams are acutely conscious of the need to pay careful attention to the state of the culture within the assets for which they are responsible, and to take active steps to encourage and promote a healthy corporate culture. This can most readily be done at the asset Board via the SNED who can seek to remind the Board about the importance of cultural oversight as part of the Board's mandate. It can also be promoted via the shareholder team's interactions with the Chair and senior executives (for example, during shareholder meetings). For example, topics linked to POL's culture (i.e., people surveys, board evaluations etc) are now standard agenda items at Quarterly Shareholder Meetings ("QSMs") and the organisation's culture is frequently discussed at monthly Ministerial meetings involving POL, UKGI, and the Department, and in interactions between the SNED and the Chair of the POL Board.
156. Activity 21 of the POPs now directs that UKGI shareholder teams should seek to promote effective organisational health systems and corporate culture within the asset, whilst ensuring that the asset develops appropriate metrics and reporting on cultural issues. This guidance builds upon guidance set out by the Financial Reporting Council ("FRC"), which has since 2016 produced reports and published guidance on corporate culture and the role of boards, reflecting growing recognition in the last decade of the importance of culture within organisations. The guidance in the POPs is intended to encourage diversity of thought within the organisation, openness of management, and ensure quality of succession planning is in place.



157. In addition, internal guidance and training are intended to provide advice to SNEDs and shareholder teams on how effectively to support and challenge UKGI's asset Boards to address cultural challenges. They set out the specific actions that the SNED and the shareholder team should undertake in relation to culture, providing practical guidance as to positive and negative indicators that asset Boards should be monitoring, and how the shareholder team should seek to encourage these activities. The guidance also provides shareholder teams with an overview of recognised frameworks which they may be able to use with their asset's Executive team to track key metrics and measure improvements over time. Examples of the training delivered to SNEDs and shareholder team on culture and related issues were listed in Charles Donald's Fourth Witness Statement (**WITN10770400**, §74).
158. Outside of the direct training and experience of the shareholder team and SNED, UKGI's operating procedures have also evolved to help build an open and transparent culture between UKGI and those in its portfolio. In UKGI's opinion it has been clear from the evidence provided to the Inquiry that the way senior management reported the issues to both the POL Board and the Shareholder was not sufficient or accurate. For SNEDs and shareholder teams to gain an accurate picture of the culture of the asset there has to be frequent direct engagement with the company, at a variety of different levels, and that, where necessary, shareholder teams have sufficient levers to effectively challenge the company on its approach. Shareholder teams are also encouraged to discuss issues of culture with their peers in UKGI, for example there is now a specific segment of portfolio review meetings dedicated to culture which allows for a consistent and structured discussion on the topic. Members of UKGI's Board members sometimes attend portfolio reviews, allowing shareholder teams to benefit from their experience, challenge and input. UKGI's focus on culture and the ways in which that focus translates into practice is illustrated by the evidence of Tom Cooper (**WITN00200200**, §§21-49) and Lorna Gratton (**WITN11310100**, §§79-98).
159. It is important to highlight that bespoke measures can also be deployed for improving the culture of a company depending upon the nature of its business and engagement with stakeholders. UKGI recognises the importance of the board of an asset being able to directly gauge and appreciate key issues for the workforce as

identified in the FRC's 2018 Review. In the case of POL, where UKGI was keen for the POL Board to apply this principle to enhance its understanding of the perspectives of postmasters as key stakeholders, this has led to the appointment of two Postmaster NEDs to the Board, which was recommended by UKGI in July 2020. UKGI's view is that the appointment of the two Postmaster NEDs to the POL Board has been a positive development and not a 'cosmetic' appointment. Their appointment has enabled the interests of postmasters to be more readily represented at the highest levels within POL's organisation, helping the POL Board to understand, more directly, the lived experience of postmasters working in the network. UKGI have been monitoring the implementation of this initiative closely, and whilst there remains work to be done by POL and the POL Board to ensure that this initiative can work as effectively as possible, UKGI consider that the appointment of Postmaster NEDs has been an important step towards delivering on POL's commitment to put the success of postmasters at the centre of its future strategy and to alter its culture.

160. The Chair's letter (which is a letter prepared by UKGI and the Department and usually sent by the Minister to the asset)<sup>21</sup> is another mechanism by which the importance of culture can be emphasised, and a clear set of expectations set out, and this is also a tool that has been deployed in relation to POL. The importance of POL building a more productive relationship with postmasters has been a central tenet of the Chair's letter since February 2020. For example, the most recent Chair's letter of September 2024 welcomed the appointment of Postmaster NEDs (discussed previously) and asked the Chair to prioritise engagement with the Inquiry and *"drive forward the Company's cultural change programme, embedding any lessons and changes."* (Letter from Sarah Munby to Tim Parker: POL Strategic Priorities for 2022/2023) (UKGI00044315). As Lorna Gratton set out in her Witness Statement (WITN11310100, §§79-82), the Shareholder Team worked with POL to understand how they would track and monitor this cultural change. In conjunction with the Institute of Business Ethics, POL have now developed a cultural indicators dashboard, which is shared with the POL Board.

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<sup>21</sup> It was a governance tool introduced during the Phase 5 and 6 period.

161. A healthy corporate culture cannot be imposed externally on a company, whatever external corporate governance arrangements might be in place. It is ultimately the responsibility of the POL Executive, overseen by the POL Board to set the standards by which the Company operates and to ensure that they are upheld throughout the organisation. However, UKGI, in conjunction with the Shareholder, has an important role to play in ensuring that clear expectations are set, monitoring arrangements are in place, and any deficiencies in corporate culture that are identified are highlighted and addressed. UKGI's role in this regard is now more clearly articulated and better supported through training, guidance and the formulation of best practice.

*Board Performance/Evaluation*

162. The critical role of a board is to deliver effective corporate governance. If there are problems with the way in which the company's management is dealing with important issues, or deficiencies in the corporate culture which are causing detriment to employees or business partners, it is essential that the board is able to identify and address those issues, through its close and detailed interaction with executives and others in the company, and the reporting that it receives. The board has the power to call for any information or documentation it wishes to consider, it can direct the executive to take action, and it can commission its own deep-dives and investigations if it considers that the information it is receiving is not adequate. A curious, challenging and testing board is the first, and most effective, line of defence against an unhealthy corporate culture and mismanagement of issues by the executive.
163. The Inquiry has heard evidence concerning the approach taken by the POL Board to Horizon-related issues since 2012 during the course of the Phases 5 and 6 hearings. That evidence has been very detailed, and the Inquiry may consider that the POL Board performed more effectively at some points during that chronology than others. There are instances of what may be considered to be proactive and effective challenge on the part of the POL Board, with the response to the Second Sight interim report being one such example; there are other points where the POL Board might fairly be said to have missed opportunities to drill down into what it was

being told by the POL Executive, and/or follow up on lines of enquiry that it had initiated so as to obtain a better understanding of the extent of the problem. The evidence may also suggest that there were periods in which the overall POL Board composition was sub-optimal with the POL Board lacking technical IT and/or legal expertise of a type which may have enabled it to interrogate what it was being told by the POL Executive and/or external advisers more effectively. The evidential picture over such a long period is too complex and extensive to permit of a single judgment of general application to the performance of the POL Board. But it is clear that Board performance and composition are centrally important to the delivery of effective corporate governance at all times but particularly when difficult issues arise.

