

# **DEPARTMENT FOR BUSINESS AND TRADE**

## **REVIEW OF THE GOVERNANCE RELEVANT TO POST OFFICE LIMITED'S SENIOR EXECUTIVE REMUNERATION**

**August 2023**

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# 1. INTRODUCTION

- 1.1 We have been asked by the Minister for Postal Affairs (the “**Minister**”) to conduct an independent review (“**Review**”) into the governance practices of, and decisions made by, the Post Office Limited’s (“**POL**”) Remuneration Committee (“**RemCo**”) in relation to a remuneration metric known as the Inquiry Support Target which comprised part of POL’s executive Transformation Incentive Scheme (“**TIS**”).
- 1.2 The background to our Review is that, on 1 March 2023, POL published its Annual Report and Accounts for the financial year 2021/2022 containing POL’s Directors’ Remuneration Report.<sup>1</sup>
- 1.3 The Annual Report and Accounts set out a description of the TIS<sup>2</sup> which was implemented on a one-off basis for POL’s Executive Director, Group Executive and Senior Leadership Population. The Annual Report and Accounts describes the TIS as being a scheme based on a scorecard of four equally weighted metrics aligned to POL’s business transformation priorities. Those four metrics were: (i) Postmaster Satisfaction; (ii) Inquiry; (iii) New Branch IT; and (iv) Organisational Design.
- 1.4 The Annual Report and Accounts included<sup>3</sup> a summary table setting out the performance assessment for the Inquiry Metric and its sub-metrics. The relevant sub-metric for the purpose of our Review is known as the Inquiry Support Target. In relevant part, this summary table reads as follows:

Inquiry (weighting 25%)		
Delivery of all the required information and support for the Horizon Inquiry satisfying the requirements of Sir Wyn Williams, ensuring there is a clear measurable plan created to demonstrate action on improving the overall culture to be Postmaster centric and to ensure processes for Postmasters are addressed in line with recommendations from the inquiry. Any actions or plans must have been endorsed by the Inquiry and the Board.		
Metric	Target	Outcome
Inquiry support	All required evidence and information supplied on time, with confirmation from Sir Wyn Williams and team that Post Office’s performance supported and enabled the Inquiry to finish in line with expectations.	Achieved

- 1.5 On 5 May 2023, Sir Wyn Williams, Chair of the Post Office Horizon IT Inquiry (the “**Inquiry**”) <sup>4</sup> published a statement that, on 31 March 2023, the Solicitor to the Inquiry had

<sup>1</sup> Pages 31 to 52 of the Annual Report and Accounts.

<sup>2</sup> Pages 38 to 41 of the Annual Report and Accounts.

<sup>3</sup> Page 39 of the Annual Report and Accounts.

<sup>4</sup> The Inquiry website summarises the Inquiry as: “led by retired high court judge Sir Wyn Williams who has over 28 years’ judicial experience. Sir Wyn is tasked with ensuring there is a public summary of the failings which occurred with the Horizon IT system at the Post Office leading to the suspension, termination of subpostmasters’ contracts, prosecution and conviction of subpostmasters.”

written to POL on his behalf to seek clarification on the Inquiry Support Target which had been brought to his attention and which he considered to be “*misleading and inaccurate*” because its presentation suggested that a metric had been set and achieved with confirmation given from him and his team, which was not in fact the case. On the same day, POL issued a clarification to the Annual Report and Accounts and apologised unreservedly to Sir Wyn Williams and the Inquiry team for presenting the Inquiry Support Target in that way.

- 1.6 On 9 May 2023 Lisa Harrington, the RemCo Chair, in response to Sir Wyn’s statement, announced that she had commissioned an immediate internal review into the awarding of payments relating to the Inquiry Support Target. The review would be led by Amanda Burton who had joined POL as a Non-Executive Director on 27 April 2023 as part of a planned succession to take over the role of Chair of the RemCo.
- 1.7 On 10 May 2023, the Minister informed the House of Commons that the Department for Business and Trade was commissioning its own independent review into the governance of POL’s remuneration practices in relation to the TIS.
- 1.8 Amanda Burton’s report was published on 5 June 2023 and, on 20 June 2023, the Business and Trade Select Committee held a non-inquiry session in relation to the TIS and the Inquiry Support Target.
- 1.9 We were appointed by the Minister on 16 June 2023 to conduct this Review. This Report contains our Findings and Recommendations.

### **Summary of our Findings**

- 1.10 We have set out our findings in relation to POL’s governance around remuneration and the Inquiry Support Target and its assessment at Section 3. In high-level summary, our key findings are as set out below.
- 1.11 Before addressing our findings, it is important to note that the Inquiry moved onto a statutory footing on 1 June 2021 and was, from that point, anticipated to finish in the Autumn of 2022. Neither RemCo nor POL Human Resources appear to have recognised the significance of this change and particularly the consequence that the performance that the Inquiry Support Target incentivised would now be compelled by law.
- 1.12 Had that been recognised and appropriately addressed by RemCo then the issues that we have considered in this Review would not have arisen because the Inquiry Support Target would likely not have been approved by RemCo in July 2021 either at all or certainly not in its final form. A number of those that we have spoken with have acknowledged that in hindsight.

