

# STEVENS&BOLTON

## Strictly Private & Confidential

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By Email

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Dear Mr Shortman

## JFSA COMPLAINT REGARDING HMG'S REGULATION OF POL

Thank you for your letter of 30 November 2020 in response to the JFSA's complaint about HMG's oversight of POL during the Relevant Period.

It was disappointing to hear that the Department's position towards the Complainants remains unchanged in light of their complaint about HMG.

There were, however, three points in your letter that it is important we clarify for the record in advance of the complaint's submission to the Ombudsman today:

### 1. Complaint against HMG (and not against POL)

*"As you have been informed in previous correspondence, **the Government cannot accept any further requests for payment**. **The Government was not party to the litigation or mediation talks and the settlement agreed with the Post Office and approved by the Court included all legal and other costs**. In considering your complaint under our departmental complaints procedure it is not within my remit to offer the further compensation you are seeking."*

The complaint is not about the conduct of POL, nor is it about the settlement reached with POL, it is about HMG's failure to oversee and regulate POL properly during the Relevant Period leading to injustice for the Complainants. It is, in other words, an entirely fresh complaint made against HMG and not something that HMG (or anyone else) has made any payment to the Complainants in respect of it.

### 2. Operational independence myth & UKGI

*In order to address your concerns around Government's oversight of the Post Office in connection with the Horizon case, **I must first clarify that Post Office Limited (POL) operates as an independent, commercial business**. However, the Government maintains oversight via UK Government Investments (UKGI), as Shareholder Representative for the department. UKGI oversees POL's corporate governance,*

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*strategy, and the stewardship of resources, as well as holding a non-executive seat on POL's Board.*

POL is, and has always been, as Mr Justice Fraser commented in the Proceedings, a publicly owned corporation – it is the entity entrusted to provide a national service by HMG, its 100% owner and sole financier with a seat on POL's Board whose directors HMG has absolute power to appoint and to remove.

As we note in the complaint, UKGI is not the means by which HMG maintained oversight of POL during the Relevant Period. For example, POL's private criminal prosecutions of SPMs reached their peak, and independent reports confirming errors in the Horizon system reached POL's Board, in around 2012-2013. UKGI was not even incorporated until 11 September 2015, not only a number of years later on, but after the initial mediation and settlement scheme agreed with Parliament had been terminated by POL.

**3. "Independent Inquiry" looking to the future (whilst ignoring the injustices of the past)**

*To establish a clear account of the implementation and failings of Horizon over its lifecycle **and ensure lessons have been learnt so that this cannot occur again**, BEIS has launched an Independent Inquiry on this issue. It is now for the Inquiry to gather the evidence and build on Mr Justice Fraser's findings. Once the Inquiry has concluded, Government will consider whether any further action needs to be taken.*

We include within the Annex to this letter the "terms of reference" for the "Independent Inquiry" – which, to be clear, is a non-statutory inquiry led by a retired judge with a mandate to learn lessons for the future. The terms of reference are equally clear that the following matters are outside the Inquiry's scope, which means that it has no jurisdiction to consider them:

*The Inquiry will consider only those matters set out in the preceding sections A-F. Post Office Ltd's prosecution function, matters of criminal law, the Horizon group damages settlement, the conduct of current or future litigation relating to Horizon and/or the engagement or findings of any other supervisory or complaints mechanisms, **including in the public sector, are outside the Inquiry's scope***

We have clarified for the Ombudsman that the complaint concerns the conduct of HMG in relation to POL during the Relevant Period, and that the terms of the Inquiry prevent it from considering injustices perpetrated against the Complainants. In short, the Inquiry bears no relevance to complaint, and consequently it would be wrong for the Ombudsman's consideration of the complaint to be delayed pending the outcome of the Inquiry. They are looking at completely different things – the Inquiry looks forward towards lessons that POL can learn for the future, whilst the complaint seeks redress for HMG actions and inactions in respect of POL over a prolonged period in the past.

We hope that this letter helps to provide the department with a little more clarity.

Yours sincerely



Jamie Crawford  
Partner  
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## ANNEX

### **Post Office Horizon IT inquiry 2020: terms of reference** **Updated 5 November 2020** **Scope of the Inquiry**

Government wants to be fully assured that through the Inquiry there is a public summary of the failings that occurred, which were associated with Post Office Ltd's Horizon IT system. The Inquiry will draw on the findings made by Mr Justice Fraser from the Bates V Post Office Group Litigation (in particular Judgment (No3) 'Common Issues' and Judgment (No 6) 'Horizon issues') and other evidence, listen to those that have been affected, understand what went wrong, assess whether lessons have been learned and that concrete changes have taken place, or are underway, at Post Office Ltd.

The Inquiry shall:

*A: Understand and acknowledge what went wrong in relation to Horizon, leading to the Group Litigation Order, by drawing on evidence from the Horizon judgments and affected postmasters' experiences and identify what key lessons must be learned for the future.*

*B: Build upon the findings of Mr Justice Fraser, by obtaining all available relevant evidence from Post Office Ltd, Fujitsu and BEIS to establish a clear account of the implementation and failings of Horizon over its lifecycle.*

*C: Assess whether Post Office Ltd has learned the lessons from the criticisms made by Mr Justice Fraser in the 'Common Issues' and 'Horizon Issues' trials and those identified by affected postmasters and has delivered or made good progress on the organisational and cultural changes necessary to ensure a similar case does not happen in the future.*

*D: Assess whether the commitments made by Post Office Ltd within the mediation settlement – including the historical shortfall scheme – have been properly delivered.*

*E: Assess whether the processes and information provided by Post Office Ltd to postmasters are sufficient:*

*i) to enable both parties to meet their contractual obligations*

*ii) to enable postmasters to run their businesses. This includes assessing whether Post Office Ltd's related processes such as recording and resolving postmaster queries, dispute handling, suspension and termination are fit for purpose. In addition, determine whether the quality of the service offer for postmasters and their relationship with Post Office Ltd has materially improved since the conclusions reached by Mr Justice Fraser.*

*F: Examine the governance and whistleblowing controls now in place at Post Office Ltd and whether they are sufficient to ensure that the failings that led to the Horizon case issues do not happen again.*

*The Inquiry will consider only those matters set out in the preceding sections A-F. Post Office Ltd's prosecution function, matters of criminal law, the Horizon group damages settlement, the conduct of current or future litigation relating to Horizon and/or the engagement or findings of any other supervisory or complaints mechanisms, including in the public sector, are outside the Inquiry's scope.*