164. UKGI recognises the importance of ensuring that the Boards and Chairs of its assets are evaluated effectively and regularly. This is an area to which UKGI has paid particular attention over the period since the GLO and it now has enhanced guidance and practice in place in relation to the evaluation of asset Board performance (**WITN10770300**, §§8-35).
165. In summary, and dealing first with overall Board performance, UKGI seeks to promote best practice in this area through the POPs (Activity 28) (**UKGI00049040**) and the associated Board Effectiveness Reviews (“BER”)<sup>22</sup> guidance it has developed. The publication of the first dedicated UKGI guidance note on BERs in 2018 (and subsequent updates) codify UKGI’s expectation that each asset conducts an internal BER every year and an external BER at least once every three years, in accordance with the Code. This guidance highlights the importance of and rationale for BERs, and clearly sets out UKGI’s expectations of how the BERs should be undertaken. In addition, the requirement for a Board to undertake BERs is made clear in the Governance Expectations of the Annex to the Chair’s letter (which are standardised across UKGI). Additionally, the POPs state that the SNED should encourage input into the BER process from the Board’s stakeholders including Government. Further guidance is also provided by the ‘Cabinet Office/UKGI Note on Board Effectiveness Reviews’ of 2022 (**RLIT0000476**) and ‘FRC Guidance on Board Effectiveness’ (**RLIT0000477**), both of which are incorporated into POPs (**UKGI00049040**). BERs

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<sup>22</sup> Now referred to as Board Performance Reviews in the FRC Corporate Governance Code (“the Code”).

should be conducted both internally and externally at regular intervals and it is generally beneficial to have both perspectives. The guidance makes clear that BERs should include board composition, cohesiveness and dynamics, risk management and the quality of intra- and extra-board relationships. The Cabinet Office/UKGI Guidance note on BERs also makes clear that the annual review should consider *“The overarching culture and tone set by the board. Clarity of, and leadership given to, the purpose, direction and values of the ALB” (RLIT0000476)*.

166. The BERs that have been conducted since 2019 in relation to the POL Board demonstrate that the process can be effective in identifying whether difficult issues are being addressed adequately by the POL Board. The Inquiry may consider that in previous years there was insufficient critical evaluation of POL Board performance, and in particular a lack of consideration of whether the POL Board had the right composition of skills to deal successfully with the Horizon issues. As outlined below, UKGI has learned lessons in relation to the importance of enhancing composition and skills of its asset’s Board to better enable them to tackle complex ad hoc issues.
167. The performance of the asset Chair forms part of the BER process but UKGI also makes clear its expectation that Chairs will be subject to separate appraisal. In 2017 UKGI introduced dedicated guidance which codified this expectation for its assets, underscoring the increased emphasis that UKGI places on regular rigorous and objective assessments of the asset Chair. Following the introduction of such guidance, formal Chair appraisals separate to BERs have been a regular feature for POL since 2018. UKGI’s role is to promote and facilitate such appraisals and to provide feedback as a key stakeholder, as now set out in the POPs (Activity 27) (UKGI00049040). There are now also a number of relevant guidance documents directed to chair performance, as explained in Charles Donald’s Fourth Witness Statement (WITN10770400, §50(ii)).
168. As for the asset’s NEDs, their performance is addressed by the BER but also subject to separate appraisal by the chair. UKGI’s role is to support and facilitate this process (the POPs at Activity 29) (UKGI00049040) in accordance with both UKGI’s internal guidance and the guidance jointly issued by UKGI and the Cabinet Office.

The SNED will be evaluated as part of that process, alongside their NED colleagues, but are also subject to an extensive and multi-layered process of performance assessment operated within UKGI. The detail is set out in Charles Donald's Third Witness Statement (WITN10770300, §§32-35) but, in short, this will include line management meetings, UKGI Executive Committee meetings, peer-led portfolio reviews, feedback from the asset Chair, the Permanent Secretary and the Department's Director-General. If a SNED were to find themselves struggling, for whatever reason, there are a large of number of routes by which that will be identified and addressed.

169. In short, UKGI believes that board effectiveness (including board composition) is not assumed or taken for granted; it should be assessed, rigorously and objectively, primarily by the asset's Board with monitoring by UKGI. That does not mean that the assessment will necessarily be a positive one and Boards will often face challenges, such as recruiting NEDs with (for example) experience of dealing with complex IT projects; but the importance of regular and rigorous board evaluation is now fully recognised and UKGI's role in advocating that this is done effectively by assets within its portfolio is outlined in the POPs and associated guidance.

*Board Information Flow, Composition and External Assurance*

170. Board performance comprises a range of different elements, all of which must be considered in the course of an effective BER. However, the Inquiry may consider that the key requirement highlighted by the Phases 5 and 6 evidence is curiosity on the part of the board, and a willingness to drill down into the information being provided by the executive to ensure that the board has the full picture. As Robert Swannell explained, a curious and challenging board is a key component in addressing a substandard corporate culture (WITN10800100) § 169; Oral Evidence 9 July 2024, 138-139), though as noted at paragraphs 12-14 above, a board will be hampered in exercising curiosity and challenge if there is an inaccurate or incomplete flow of information to it from the executive.

171. There are clearly points during the Phases 5 and 6 chronology where the POL Board is seen to adopt a curious and challenging approach to the information being provided by management. There are also instances of the POL Board proactively seeking to commission its own investigations into the issues relating to Horizon, with the Linklaters LLP and Deloitte LLP commissions in the aftermath of the Second Sight interim report being obvious examples. The establishment of the litigation sub-committee in early 2018 to oversee the GLO is also an example of the POL Board taking a proactive approach to oversight of the Company's handling of a difficult issue and establishing a forum for receiving information and providing challenge.
172. However, it must be acknowledged that, as a number of witnesses have pointed out, there was never a full, 'drains up' analysis of Horizon commissioned by the POL Board and seen through to a definitive conclusion, which would have enabled the POL Board to reach its own fully independent view of the integrity of the system and the reliability of the assurances provided by the POL Executive. It is also apparent that there were opportunities to undertake an investigation of that nature, and the evidence has highlighted the Deloitte reporting in 2014 and the Parker Review in 2016 as examples of potential missed opportunity on the part of the POL Board to probe harder and follow up on lines of investigation that it had commenced. The Parker Review, in particular, now appears, with the benefit of hindsight, to have been a stark example of a failure to follow through on a line of enquiry that might well have revealed the deficiencies in Horizon, and POL's response to the issue much earlier. This would have required Tim Parker to share the review with the POL Board, and, from UKGI's perspective, there is force in the view expressed by Sarah Munby in her correspondence with Tim Parker that it was an error of judgment not to have done so. It would then have required the POL Board to pursue the issue identified in the Swift report which was commissioned by Tim Parker, and the further lines of recommended investigation, to their conclusion, notwithstanding the litigation.
173. The relevant witnesses have addressed the reasons why the POL Board took, or chose not to take, certain action at different points in the chronology. That evidence is detailed and will be for the Inquiry to evaluate. UKGI has reflected on the key

lessons it has learned on the issue of Board proactivity and curiosity and has set these out below against three thematic topics: (i) the flow of information to the POL Board, with specific regard to legally privileged advice; (ii) POL Board composition and skillset; and (iii) the commissioning of external assurance on complex project and issues.