### **Findings in relation to POL’s governance around remuneration**

- 1.13 From the evidence we have seen, we conclude that there are aspects of POL’s governance around remuneration that would benefit from further consideration and enhancement because they do not align with best practice for a private corporation. However, those findings ought to be balanced against the fact that POL is a public

corporation and therefore has particular requirements that are different to those of a private corporation. Our recommendations are therefore focussed on maximising the effectiveness of POL's governance around remuneration.

1.14 The composition of RemCo was in accordance with good governance practices.

Findings in relation to the Inquiry Support Target

1.15 Because there is more than one way in which to interpret the Inquiry Support Target, we consider that there was a justifiable basis on which RemCo could decide that it had been achieved and there was therefore a justifiable basis on which to make the award that RemCo approved in relation to the Inquiry Metric (see paragraphs 3.62 to 3.69 below).

1.16 POL is not able to evidence the basis on which RemCo awarded bonuses under the TIS, including the Inquiry Support Target, because there are no written records of the rationale for its decision and the recollections of those involved are inconclusive. This means that it is practically impossible to ascertain the basis for RemCo's decision in respect of the Inquiry Support Target. The fact that RemCo's decision-making was not better recorded is a clear governance failing, including on the part of the RemCo members who should have identified that the minutes were deficient.

1.17 We have also concluded that POL intended the Inquiry Support Target to be validated internally and we have found that it did not intend for a confirmation specific to this target to be obtained from Sir Wyn Williams or his team.

1.18 The language of the Inquiry Support Target was not considered or discussed in the course of RemCo preparing the Directors' Remuneration Report which the RemCo approved for inclusion in the Annual Report and Accounts. The process of preparing the Directors' Remuneration Report did not give proper consideration to the external audience and the impact on Sir Wyn Williams and his team.

1.19 POL's governance in relation to the Inquiry Support Target was inadequate and we have made Recommendations in that regard.

**Summary of our Recommendations**

1.20 In Section 4, we have set out the following Recommendations:

(A) **Recommendation 1:** POL should undertake a review of its governance structures, processes and systems in relation to remuneration to ensure good corporate governance practice is being followed consistently and is in alignment with the role of the Shareholder and its duties.

(B) **Recommendation 2:** POL should review the organisational support provided to the RemCo.

(C) **Recommendation 3:** POL should take steps to ensure that the minuting of RemCo meetings is accurate and complete.

- (D) **Recommendation 4:** POL should review the process for the creation of incentive schemes.
- (E) **Recommendation 5:** POL should consider how best to reduce the amount of time between the agreement of a scheme framework and the design of its metrics and measures.
- (F) **Recommendation 6:** POL should ensure clarity as to scheme rules.
- (G) **Recommendation 7:** POL should ensure scheme rules are applied appropriately.
- (H) **Recommendation 8:** POL should ensure that the design and assessment of schemes is sufficiently clear and simple.
- (I) **Recommendation 9:** POL should consider applying separate schemes to Executive Directors and the broader Group Executive and Senior Leadership populations.
- (J) **Recommendation 10:** POL should ensure that schemes are appropriately reviewed on an ongoing basis.

## Structure of Report

1.21 This Report is structured as follows:

- (A) Section 2 addresses the scope of work undertaken during the course of our Review.
- (B) Section 3 sets out our Findings.
- (C) Section 4 sets out our Recommendations.
- (D) Section 5 sets out a Timeline of relevant events.
- (E) Section 6 sets out the factual background to POL's structure and governance in relation to remuneration and provides additional context and explanation to our Findings and Recommendations.
- (F) Section 7 sets out the factual background to our Findings in relation to the Inquiry Support Target and provides additional context and explanation to our Findings and Recommendations.

## 2. SCOPE OF WORK UNDERTAKEN

### Terms of Reference for our Review

2.1 The formal Terms of Reference for our Review are as follows:

*“The review will take into account the statutory context and include consideration of the following matters in the narrow context of the decision to determine that the Inquiry Support Target had been achieved and that bonuses should be paid to executives on that basis.”<sup>5</sup>*

(A) *RemCo governance*

(1) *Whether RemCo’s corporate governance arrangements were/are in accordance with good corporate governance practices. In particular, S&S will consider:*

- (a) *the scope of RemCo’s remit;*
- (b) *the composition of RemCo membership;*
- (c) *RemCo’s Terms of Reference and whether these are in accordance with corporate governance best practice; and*
- (d) *the mandate given to the POL/RemCo by UK Government Investments and the roles of RemCo, the POL Board and its management and their respective responsibility for decision-making.*

(B) *Performance metrics and decision-making*

(1) *What basis was there for determining that the Inquiry Support Target had been achieved and what were the necessary preconditions for that assessment to be reasonably made?*

(2) *Was the RemCo decision-making and governance in relation to the award of bonuses on the basis of the Inquiry Support Target sufficiently robust and consistent with corporate-governance best practice and statutory requirements? In particular, S&S will consider:*

- (a) *the quality of the information provided to RemCo and whether RemCo was provided with the right information and assurance;*
- (b) *how RemCo scrutinised the recommendations made by management and reached its decision that the Inquiry Support Target had been achieved;*

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<sup>5</sup> This review will not, therefore, consider the circumstances in which the Inquiry Metric was created other than where giving appropriate context requires it.