174. With respect to information flow to the POL Board, it is clear from the evidence heard during the Inquiry that legal professional privilege (“LPP”) inhibited the POL Board, and then the Shareholder Team (and ultimately the Department) from receiving core pieces of advice that would have assisted in its consideration of Horizon related issues. There was no sharing of written privileged material (most significantly the legal advice POL received from its external lawyers) relating to the GLO until the SNED and the Shareholder Team insisted on the establishment of a litigation protocol in early 2018 and it would appear that Tim Parker did not share the material relating to his review with the POL Board, UKGI or the Department, including the advice by Jonathan Swift KC, due to advice from POL’s lawyers that sharing such information would result in LPP being waived. That issue has now been addressed. Both Tom Cooper and Lorna Gratton made clear in their Phase 7 witness statements that LPP no longer acts as an impediment to information sharing with the POL Board or the Shareholder Team and the Department. There are provisions regarding the sharing of legal advice with UKGI and the Shareholder in the current POL Framework Document (**POL00362299**) to facilitate information sharing of legal advice where there is actual or threatened litigation, and there is now no question of the POL Board or the Shareholder Team tolerating a situation where the executive withholds relevant material on the grounds of LPP.
175. With respect to asset Board composition, UKGI actively and regularly considers whether a Board has the required skillset and works with assets’ Chairs to ensure that this assessment feeds into proactive succession planning. UKGI’s lens on Board composition and capability extends to providing a view on whether the Board is sufficiently equipped to understand and scrutinise the matters being escalated by the executive, including whether the Board has the required skill set to effectively challenge and test the executive on technical matters. Where such experience is lacking, UKGI’s POPs notes that supplementing the skills of the Board may be an



appropriate step: *“Where UKGI is of the view that an Asset Board has a need for additional or specialist skills, whether on a temporary or permanent basis, UKGI may need to encourage the departments or Asset Chair to make further appointments, even where this may take the total membership above the suggested maximum levels”* (UKGI00049040, §23.1.2). For example, in the context of POL, UKGI was supportive of the appointment of a NED with extensive legal experience to the POL Board in July 2021 to support it in providing effective challenge to the Horizon compensation schemes, as well as chair the Remediation Committee. Furthermore, shareholder teams may also consider recommending the appointment of a Board adviser for a time limited period to assist an asset’s Board when experiencing challenges that are technical in nature.

176. Lastly, it is UKGI’s view that asset Boards can and should seek external assurance where there are concerns about the handling or risks with significant or complex matters. This is actively promoted in UKGI’s POPs. It should also be noted that this is not just something the asset’s Board can commission, rather shareholder teams can advocate for this option via the relevant Department where it has concerns that an asset is facing significant challenges in grappling with a particular issue and the shareholder would benefit from enhanced assurance of its own (UKGI00049040, Activity 13.3).
177. The approach taken by the POL Board to the New Branch IT (“NBIT”) issue, which will replace the Horizon system, as described at §§99-106 of Lorna Gratton’s Witness Statement (WITN11310100) provides a practical illustration of the approach that UKGI seeks to promote in assets in its portfolio when dealing with a difficult and complex issue of this nature. The SNED and the Shareholder Team promoted the establishment by the POL Board of the Investment Sub-Committee to provide POL Board oversight of the project, and the sub-committee has taken a proactive and interventionist approach, including by requiring changes to be made to the leadership of the programme. The POL Board has been involved in commissioning external assurance, from Accenture in the first instance. The resources of the Department have been deployed through the commissioning, at UKGI’s recommendation, of Public Digital to provide an additional level of external oversight, and the enrolment of the NBIT project on the Government’s Major

Projects Programme, which has led to additional oversight from the Infrastructure Projects Authority. The POL Board and the Shareholder Team have also encouraged the management team to engage extensively with postmasters to obtain their input on the new system.

178. The handling of the Horizon replacement issue demonstrates the proactive and multi-layered approach to a complex issue of this nature that UKGI seeks to promote and reflects much of the learning that has been extracted from the handling of Horizon. The fundamental point is that proactive intervention on the part of the POL Board and the Shareholder Team is required, and that full use should be made of any relevant assurance mechanisms that may be available, including those to which the company has privileged access by virtue of its status as a public corporation.

#### *Risk Reporting*

179. During the course of Phases 5 and 6 the Inquiry heard a significant amount of detailed evidence concerning ShEx/UKGI's historical risk reporting procedures, and the ways in which Horizon-related issues featured, from time to time, on internal ShEx/UKGI risk registers and heat maps. That evidence revealed a degree of inconsistency in approach, both to the characterisation of the risk and the purpose of the risk assessment process. The Shareholder Team was no doubt hampered in its risk reporting by incomplete and at times in inaccurate information flow being received from POL. Notwithstanding this, in terms of characterisation of the risk it is clear that at times the articulation of the Horizon risk in ShEx/UKGI risk registers did not reflect a full and accurate appreciation of the broad range of risk presented by the Horizon issue. For example, the Shareholder Team did not explore the risk that Horizon could be flawed, and the possibility of Bugs, Errors and Defects ("BEDs") or remote access. The ShEx/UKGI risk registers did not capture the human impact significance of the Horizon problem: the focus on risk was via too narrow a lens demonstrating that the Shareholder Team was at times too trusting of the assurances given by the Company. At times the purpose of the risk registers was

also unclear and did not distinguish between risks to POL and those risks most important to the shareholder and delivery of the ShEx/UKGI's shareholder role mandate as determined at the time.

180. It is clear that the scale and implications of issues relating to Horizon were not well understood by the Shareholder Team and, therefore, were not fully appreciated by UKGI as an organisation until it was, in effect, too late. The issue did not receive the level of consideration it merited at senior executive level with ShEx/UKGI via the existing risk reporting processes nor was it highlighted or escalated to the UKGI Board. By way of illustration, neither the UKGI Executive Committee (including the Chief Executive) nor the UKGI Board were aware of the cumulative number of prosecutions and convictions of sub-postmasters until well into the GLO.
181. Accordingly, the focus of UKGI's reflections on the issue of risk assessment and reporting has been on the processes by which UKGI, in the current exercise of its shareholder role, seeks to maintain visibility of how significant risks are being managed by assets in its portfolio, including the critical question of how it identifies whether those risks are being adequately characterised and addressed by the company. The Horizon experience demonstrates that it is sometimes necessary not to take assurances from management at face value. SNEDs and shareholder teams must constantly assess whether an asset's Board has fully gripped key risks and whether these risks are being reported, where necessary, into the Department.
182. Before turning to the steps that UKGI has taken in this regard it is important to make the obvious point that, in a company operating a healthy, 'no surprises' culture, risks facing the business will be clearly and accurately reported to the board by the executive and the board will be in a position, though the ARC or the full board, to make a properly informed assessment of the nature of the risk and the adequacy of the company's response. The executive and board will nearly always be in the best position to identify and prioritise risks in a company. With respect to an organisation such as POL, which is 100 percent owned by Government and where the CEO is also the Accountable Person, there is also the requirement that significant risks will be raised directly with the Department and with the Principal Accounting Officer<sup>23</sup> and Departmental officials, in line with HMG guidance as set out in the

“Orange Book: Management of Risk – Principles and Concepts”(RLIT0000437). This is the primary reporting mechanism by which risks should be escalated into the Department and it is the POL Board and CEO that are ultimately accountable for that escalation.

183. The evidence before the Inquiry demonstrates that such a reporting line will not always be sufficient. As a result, UKGI has sought to optimise its ability to act effectively as a secondary lens through which it can assess the approach being taken by an asset to managing key risks, provide challenge and, where necessary, escalate the issue internally or with the Department. In no way does this relieve the company’s obligation to escalate significant risk to the department, or the department’s obligation to ensure it has appropriate arrangements to consolidate and aggregate risks from its assets. Within its current model, UKGI has identified three principal ways in which this can be done and has sought to develop and enhances its processes in relation to each of them.
184. First, there is the important role played by the SNED as a member of the asset Board, as supported by the shareholder team. As outlined within Lorna Gratton’s Witness Statement (**WITN11310100**, §§37-39), through the SNED’s position on the Board and, typically, the ARC, they will gain an insight into the nature of the risks facing the asset, the way in which they are being managed by the executive, and the oversight being exercised by the asset Board. This will enable the SNED/shareholder team to escalate issues to the Department as may be required.
185. Second, the day-to-day interactions between the shareholder team and the asset’s executive, at a variety of different levels, also serves to enhance this visibility. The precise configuration of this interaction will vary between assets but, in relation to POL, the enhanced level of regular interaction between the Company and the Shareholder Team includes the QSMs, network meetings, financial and investment spend monitoring meetings, working group meetings and regular POL and Department ministerial meetings attended by UKGI. Ultimately, should the SNED or the shareholder team become aware of an issue through any of these mechanisms

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<sup>23</sup> The Permanent Secretary of the Department has been the Principal Accounting Officer for POL throughout the period ShEx/UKGI undertaken the shareholder representative role.

that they do not consider the department has been fully sighted on, or has not fully considered, it may be appropriate to provide to escalate via a submission or otherwise directly to the departmental Minister or Permanent Secretary.

186. Third, within UKGI there have also been enhancements to our internal portfolio monitoring processes, which are designed to support SNEDs and shareholder teams effectively identify and consider risks within the assets they oversee. As set out in Charles Donald's witness statement (**WITN10770400**), UKGI's internal risk processes, traffic light reporting, and Portfolio Reviews are not intended to replicate the visibility the board has on key asset risk. Rather those processes are appropriately focused on how key risks arising within the asset may impact UKGI's ability to deliver its shareholder mandate and whether the appropriate steps are being taken to mitigate those risks – for example via an assessment of executive and board capability. Notwithstanding the distinction in focus, UKGI's current and enhanced risk reporting processes and portfolio practices such as peer-led portfolio reviews and traffic light dashboards, as well as other mechanisms such as an enhanced rhythm of meetings between the UKGI Chief Executive and SNEDs, as well as SNED forums, do provide the SNED and shareholder team with an opportunity to discuss asset related risks, and the mitigations being taken to address them; including whether the issue and UKGI's perspective have been appropriately escalated to the Department.

#### *Whistleblowing*

187. UKGI has continued to reflect on the observations provided to the Inquiry in its Opening Submissions regarding the importance of the whistleblowing procedures, policies and practices of assets in its portfolio and over the last couple of years, has sought to proactively enhance its portfolio operating practices in this regard. It was apparent from an early stage that, in light of the events surrounding Horizon, this was an area which required careful attention from UKGI. It was one of the key institutional reflections addressed in the UKGI Internal Review and was dealt with in further detail in UKGI's Opening Submissions, albeit at that preliminary stage, UKGI was focused on the narrower issue of the failures of the POL Board to fully

grip and interrogate these issues raised by the Fujitsu whistleblower in the Panorama broadcast.

188. In the last couple of years UKGI has enhanced its guidance to SNEDs and shareholder teams on the important role that whistleblowing policies, and how they are implemented and interacted with by the workforce, play in acting as a barometer of corporate culture. Whilst responsibility for the oversight of whistleblowing rests with an asset's Board, UKGI recognises that it has a role in supporting its assets and their Boards in adopting a best practice approach to the handling of whistleblowing, via the SNEDs role on the Board and via the shareholder team's interaction with the asset's Executive. In addition, the statement of Mr Donald (**WITN10770300**, §§36-59) set out an overview of UKGI's understanding of the role of the Board in overseeing whistleblowing policies and procedures and how the SNED and shareholder team satisfy themselves as to the robustness of those procedures and the effectiveness of the board in implementing them.
189. The Inquiry has received extensive and detailed evidence from POL, including from existing POL Board members, as to the whistleblowing procedures it now operates, their effectiveness, and examples of how recent cases have been handled and investigated. This is discussed further below. The Inquiry will form its own assessment of that evidence and the adequacy of the policies and procedures now operating in POL, although it is clear that they have significantly evolved from the Phases 5 and 6 period to the present day.
190. To date, UKGI has implemented internal training and guidance aimed at providing SNED and shareholder teams with an understanding of best practice standards against which the whistleblowing policies and procedures of the assets in its portfolio can be assessed and any deficiencies identified. The POPs expressly identify, at Activity 20 (**UKGI00049040**), the need for UKGI to satisfy itself that the Board of the asset in its portfolio is demonstrating sufficient curiosity and rigour when it comes to interrogating whistleblowing policies and internal controls.
191. The key aspects of the guidance on whistleblowing available to SNEDs and shareholder teams are described in the Thirds and Fourth Witness Statements of

Charles Donald (WITN10770300, §§53-59; WITN10770400, §§78-83). This guidance assists SNEDs and shareholder teams in identifying the key issues or questions an asset's Board should have in mind when considering the effectiveness of whistleblowing policies and procedures and in addition, provides practical guidance as to actions that can be taken if the SNED and shareholder team have any concerns in this regard. There is a clear expectation that SNEDs and shareholder teams should be prepared to intervene if they consider that an asset's handling of a whistleblowing matter is inadequate. The guidance also makes clear that it should be read as applicable to serious allegations raised outside of formal whistleblowing processes, which raise many of the same corporate governance issues.