- (c) *whether those decisions were made collectively or on an individual basis;*
  - (d) *whether RemCo's decisions or directions were properly actioned by POL;*
  - (e) *RemCo's interaction with and reporting to the POL Board in relation to the Incident<sup>6</sup>;*
  - (f) *whether POL and RemCo operated within its UK Government Investments mandate and in accordance with RemCo's ToRs; and*
  - (g) *Whether there was a justifiable basis for RemCo determining that the Inquiry Metric had been achieved and that bonuses should be paid out in accordance with it.*
- (C) **Consideration of Amanda Burton's review:** *On the basis of S&S' conclusions in relation to the above matters, were Amanda Burton's conclusions justified?*
- (D) **Recommendations:** *Where issues are identified, the review should make recommendations for improvements to RemCo's governance arrangements."*

## **Nature of the Review**

- 2.2 Our Review is independent and non-statutory. We therefore have no powers to compel the production of documents or information from entities or individuals. As such, the co-operation that we have received from the individuals and entities with whom we have engaged has been entirely voluntary and has been both appreciated and helpful.
- 2.3 In this Report we do not seek to comment on any matters relating to the Inquiry itself and the substance of its important work. To the extent that we have referred to the Inquiry in the course of this Report, it has been limited to where there has been a relevant point to be made about the Inquiry Metric and/or the Inquiry Support Target.

## **Limitations of the Review**

- 2.4 Our Terms of Reference are limited to matters relating to POL's governance and decision-making in respect of the Inquiry Support Target which, in practice, has required us in some respects to consider the TIS more broadly. As such, we have not sought to reach conclusions in relation to matters beyond the governance and decision-making in relation to the TIS, though some of our observations, Findings and Recommendations may have broader applicability.
- 2.5 Our Review has also, therefore, not considered the circumstances in which the Inquiry Metric was created, other than where giving appropriate context requires it. We have not sought to form a view on whether the Inquiry Metric itself was appropriate.

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<sup>6</sup> "Incident" should be read as meaning the inclusion of the Inquiry Support Target in POL's 2021/2022 Annual Report and Accounts.



- 2.6 As set out below at paragraph 2.11, we have benefited from speaking with a number of individuals. However, there were also a number of other people that we identified as potentially having information relevant to our Review and with whom we would have liked to have spoken. In the time allowed and, in the circumstances, we were not able to speak to them.

### **Document review**

- 2.7 As our Review does not have a statutory basis and the power to compel the production of documentation, we have relied primarily on POL and also on UK Government Investments as the relevant entities involved in these events to provide documentation to us in accordance with our document requests.
- 2.8 We have reviewed contemporaneous communications, relevant RemCo materials in the period between September 2020 and September 2022 and secondary documents produced by POL, most notably a helpful chronology in relation to the Inquiry Support Target in respect of which we have also received the underlying contemporaneous materials.
- 2.9 The documentation that has been provided to us by POL has been redacted both to remove information that may be subject to Inquiry confidentiality and, for data protection reasons, to redact the names of any individual below General Executive level at POL. Whilst we understand POL's explanations for these redactions, it has made the process of reviewing information more challenging, particularly because it has meant that when considering the process that was followed in relation to the matters under review, we have not been able to see who has been corresponding with whom or, in some instances, to whom a document or reference relates.
- 2.10 The materials that we have received are not exhaustive but, within the timeline instructed by the Minister for our Review, we are satisfied that we have been provided with sufficient relevant, reasonable and proportionate material.

### **Witness Interviews**

- 2.11 In addition to documentary evidence, we have also undertaken interviews with Nick Read (POL CEO), Amanda Burton (the current POL Non-Executive Director and RemCo Chair), Lisa Harrington (former POL Non-Executive Director and RemCo Chair), Tom Cooper (Shareholder Non-Executive Director), Angela Williams (former POL Interim Group Chief People Officer) and Ben Tidswell (current POL Non-Executive Director and RemCo member).
- 2.12 Those interviews were not recorded, but the Review team took a note of them which interviewees had the opportunity to review and comment on so that we have an agreed note of what was discussed.
- 2.13 We are grateful to those who voluntarily gave their time to meet with us. We formed a view that each of those that we met with were doing their utmost to assist us and to provide us with their best recollection of events and we found them to be open and honest in their responses to our questions.