192. There is no prescriptive way in which such further intervention by the SNED and shareholder team may happen given the subjective nature of how such significance concerns within an asset might materialise. However, UKGI recognises that it should be prepared to consider further intervention in many different ways, for example by (i) further challenge from the SNED into the asset Chair and Board regarding investigative processes; (ii) reviewing assurances provided by the executive to the Board in relation to serious whistleblowing allegations to ensure sufficient objectivity, rigour and independence, including in the methodology of investigation; and (iii) the SNED and shareholder team engaging in critical self-reflection to ensure that its own assumptions and biases on a particular issue are not interfering with effective challenge.
193. Both Tom Cooper and Lorna Gratton have explained in their Phase 7 Witness Statements how they have applied the POPs, and associated guidance, in assessing the adequacy of the whistleblowing procedures now in place at POL, including the adequacy of the information provided to the POL Board as to the nature, volume, and resolution of complaints made under those procedures. UKGI now has in place a package of guidance and training which provides a robust framework for promoting best practice in relation to whistleblowing in the assets in its portfolio.

#### *Ministerial Engagement*

194. The SNED acts as the Shareholder's representative on the Board of assets in UKGI's portfolio such as POL and, with the support of the shareholder team, is responsible for ensuring that the Shareholder's interests and objectives are communicated and promoted. Effective communication between the shareholder team and the Shareholder is, therefore, essential and UKGI has taken very seriously, and reflected carefully upon, the evidence given by a number of former ministers to the effect that they regarded this communication as having been inadequate at various points during the chronology.
195. Before dealing with UKGI's reflections on this evidence and the lessons it has learned in relation to effective communication with the Shareholder it is important to note that there is no evidence of ShEx/UKGI ignoring, or failing to act upon, any contemporaneous concerns of this nature. Had any such concerns been raised ShEx/UKGI would have taken them very seriously, as would be the case today. UKGI is acutely conscious of its responsibilities to the departments and ministers to whom it provides its services and is always receptive to feedback on the discharge of those responsibilities.
196. When advice is given, it must be impartial and objective, and those providing the advice must do so in accordance with the principles set out in the Civil Service Code (**RLIT0000436**). The UKGI/DBT Memorandum of Understanding ("MOU") (**UKGI00013078**) makes clear, at §§3.1-3.2, that UKGI will provide independent advice to the Department and Ministers and that such advice will comply with the core values of integrity, honesty, objectivity and impartiality. UKGI officials are public servants and although UKGI is structured as a company with its own Board of Directors, there is no ambiguity about the responsibilities of officials when advising Ministers and this is made clear in UKGI's training and induction processes.
197. There are no barriers between UKGI and the Department (including Ministers) when it comes to the delivery of the Shareholder's objectives for POL, and this is made clear in §6 of the MOU (**UKGI00013078**). Specifically, it is recorded that the Department and UKGI agree to work together as one team to deliver the Shareholder's objectives (§6.1); and that UKGI will ensure that the relevant



Departmental officials are sighted on all advice given to Ministers (§6.3). There are provisions for the full sharing of information, joint representation at meetings, and regular reviews of effectiveness of the engagement between UKGI and the Department. The clarity provided by the MOU as to the expectations of both the Department and UKGI should avoid any repetition of a situation in which Ministers are concerned at the level of engagement, but, in the case of POL, those concerns did not come to light until after the event.

198. The practical reality of the engagement between the Department and UKGI, as reflected in the MOU is that the preparation of advice to Ministers will commonly represent a collaborative exercise in which UKGI seeks to engage with departmental officials to understand the Shareholder perspective so that it can be fed into the formulation of the options for Ministers to consider. Whilst UKGI rightly no longer leads on policy matters, it will be alive to policy priorities and will engage with departmental officials to ensure its submissions and advice take this into account. However, taking into account Shareholder and policy priorities does not inhibit the ability of UKGI to raise governance “red flags” where necessary and be able to provide full and frank advice to ministers. Indeed, where necessary UKGI is able to provide direct and separate advice to ministers to ensure its concerns are properly understood. The recruitment and professional development processes operated by UKGI, as summarised above, are designed to ensure that the mix of experience on shareholder teams includes civil service experience alongside private sector expertise to ensure as far as possible that there is effective working between UKGI and departments.
199. The integration between UKGI and Departmental officials is illustrated by the description of the regular rhythm of meetings involving POL, UKGI and the Department, as set out in Charles Donald’s Second Witness Statement (WITN10770200, §§8-16). For example, QSMs are now attended by the Department’s policy team as well as UKGI and POL; regular network meetings take place between officials from UKGI and the Department to review POL’s performance in meeting its branch network obligations; there are regular ‘working group’ meetings convened by the Minister and attended by POL, UKGI and the National Federation of SubPostmasters (“NFSP”); since early 2020, the Minister and POL’s CEO have met

on a monthly basis with the meetings attended by officials from both the Department and UKGI (usually the SNED). There are a range of other, less formal interactions between the Department and UKGI and to the extent that the evidence of some Ministers may have indicated that they saw themselves and the Department as merely recipients of information concerning the Company provided by ShEx/UKGI, that is plainly not the case under the current arrangements.<sup>24</sup>

200. Currently there is a clear and comprehensive set of specific expectations governing the engagement between UKGI and the Department in relation to POL, set out in a MOU (**UKGI00013078**). This includes the need for advice to Ministers to be formulated in accordance with the requirements of the Civil Service Code. There is a collaborative approach between Departmental officials and UKGI officials in the formulation of such advice and there is very regular interaction between the Department, UKGI and POL which enables the Department to have full visibility of how the Company is operating, the risks/issues and how they are being dealt with and how Ministerial objectives are being implemented.

## **POL TODAY**

201. POL today operates in a uniquely demanding environment, dealing with the legacy of the Horizon scandal, rightly under intense scrutiny, while seeking to secure its long-term future.
202. Many of the areas of UKGI's responsibilities as shareholder representative to POL lie outside the scope of this Inquiry. A summary of the core of the UKGI Shareholder Team's work is contained at paragraph 18 of Lorna Gratton's statement (**WITN11310100**). This section focusses on those matters that are of most direct

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<sup>24</sup> It should be noted that the extensive interaction between POL, UKGI and the Department reflects the fact the length of the arm being currently extended to POL is "short" and therefore necessitates more ministerial and departmental engagement than may be the case for other assets within UKGI's portfolio. Given the significant strain POL has, and continues to experience, UKGI encourages this enhanced dialogue and interactions with POL".

relevance to how the lessons and legacy of the Horizon scandal affect UKGI's role with respect to POL today, under the headings of: culture; whistleblowing; the POL Board (including capability and composition) and POL's relationship with the Shareholder; and redress and compensation. Although they do not represent the totality of UKGI's shareholder role in relation to POL it is anticipated that these are the aspects of UKGI's work that are likely to be of most direct interest to the Inquiry in its consideration of POL's current relationship with, and treatment of, postmasters and how it has responded to the Horizon scandal.

### *Culture*

#### *Importance of Postmaster representation*

203. UKGI was an early advocate of having greater postmaster input into the running of and oversight of POL and continues to support the role of Postmaster NEDs on the POL Board (see, for example, the submission to the Minister in support of the proposal in July 2020 (**UKGI00013237**)). UKGI remains strongly supportive of the role they play in the business Lorna Gratton's Witness Statement (**WITN11310100**, §§83-91 Tom Cooper's Second Witness Statement (**WITN00200200**, §§69-71), Charles Donald's Second Witness Statement (**WITN10770200**, §34)). Lorna Gratton and her predecessor Tom Cooper have each described how the presence of Postmaster NEDs on the POL Board, and their ability to provide the POL Board with a real-world understanding of the Postmaster perspective on the issues the POL Board was dealing with, have been very positive in promoting a culture in which the interests of postmasters became much more prominent in the POL Board's discussions than had been the case previously. In particular, Lorna Gratton and Tom Cooper have each highlighted how the contributions of the Postmaster NEDs have helped the POL Board understand the impact of certain policies and procedures on postmasters, have brought to the fore functionality issues with Horizon, have helped with determining processes to address historic detriment suffered by Postmasters (for example due to POL's historic suspension pay policy), and have assisted with postmaster representation on forums (Lorna Gratton's Witness Statement (**WITN11310100**, §84), Tom Cooper's Second Witness Statement (**WITN00200200**, §69)). The firm view of UKGI and the SNEDs is that the Postmaster NEDs have

made an important contribution to the POL Board and that their views and perspectives have been welcomed and taken seriously.

204. The role of Postmaster NED requires a sometimes difficult balance between their fiduciary duties to the Company, their own interests as active postmasters, and their position as representatives of the wider postmaster community. Similarly, it requires the other members of the POL Board to understand the role of the Postmaster NEDs, and the various interests they are required to balance; and to ensure that they are fully involved in all relevant aspects of POL Board decision-making. There has been a degree of evolution and learning during the tenure of the first Postmaster NEDs, on all sides, which is to be expected. Having reflected on the evidence heard in Phase 7, UKGI considers that there is a need for greater support and training for the Postmaster NEDs. While this is primarily a matter for POL and the POL Board as a collective, and indeed work is currently being undertaken to provide more training for future Postmaster NEDs (**WITN11310100**, §85), UKGI and the SNED strongly support this initiative and are open to assisting in any way that they can.
205. The introduction of Postmaster NEDs and the appointment of a Postmaster Experience Director (which, as explained by Lorna Gratton, has helped to place a postmaster perspective at the heart of the POL Executive, (**WITN11310100**, §92) have provided the POL Board and senior POL Executive leadership with the unmediated views and experiences of postmasters, and as such have played a vital role in informing the decisions made at the top of the Company. Ensuring postmasters have a role in the oversight and operation of the business is also intended to contribute to rebuilding trust with the wider postmaster community and, to further this, UKGI supports POL's proposal to publish POL Board minutes so that, among other things, more can be seen of the contribution that Postmaster NEDs are making (Oral evidence 7 November 2024, 97-98).
206. However, and as Lorna Gratton said in evidence (Oral evidence 7 November 2024, 33-34, 98), postmaster input into POL decision making should take place at all layers of the Company, not just at Board level (or merely on an oversight board, as proposed by the NFSP, which would risk diluting the accountability of the POL Board). She gave the example of a franchise-type postmaster council, at which

postmaster representatives would have an input into decisions that impact on how they operate and grow their business. She explained that the new management team has consulted with the Voice of the Postmaster, NFSP and other representatives to develop proposals in this area. When asked by Counsel to the Inquiry if such a proposal would make the Company more postmaster-centric, Lorna Gratton replied realistically, saying that it was a *"place to start, and I think you've got to start, see where you get to, iterate, and make it better"* (Oral evidence 7 November 2024, 34). Charles Donald, in his evidence, expressed confidence in the new Interim Chair's approach to take *"the sub-postmaster constituency very seriously and making them more central to the organisation"* (Oral evidence 8 November 2024, 71). UKGI will continue to encourage and monitor those efforts, focussing on the actions necessary to realise the often expressed aim of putting postmasters at the heart of POL.

*The YouGov Survey and Horizon reliability*

207. The results of the YouGov survey of postmasters commissioned by the Inquiry were very concerning, and clearly disappointing given that the urgent need for POL to repair its relationship with postmasters has been apparent for several years. From UKGI's perspective, and as reflected in the evidence of the SNEDs, there is a clear understanding on the part of the POL Executive and the POL Board that the relationship between the Company and postmaster must be repaired, and a considerable amount of effort has been expended in this regard. The fact that there is evidently a long way to go is a reflection of the scale and depth of the damage caused by the Horizon scandal and the rebuilding of trust will inevitably be a long-term process. However, the survey results demonstrated an urgent need to address a range of specific aspects of concern, including the operation of the Horizon system. The POL Board took up the issues raised by the survey immediately, discussing them at POL Board meetings on 24 September and 5 November 2024. As of 7 November 2024, the POL Executive were in the process of commissioning an independent, third-party review of the concerns raised about Horizon. The Voice of the Postmaster and the NFSP had been consulted not only about the terms of reference of the review, but on how they will be involved throughout the process. The issue has been escalated to the Shareholder in full and without delay. The POL Board is demonstrating engagement and urgency; it is seeking information not just

from the Executive, but from independent experts; critically, the POL Board and the POL Executive have engaged postmasters so that they can both be heard and can see what work is being undertaken to investigate; the Shareholder is being kept fully informed. From UKGI's corporate governance perspective, the issues are being addressed through the appropriate processes under the oversight of the POL Board. Delivery of tangible improvement is, of course, another matter and UKGI, through the SNED and the Shareholder Team will continue to closely monitor POL's progress in that regard.

*Ongoing support and challenge on POL culture*

208. The most important lever the Shareholder has to change the culture of POL, is the appointment of a Chair that shares the Shareholder's vision for Post Office. In 2024 UKGI worked with the Department to appoint an interim-Chair who has been clear on his commitment to put postmasters at the heart of POL's decision making and address the wider cultural concerns at POL. This is firmly supported by the Shareholder. Beyond this, the Shareholder continues to use the other levers it has available to help improve the culture at POL. For example, important influence can be exerted through the Chair's letters, and these have repeatedly emphasised the importance attached to cultural change (**UKGI00044315**, **UKGI00044317**, **UKGI00049046**, **WITN11310100**, §79) with the focus of making the business postmaster centric a central priority. Culture is also a regular feature in QSMs between POL, the Department and UKGI. Ministers, officials and the SNED can and have reiterated this priority formally and informally when meeting POL Executives and POL Board members. Metrics have been introduced to track measures relating to cultural change at POL Board level and in remuneration decisions (**WITN11310100**, §81). Issues concerning POL's culture also show the value of a SNED, both in providing the Shareholder with direct and informed insight into how such matters are being considered and addressed at POL Board and POL Executive level, and in feeding into POL the importance that the Shareholder attaches to these concerns.
209. UKGI has listened carefully to the evidence adduced in Phase 7 and has reflected on it. It is obvious that very considerable work remains to be done to improve POL's

culture and practices. There is understandable and justified frustration that progress is too slow in too many areas and the phase has highlighted significant deficiencies.

210. However, there is demonstrable evidence of a cultural shift within POL including real changes in attitudes and practices; including streamlining the decision-making processes, reducing management layers and increased engagement with unions and a broad range of postmasters (as outlined Tom Cooper's Second Witness Statement (**WITN00200200**, §37) and Lorna Gratton's Witness Statement (**WITN11310100**, §92-96)). There are grounds for optimism in the approach being taken by the new leadership at POL Board and POL Executive level. Many substantial challenges remain, but they are being confronted by actions as well as words.