- 2.14 We are conscious that one of the issues with recollection in a matter such as this is that the details of the issues have now been traversed in some detail on previous occasions and so it could be difficult for an individual (even when doing their best to assist) to know what was independent recollection. This is where reference to documents can sometimes assist, although, as we will come onto, that was not the case here, given the quality of POL's record keeping.

#### **Legal Professional Privilege material in the Report**

- 2.15 We have been given access to certain material that is subject to POL's Legal Professional Privilege ("**LPP**") on the basis that the sharing of such material does not constitute a waiver of LPP. That material has assisted our understanding of the matters under consideration.
- 2.16 To respect POL's LPP, we have been required to take care in referencing underlying evidence which may be covered by LPP. To the extent that we refer to documents or to POL internal matters in our Report, it should not be construed as POL waiving LPP in respect of the document or in respect of the relevant matter generally. Before finalising the Report, we sought comment from POL as to whether it considered that any aspects of this Report may trespass on its LPP and no requests for redaction were made. In any event, we do not consider that any are required and we have not therefore made a recommendation to the Minister regarding redaction prior to this Report being published.

## 3. FINDINGS

### Introduction

- 3.1 In this section, we have set out our primary Findings in respect of (1) RemCo governance; and (2) performance metrics and decision-making in the narrow context of the decision to determine that the Inquiry Support Target had been achieved and that bonuses should be awarded on that basis.
- 3.2 In relation to each area of our Review, we have focused on the specific questions that we are asked in the Terms of Reference. In the interests of brevity, we have cross-referred to the factual background and timeline as set out in Sections 5 to 7, as appropriate, which contain further information on facts and circumstances that explain our Findings and Recommendations.
- 3.3 Our task in undertaking this Review was, at a high level, to gain an understanding of the processes and governance relevant to POL's decisions regarding the achievement of the Inquiry Support Target, to assess whether these processes are consistent with corporate governance best practice and statutory requirements, to assess the robustness of the approval processes and decision-making in relation to achievement of the Inquiry Support Target itself and to review the robustness of the conclusions reached in Amanda Burton's report.

### Findings in relation to whether POL's governance practices were in accordance with good governance practices

- 3.4 POL is wholly owned by the Secretary of State for Business and Trade (the "**Shareholder**"). The Shareholder performs its role as shareholder through UK Government Investments. UK Government Investments is the government's centre of excellence for corporate governance and has expertise in managing the interface between public corporations and government. The relationship between the Shareholder and POL is governed by the shareholder relationship framework document (the "**Framework Document**") and the articles of association of POL (the "**Articles**").<sup>7</sup> The Framework Document is a core constitutional document of POL and is used as a guide to govern the collaborative relationship between POL and the Shareholder, setting out arrangements for the Shareholder to monitor and understand POL's strategy, performance and delivery and, together with the Articles, set the boundaries within which POL, as a public corporation, must operate.<sup>8</sup> This governance arrangement is explained in further detail in paragraphs 6.2 to 6.11 and is summarised here to provide context to our Findings. Any assessment of POL's governance practices should be considered against its constitution as a public company.

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<sup>7</sup> The [POL Shareholder Relationship Framework Document](#) dated March 2020 was agreed between POL, UK Government Investments and the Department for Business Energy and Industrial Strategy (the previous shareholder of POL before the most recent Machinery of Government changes in 2023). It does not convey any legal powers or responsibilities and is not legally binding on the parties other than in respect of confidentiality obligations.

<sup>8</sup> POL is classified as a Public Non-Financial Corporation under the Office for National Statistics (ONS) national account system (non-financial meaning that it deals in goods and services rather than assets and liabilities, and public due to the level of control exercised by government). Further detail of the classification system can be found on the ONS website.

- 3.5 Our terms of reference ask us to consider whether the RemCo's corporate governance arrangements were/are in accordance with good corporate governance practices. In assessing this, we are to consider whether the RemCo's terms of reference ("ToR") are in accordance with corporate governance best practice. There are therefore references in our terms of reference to both good governance and best practice, but, practically, for the reasons explained in our Report, we do not consider there to be a distinction between the two when making an assessment of POL's specific governance practices and we treat these two standards similarly.
- 3.6 A key and very important principle of corporate governance is that the approach a company takes to designing its governance processes should be appropriately tailored to that company. POL is an entity that is very different from listed commercial companies - it is a private company limited by shares, classified as a public corporation with the Shareholder holding a Special Share in POL (the rights and privileges attaching to this Special Share are set out in the Articles). Neither the Shareholder nor UK Government Investments have any involvement in the day-to-day operations of POL or in the management of its network of post offices and staff. Whilst the POL Board retains operational control, it is accountable to the Shareholder for POL's performance and is required to seek consent for certain matters, as set out in the Articles. POL's strategy is to provide retail services as a commercial business but with a social purpose. In light of this relationship, structure and purpose, it is reasonable to expect adaptations to have been made to the approach taken by listed companies as it must also take into account the government-wide corporate guidance applicable to public corporations (as detailed in Appendix 2 of the Framework Document). Any assessment of POL's governance practices must be considered in this context.