*POL employees implicated in past misconduct and failings*

211. UKGI acknowledge that many postmasters are concerned about the ongoing employment by POL of individuals who are implicated in past misconduct and failings either directly, or through prior roles in relevant teams and units. UKGI further acknowledge that this situation has remained unresolved for too long. The SNED has emphasised to POL the need to prioritise this issue and has supported practical measures intended to bring resolution (see, for example the intervention in the POL Board meeting of 29 April 2024, **POL00448649**) given the issue's direct relevance to the Horizon scandal and its significance to regaining trust in POL.

*Whistleblowing*

212. POL's whistleblowing policies and procedures have developed significantly from those in place during the Phases 5 and 6 period. UKGI considers that POL's current 'Speak Up' policy represents best practice for whistleblowing under the Code and other applicable UK standards. The policy is overseen directly by the POL Board, including a Board-level champion (Amanda Burton) and is subject to annual review and external assurance. The ARC, on which the SNED sits, receives regular reports from the Speak Up Analyst and the Head of Assurance and Complex Investigations. A further layer of support is provided by the training given to the SNED and the UKGI Shareholder Team, as described above. The evidence of Lorna Gratton and

others is that whistleblowing is treated seriously and professionally at POL Board level (WITN11310100, §§103-104, WITN11330100, §18-48, §78-85, WITN11290100, §49-52).

213. While these structures are sound, the evidence heard by the Inquiry reveals two problems. First, whistleblowing (and other) complaints take too long to resolve, in part because of the hesitancy in decision-making that has affected many aspects of POL's work. The new POL Chair has made clear that he is alive to this issue and is focused on addressing it. Second, there is plainly insufficient awareness of the whistleblowing policy among postmasters. This echoes Lorna Gratton's wider reflections on cultural change in POL, to the effect that while considerable work has been done, there is a concern that the policies and procedures generated centrally in POL may not be permeating through to those operating and working in Post Offices throughout the country (WITN11310100, §96). Resolving this issue will take time and effort, as confidence in whistleblowing protection by key stakeholders is a key indicator of a healthy culture and integral to rebuilding trust in the integrity of the Company as a whole, but the awareness of this problem by UKGI, the SNED, the POL Board and the senior leadership of the POL Executive (notably the Chief People Officer, Karen McEwan) provide grounds for optimism that the position can and will be improved.

#### *The Board and the Shareholder Relationship*

214. Primary responsibility for overseeing the work of the POL Executive rests with the POL Board, in line with Government's wider approach to managing ALBs (see Section 5 above). UKGI's role includes assisting the Department in: (i) appointing POL Board members; (ii) monitoring the POL Board's performance; and (iii) facilitating the relationship between POL, the Shareholder and the rest of Government.
215. On appointments, recruitment is underway to strengthen the POL Board through the appointment of NEDs with experience in organisational design, major IT projects, and public sector ownership (WITN11310100, §158). As has been extensively discussed, in response to serious concerns raised by the Senior



Independent Director and others (including UKGI) concerning his performance, the Secretary of State took the decision to remove the previous Chair. This is a recent example of the exercise of 'hard' ministerial powers discussed in paragraph 26 above. A new Interim Chair has been appointed, and a new CEO will follow. The Interim Chair is proactively engaging with Government and is focussed on improving the relationship between POL and its stakeholders. As Lorna Gratton has said, the POL Board has now become more "*cohesive and united*" (**WITN11310100**, §165).

216. On monitoring, the SNED sits on all POL Board sub-committees and is therefore sighted on all aspects of the POL Board's activities. A detailed and candid analysis of the performance of those sub-committees is contained in Lorna Gratton's Witness Statement (**WITN11310100**, §161). The measures taken by UKGI to strengthen its internal processes to allow for better monitoring of ALB performance are described above.
217. There are still areas in which the POL Board's effectiveness can be improved, several of which have been identified by Grant Thornton (though it should be noted that the relevant reviews took place at a time of unique tension and that substantial changes have since occurred, including of personnel). The primary reflection from the report is a need for clarity of purpose for POL and its future strategy from its shareholder. To help address this concern, government has said that they will bring forward a Green Paper in the first half of next year on the future of POL, including its policy requirements and purpose. The report also highlights a risk-averse culture that has developed within POL, which has resulted in too many decisions being escalated upwards. Practical steps have been taken to rationalise the senior leadership structures and to improve the functioning of POL Executive and the POL Board, thereby allowing the latter to focus on providing the strategy that POL needs (see the evidence of Nigel Railton, Oral evidence 8 October 2024, 123-127; and the Witness Statement of Lorna Gratton at **WITN11310100**, §§75-78, §§161-165). Continuous evaluation of Board capability is being considered and a skills survey has recently been carried out.

218. On the shareholder relationship, there has again been a period of some tension. As was identified in the evidence of Sarah Munby, the former Permanent Secretary of BEIS, this was in part caused by the repeated requests for support from the public purse outside of the agreed funding cycle, particularly in respect of administration costs / legal fees associated with redress/compensation and NBIT (Oral evidence 5 November 2024, 152-154, 184-185). The sums involved are large and therefore inevitably result in careful scrutiny from the Department and the Treasury. The perspectives of the Company and the Government are very different and can be a source of mutual frustration. Here, the SNED plays an important role in communicating the different perspectives and promoting mutual understanding. This is helped by the fact that s/he is drawn from UKGI rather than the Department and the fact UKGI is not responsible for formulating the overarching policy, which allows for a more candid exchange of views during the formulation of a funding request, and hence a more informed and realistic final proposal.
219. As with many other areas, the relationship between POL and the Shareholder is one that both parties are seeking to continuously improve as the Company emerges from its period of crisis. As Lorna Gratton has said (and as described in paragraph 25 above), the length of the arm between the Shareholder and the asset is currently short, which is entirely appropriate in the circumstances, and cannot be surprising given recent history and the very large sums of public money involved (**WITN11310100**, §§171-174). It will lengthen as the culture and performance of POL strengthen, including in respect of its ability to deal with the legacy of the Horizon scandal. There are also steps that can and are being taken by UKGI and the Shareholder to rationalise the relationship between the Company and Government, notably though updating the Framework Document (**WITN11310100**, §168) which is well under way. This will help to clarify what is expected by the Shareholder of the Company and allow for greater commercial freedom in certain areas.
220. While other incremental improvements will no doubt prove possible, UKGI's position is that the fundamentals of the relationship between the Shareholder, UKGI and POL are well-established, well-understood and represent the best governance model available. This model, and UKGI's role within it, allows Ministers to exercise powers to direct and influence on an informed basis, with access to appropriate

advice from the SNED, the UKGI Shareholder Team, and the Department's own policy team. The powers already available to Ministers include (as discussed at paragraph 26 above) 'hard' powers such as those contained in the Articles of Association,<sup>25</sup> and 'soft' powers such as the annual Chair's letter setting out the Minister's priorities for the Company for the coming year. Ministers can and do augment this through meetings with the Chair or CEO, or through correspondence on a specific issue (**WITN11310100**, §§28-29, **WITN11010100**, §33). UKGI does not consider there to be a need for further legislation to fill a non-existent gap in Ministerial powers with respect to POL (Oral evidence 10 July 2024, 185, 9 July 2024, 116-121, 9 July 2024, 182).

### *Redress and Compensation*

221. UKGI's role in redress and compensation is now more limited and in line with our shareholder model, which would not normally require us to take a proactive role in the governance and handling of compensation schemes. These are primarily matters for direct consideration by the Company and the Department. The SNED sits on both the RC and the POL Board, where issues about redress and compensation are raised and discussed. The UKGI Shareholder Team monitors progress and performance of the schemes against objectives and budget. Lorna Gratton has explained the nature of those roles in her statement (**WITN11310100**, §§175-176). She and UKGI continue to support the provision of full, fair, and timely redress and compensation. For example, UKGI has provided its support to the appeals process for the HSS, has been encouraging the acceleration of an appeals process as well as funding for claimant legal costs at the outset. Similarly, UKGI has been supportive of moving away from more ad hoc negotiations to settle claims under the OC to a more principles-based approach and provided assistance to the Department in formulating its policy around fixed sum awards.
222. A concern that was raised in evidence in Phase 7 was that references in the Chair's letter to the need to consider 'value for money' in the schemes might be interpreted

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<sup>25</sup> POL's Articles of Association allow the Secretary of State to appoint or remove the Chair and Directors, and grant the Shareholder rights of consent and information (**UKGI00044318**, **UKGI00043216**; **WITN00800100**, §§23, 63). The Articles were updated in 2020 to enhance the consent rights (**WITN10770200**, §§25-26) and provide a specific power of direction (**UKGI00044318**, Article 7(F)).

to limit or restrict awards made to individual postmasters. This is not what is intended and, to UKGI's knowledge, is not what has happened. The 'value for money' in question relates to the costs of administering the scheme and does not impact on the size of individual awards. There is extensive evidence before the Inquiry that this is how the phrase has been understood and implemented across Government and POL: see the evidence of Simon Recaldin (Oral evidence 4 November 2024, 29-31), Sarah Munby (Oral evidence 5 November 2024, 122-130, 172-177), Lorna Gratton (Oral evidence 7 November, 46-48), and Jonathan Reynolds MP (Oral evidence 11 November 2024, 14-21).

*Conclusions on POL today*

223. UKGI has an important role to play in the future of POL, through supporting the Company, providing a critical shareholder oversight role, and acting as an interlocutor between the Company and the Shareholder to further mutual understanding and common direction. The structures that are now in place in UKGI for delivering those objectives are effective. They allow for clear visibility and communication, and appropriate engagement. Work is underway to provide greater clarity and freedom for POL in areas where it is right that it enjoys autonomy.
224. Those structures help to provide POL with the opportunity to rebuild the close working relationship it needs with the Shareholder. However, they do not and cannot guarantee that the Company will meet the myriad complex challenges that it faces. UKGI can offer support, but it cannot run the Company, dictate its culture, or secure its long-term sustainability. That is the responsibility of the POL Board and the POL Executive.
225. Accordingly, it is important for UKGI to be frank as to the extent of the assurance it can give to the Inquiry as to the future relationship between POL and postmasters. UKGI is working closely with POL and the Department to refresh the governance framework (in particular the Framework Document) and ensure that they are clearly articulated and understood by all parties. The relationship and lines of communication between UKGI and the Department are effective. Under guidance of the new Chair the POL Board is working more collegially and is actively seeking to

address those areas where its effectiveness can be further improved. The need for postmasters to be treated as valued partners by POL, provided with the appropriate support to run their businesses effectively and in a way that is financially sustainable, is clearly understood by the POL Board and the POL Executive. However, there can be no doubt that POL continues to face significant challenges in delivering substantial and tangible improvement in its relationship with postmasters and embedding of a corporate culture that treats them as valued partners working towards a common set of objectives.

## CONCLUSION

226. The impact of the events with which this Inquiry is concerned cannot be overstated. UKGI has been acutely aware from the very beginning of its involvement in this process of the devastation caused to the lives of so many postmasters and their families. Financial compensation can be provided, and it is hoped that this will be completed swiftly and fairly, but much of the damage that has been done cannot be repaired and that was made very clear by the deeply affecting human impact evidence heard at the start of this Inquiry. UKGI has had that evidence at the forefront of its mind throughout its participation in this Inquiry, whether providing evidence or formulating submissions.
227. The obligations on a responsible public body involved in a process such as this are clear. It must engage in a frank, rigorous and self-critical process of reflection. It must co-operate fully and unreservedly with any investigation or inquiry undertaken into the material events. It must provide any such inquiry with a full, public account of its involvement and its reflections on that involvement at the earliest possible opportunity. It must remain open-minded and reflective during the course of the inquiry, receptive to learning further lessons and not defensive.
228. UKGI has sought to discharge those responsibilities, initially through its Internal Review in 2021, which was followed by detailed Opening Submissions to this Inquiry, and latterly, through the provision of 24 witness statements totalling over 1,183 pages of evidence. UKGI has also provided by the Inquiry with over 40,000 documents which provide a comprehensive account of its involvement in the

material events. No request for disclosure or evidence has gone unmet and witnesses have frequently gone beyond the strict scope of Rule 9 requests for evidence to provide the Inquiry with the fullest possible account of their actions and reflections. The witnesses who have appeared before the Inquiry have been frank and reflective in their evidence and have sought to assist the Inquiry to the best of their ability.

229. UKGI is conscious that this body of evidence, whilst substantial, forms only one small part of the evidence received and analysed during the course of Phases 5-7. Nonetheless, UKGI hopes that it has been of assistance to the Inquiry, and it remains committed to providing the Inquiry with anything else it may require.
230. UKGI's overriding objective, from the time that it first became apparent, in the aftermath of the GLO, that the Horizon issues had been disastrously mishandled by POL has been to understand what went wrong and what steps need to be taken to ensure, as far as possible, that nothing like this can ever happen again in an asset within its portfolio. The process of engagement with this Inquiry has been of enormous value in this exercise and, as explained above, has informed the work done by UKGI to further that objective. Much has been done in that regard, and a full account has been given to the Inquiry. However, UKGI does not seek to suggest that the process of learning lessons, implementing improvement and preventing recurrence has ended, and, if the Inquiry identifies recommendations for further action on the part of UKGI they will be welcomed.
231. UKGI would wish to conclude these closing submissions by addressing the postmasters, and their families, whose lives have been irreparably damaged by the tragic and unjustifiable events with which this Inquiry is concerned. The dignity and resilience that they have shown during the Inquiry, as with the fight for justice which preceded it and continues, has been remarkable. All of those involved in this Inquiry both within and on behalf of UKGI would wish to pay tribute to them.

**Neil Sheldon KC**  
**Matthew Hill**  
**Paul Mertens**  
**UK Government Investments**

9 December 2024