*Was the mandate given to the POL/RemCo by UK Government Investments in respect of remuneration and the scope of RemCo's remit (as set by the ToR), in accordance with good governance practices?*

- 3.7 From the evidence we have seen, we conclude that there are aspects of POL's governance around remuneration that would benefit from further consideration and enhancement because they do not align with best practice for a private corporation. However, those findings ought to be balanced against the fact that POL is a public corporation and therefore has particular requirements that are different to those of a private corporation. Our recommendations in this respect are therefore focussed on maximising the effectiveness of POL's governance around remuneration.
- 3.8 In accordance with the Framework Document, POL voluntarily applied the UK Corporate Governance Code (the "Code", see paragraph 6.9). The Code applies to premium listed companies in the UK and therefore POL (as a private limited company) is not required to apply it. However, POL agreed with the Shareholder to do so. The Code sets out a number of principles and provisions in relation to governance generally and some which specifically relate to remuneration. It is generally considered to be a reference point for good governance.
- 3.9 The Code provides flexibility for companies who are required to apply it to depart from its provisions and implement bespoke arrangements that are most suited to their particular circumstances. From the evidence we have seen, it appears that the way that the Code

was adapted in respect of remuneration governance at POL has resulted in the role of the RemCo and the extent of its autonomy being unclear to the RemCo members who found it challenging to deliver their duties, particularly when considered against the backdrop of the requirement to obtain Shareholder consent.

- 3.10 POL's board of directors (the "**POL Board**") has, in accordance with the Code and good governance practices, delegated remuneration matters to the RemCo. The scope of RemCo's remit in respect of remuneration is set out in the RemCo ToR.<sup>9</sup> The authority of the RemCo (and the POL Board) in respect of remuneration is, however, subject to the requirement that advance Shareholder consent is required in respect of the approval of, agreement to, or any material variation or amendment to, the remuneration paid or granted to any director of POL.
- 3.11 Whilst delegation of remuneration matters to the RemCo is in accordance with good governance practices, the RemCo's role, due to the Shareholder rights, is more limited than the role of a remuneration committee would usually be in a private company and more limited than the Code anticipates (however, as we noted above, the Code is not intended to apply to public corporations). RemCo members who we interviewed raised concerns about the limitations on the extent to which the RemCo could shape remuneration policy at POL due to: (i) the provisions of the RemCo ToR envisaging a more reactive, than proactive, role for the RemCo; and (ii) the overriding requirement for advance Shareholder consent before any decision can be made in respect of director remuneration. The RemCo members were also of the view that the current governance structure involving a layer of consent and approval above POL, and with consequential time delays, limits RemCo's ability to operate to good standards of corporate governance.
- 3.12 Remuneration committees in a private company would usually have the ability to design and recommend remuneration policies. Under the Code, a remuneration policy is subject to shareholder approval every three years but, once approval is obtained, a remuneration committee can then operate within the remit of this policy without the need for shareholder approval in respect of all decisions.
- 3.13 Public corporations such as POL are crucial vehicles for the delivery of public services and require special skill sets and capability at senior level. The governance for remuneration of those senior employees will necessarily operate differently from that of a private company to provide important assurance to government, and ultimately Parliament, as to how public funds are used.
- 3.14 Whilst flexibility can be applied depending on the degree of autonomy an organisation may need to achieve its purpose, generally Government policy and best practice for managing arm's length bodies retains the need for Departmental approval of senior level remuneration. Whilst we understand the points expressed by RemCo members on the challenges this has presented, there is an overriding need for governance processes required by the Shareholder as essential mechanisms to enable public funds to be managed and monitored and to ensure the delivery of value for money. We conclude that, in light of the issues that this incident has raised, the Shareholder, UK Government Investments and POL may wish to consider if they should review the terms of the remuneration controls to assess whether they remain appropriate to enable POL to

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<sup>9</sup> The RemCo terms of reference relevant to our Review were approved on 8 April 2020.

achieve its purpose, to provide clarity to the RemCo as to how the processes will work so that the RemCo can enhance its own understanding and find ways to work within those constraints, and to consider if there is any ability to speed up the consent process whilst maintaining an appropriate level of Shareholder oversight and control.<sup>10</sup> We note that UK Government Investments is very cognisant of achieving balance in their role facilitating the agreement of Framework Documents and they understand the importance of appropriate delegations and controls as a critical success factor for public corporations.<sup>11</sup>

### Was RemCo's composition in accordance with good governance practices?

- 3.15 We have concluded that RemCo's composition was in accordance with good governance practices.
- 3.16 The Code provides that remuneration committees at companies which are a similar size to POL should consist of at least two independent non-executive directors. This provision of the Code is reflected in the RemCo ToR.
- 3.17 In practice, the RemCo at POL was at all times made up of at least two independent non-executive directors plus the director appointed by the Shareholder (the "**Shareholder Non-Executive Director**"). The appointment of the Shareholder Non-Executive Director to the RemCo was a requirement of the Framework Document. Whilst the Shareholder Non-Executive Director is not regarded as an independent director, it is in our view appropriate for the Shareholder Non-Executive Director to be appointed to the RemCo as it assists the Shareholder in maintaining an appropriate degree of oversight. This means that POL has used the flexibility available in the Code to put in place a remuneration committee with a membership that is most suited to POL's particular circumstances. RemCo's composition was therefore in accordance with good governance.
- 3.18 We note that the RemCo terms of reference do not refer to the appointment of the Shareholder Non-Executive Director to the RemCo. Instead they simply provide that the RemCo should consist of at least two independent non-executive directors. This means that on this specific point, the RemCo ToR are not in accordance with good governance as they do not reflect the bespoke arrangements for the POL RemCo set out at paragraph 3.9 above. In our view this does not change our overall conclusion but, as a matter of good governance, the composition of the RemCo as described in the RemCo terms of reference should be updated to reflect the Framework (and the situation in reality).

### **Findings in relation to the Inquiry Support Target**

- 3.19 It is important that the Inquiry moved onto a statutory footing on 1 June 2021 and was, from that point, anticipated to finish in the Autumn of 2022. For reasons that are unclear, neither RemCo nor POL Human Resources appear to have recognised the significance of this change or the consequences for the Inquiry Metric, particularly the consequence that the performance that the Inquiry Support Target incentivised would now be compelled by law.

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<sup>10</sup> The Framework Document requires POL to have regard to [guidance](#) issued by the Government on Managing Public Money.

<sup>11</sup> Critical success factors are listed in Annex C of UK Government Investments' [report](#) published in January 2020: "UK government's arm's length bodies: the case for them in specialised delivery and how to optimise their use."



- 3.20 Had that been recognised and appropriately addressed by RemCo then the issues that we have considered in this Review would not have arisen because the Inquiry Support Target would likely not have been approved by RemCo in July 2021 either at all or certainly not in its final form. Those that we interviewed recognised with the benefit of hindsight that this was how RemCo ought to have proceeded.
- 3.21 However, RemCo did not recognise the importance of the Inquiry's statutory basis and in July 2021 the Inquiry Support Target was approved in the form that appeared in the Directors' Remuneration Report. Our analysis therefore considers how RemCo was entitled to proceed, that being the case and noting the contractual rights and obligations that attached to the Inquiry Metric as agreed with the recipients.

*What basis was there for determining that the Inquiry Support Target had been achieved and what were the necessary preconditions for that assessment to be reasonably made?*

- 3.22 Our assessment is that there are two possible interpretations of the Inquiry Support Target as described below. Our Review has not been able to determine on which basis RemCo assessed the Inquiry Support Target as having been achieved because the documentary record of that assessment is limited and RemCo members' recollections differ on this point. We have not therefore been able to identify which interpretation was applied.
- 3.23 We have carefully considered the language of the Inquiry Metric and the Inquiry Support target, what those who drafted it intended it to mean, what POL Human Resources considered it to mean in making its recommendation to the RemCo and what the RemCo read it to mean when making its assessments.
- 3.24 Our conclusion is that fairly limited thought was given to how the Inquiry Support Target was drafted until almost the point at which RemCo was required to assess it. On the basis of the documents that we have reviewed, it appears to have been drafted in a short amount of time on the morning of 27 November 2020 by members of the POL team engaging with the Inquiry<sup>12</sup> and was not subsequently revisited, including at the point at which the TIS measures and metrics were considered and approved by the RemCo in July 2021.
- 3.25 We understand that this was the first non-quantitative incentive scheme that POL had implemented and it is naturally more challenging to construct meaningful performance metrics within a non-financial scheme. However, there is no written evidence to suggest that there was sufficient consideration given to whether this was an appropriate and workable incentive target.
- 3.26 The Inquiry Metric as approved by the RemCo on 8 December 2020 was described in the following terms:

*“Delivery of all the required information and support for the Horizon inquiry satisfying the requirements of Sir Wyn Williams, ensuring there is a clear measurable plan created to demonstrate action on improving the overall culture to be Postmaster centric and to ensure processes for Postmasters are addressed in*

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<sup>12</sup> It is not possible for us to say who because the names of the individuals and their roles are redacted in the documents that we have received.

*line with recommendations from the inquiry. Any actions or plans must have been endorsed by the inquiry and the Board.”*

3.27 It is the first clause of the Inquiry Metric that is relevant to our Review: *“Delivery of all the required information and support for the Horizon inquiry satisfying the requirements of Sir Wyn Williams”*.

3.28 The Inquiry Support Target required that POL would produce to the Inquiry:

*“All required evidence and information supplied on time, with confirmation from Sir Wyn Williams and team that Post Office’s performance supported and enabled the Inquiry to finish in line with expectations.”*

3.29 Once the TIS metrics and measures were approved by the RemCo in July 2021, the preconditions to determine the Inquiry Support Target as having been achieved were that the two elements or ‘limbs’ comprising it had each been met. Those two limbs were:

(A) *“All required evidence and information supplied [to the Inquiry] on time”* (“**First Limb**”).

(B) *“with confirmation from Sir Wyn and team that POL’s performance supported and enabled the Inquiry to finish in line with expectations”* (“**Second Limb**”).

3.30 The preconditions for the First Limb to be met were that POL had provided to the Inquiry all the evidence and information that the Inquiry had required of it and that it had done so in the required timeframes. To enable it to reach that determination acting reasonably the RemCo would require evidence that POL had responded to the Inquiry in full and on time (and for there to be an absence of evidence suggesting that the Inquiry had concerns about what had been provided to it).

3.31 We consider that there is scope to reasonably interpret the Second Limb in two ways:

(A) That the purpose of the first clause of the Inquiry Metric and the Inquiry Support Target was to ensure that POL assisted and supported the Inquiry in full such that the assessment to be made in February 2022 was whether, during the TIS performance period<sup>13</sup>, POL had supported and enabled the Inquiry to reach its conclusions (*i.e.* to finish), irrespective of whether or not the Inquiry had in fact finished at that point in time (the “**First Reading**”).

(B) That POL had done what it could to enable the Inquiry to finish in line with expectations, that the Inquiry had been so enabled and had in fact finished (the “**Second Reading**”).

3.32 In relation to the TIS performance metrics, the TIS Rules gave the RemCo discretion to determine whether the performance of the participants had achieved what was required by the TIS performance metrics and targets.

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<sup>13</sup> Here it is relevant that the TIS Rules provide that the “*gateway conditions, measures and metrics specified in your Scheme letter will all be measured over the full cycle of the Scheme, i.e. up to 31 January 2022*”.



- 3.33 Had RemCo proceeded on the basis of the First Reading then it would have been possible for it to apply this discretion in assessing the performance of POL in meeting the Inquiry Support Target as read to conclude that it had been achieved during the time of the performance period. Had RemCo in fact taken the Second Reading then the correct decision would have been for it to conclude that the Inquiry Support Target had not been achieved, because the Inquiry has not finished.
- 3.34 As to the other element of the Second Limb, regarding confirmation from Sir Wyn Williams and his team, we have concluded from evidence we have seen that the Inquiry Support Target was initially drafted and then subsequently approved by RemCo on the basis that it would be validated based on internal evidence and not using an external source such as validation by an external body. Further, POL Human Resources in part based its recommendation on letters that POL had already received from the Inquiry rather than seeking to obtain a particular confirmation.
- 3.35 We are therefore satisfied that neither the First Limb nor the Second Limb required external validation or a letter from Sir Wyn Williams or the Inquiry Secretariat. We have made a Recommendation regarding the necessity for RemCo to ensure that proper consideration is applied at the time of drafting incentive schemes in the future to ensure the intent and implementation is clear and accurate, does not raise any ambiguities or uncertainties and can be applied consistently and confidently.

*Was the RemCo decision-making and governance in relation to the award of bonuses on the basis of the Inquiry Support Target sufficiently robust and consistent with corporate governance best practice and statutory requirements?*

- 3.36 We conclude that RemCo's decision-making and governance in relation to the award of bonuses on the basis of the Inquiry Support Target was not sufficiently robust or consistent with corporate governance best practice and statutory requirements. We have elaborated on why we have formed this conclusion in relation to the questions asked of us below.
- 3.37 Of particular note, is the fact that POL is not able to evidence the basis on which RemCo awarded bonuses under the TIS which appears to be a significant corporate governance failing and means that it is practically impossible to ascertain RemCo's basis for its decisions in respect of the Inquiry Support Target. The fact that RemCo's decision making was not better recorded is a clear failing by POL, including on the part of the RemCo members who should have identified that the minutes were deficient.

*Was RemCo provided with the right information and assurance?*

- 3.38 Our assessment of the available evidence is that POL Human Resources proceeded on the basis that it would gather evidence to assess whether the Inquiry Support Target had been achieved in line with the First Reading, albeit that this approach was not documented.
- 3.39 In respect of the First Limb, the evidence supplied to the RemCo in support of the recommendation that the Inquiry Support Target had been achieved was set out in the relevant POL Human Resources paper for the 22 February 2022 RemCo meeting:

***“How reviewed and assessed***

***Inquiry Support:*** *We have reviewed a redacted copy of the Rule 9 Notice updates to the Steering committee that indicate that we have responded in a timely fashion to all requests for information. Sir Wynn’s announcement of 16 November 2021 on the Inquiry website regarding POL’s waiver of legal privilege publicly acknowledges the efforts POL is making to support the inquiry. We have also reviewed letters sent by the Inquiry and signed by Sir Wynn which indicate that he has been pleased with the level of support provided by POL.”*

3.40 This recommendation relies on three elements: (i) a redacted copy of Rule 9 Notice updates to the POL inquiry Steering Committee (“**Rule 9 updates**”); (ii) Sir Wyn Williams’ announcement of 16 November 2021 on the Inquiry website regarding waiver of LPP; (iii) letters sent by the Inquiry and signed by Sir Wyn Williams which are said to indicate that he has been pleased with the level of support provided by POL. We have considered each of those in turn below:

- (A) In respect of the Rule 9 updates, it appears that this document was not received by POL Human Resources and may not have in fact been reviewed by it. If that is correct then this basis for POL Human Resources advising that the Inquiry Support Target had been achieved was not correct as described in the papers presented to the RemCo.
- (B) In respect of Sir Wyn Williams’ 16 November 2021 posting on the Inquiry website, which related to a specific request in relation to the waiver of legal professional privilege, Sir Wyn does express in that document that he was “*very pleased to report that all four institutions responded to my request within the timescale I specified*”, however there is no suggestion that Sir Wyn’s approval in relation to POL goes beyond that broad statement. We do not consider that this document can properly be used to support the achievement of the Inquiry Support Target.

We have reviewed the letters said to have been in support of the proposition that Sir Wyn Williams was “*pleased with the level of support provided by POL*”. Whilst they have been described to us by members of the RemCo as “*anodyne*” and not a sufficiently positive statement of POL being co-operative with the Inquiry to have been relied upon as evidence for the purposes of assessing whether the Inquiry Support Target had been achieved, they do give limited support to the notion that POL’s engagement with the Inquiry was positive and that it was meeting the Inquiry’s information requests in the spirit of the Inquiry Metric. They are, however, helpful in a contextual way and are not determinative when taken on their own. (We do consider that if POL intended to use these letters for the purposes of validating an internal incentive arrangement, then the proper course of action would have been to at least inform the Inquiry that it intended to do so or, more appropriately, to request the Inquiry’s consent to do so.)

3.41 Taking that evidence together, whilst the three letters from the Inquiry to POL do provide some support for the notion that POL was assisting the Inquiry, the fact that it seems likely that POL Human Resources had not reviewed the Rule 9 updates meant that the core of the rationale was set out on an incorrect basis. As such, the rationale given by POL Human

Resources for its recommendation was not sufficiently evidenced. We have therefore concluded that, on its own, this information and assurance was inadequate to enable the RemCo to reach the conclusion that the Inquiry Support Target had been achieved.

3.42 However, and notwithstanding that the evidence presented by POL Human Resources was inadequate, we have concluded that RemCo nonetheless reached a reasonable assessment and defensible decision that the Inquiry Support Target had been achieved by relying on other sources of information known to its members in their other roles at POL. In particular:

- (A) Ben Tidswell sat on the Historical Remediation Committee (“HRC”).<sup>14</sup> and each of Ben Tidswell, Tim Parker, Lisa Harrington and Tom Cooper had received updates in relation to the Inquiry in the course of their Board engagements.
- (B) The POL Board had received a paper prepared by POL’s legal advisers in relation to the Inquiry’s information and evidence gathering and which was appended to the papers for the 25 January 2022 Board Meeting (the “Appendix”).<sup>15</sup> The Appendix was presented to, and discussed at, a meeting of the Group Executive and then the POL Board on 25 January 2022. It summarised the Inquiry’s prior and upcoming information requirements and the steps that POL had taken to engage with them. Each of the RemCo members sat on the POL Board and so would have received this paper and listened to and/or engaged in the relevant discussion.
- (C) Ben Tidswell is recorded in the minutes of the 25 January 2022 RemCo meeting as having raised the Appendix as a relevant document to be considered by the committee in assessing the Inquiry Support Target and the RemCo members we spoke with identified this as an item that had been considered in relation to this decision.
- (D) Our assessment is that the Appendix contains sufficient information for the RemCo to reach a view that POL had indeed been providing information to the Inquiry in accordance with its Rule 9 requests and on time and that the Inquiry had not expressed concerns about POL’s engagement as of 25 January 2025.
- (E) The RemCo had consistently received updates from POL Human Resources that set out that the Inquiry Support Target was “on track” or that progress was “good”. We have not identified any evidence that ought to have caused RemCo or POL Human Resources to consider that assessment was not accurate at the time that this decision was made.

3.43 As to the Second Limb, if RemCo proceeded on the basis of the First Reading, then it would be justified in concluding that the Inquiry Support Target had been achieved on the

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<sup>14</sup> The HRC is comprised of four Non-Executive Directors and is chaired by Ben Tidswell. The HRC oversees the administration of the Historical Shortfall Scheme (HSS); considers the principles that underpin how HSS claims are assessed for the consideration of the HSS Independent Advisory Panel (IAP); considers claim outcomes recommended by the IAP (including those recommending offers of financial compensation); recommend to the Board decisions on precedent setting matters; and consider any other matters escalated to the HRC for decision. The HRC has no formal oversight role in relation to the Inquiry.

<sup>15</sup> We have received and reviewed the Appendix and not the full set of Board Papers for this meeting.

basis of the evidence that we have found that it relied on showing support given to the Inquiry during the TIS performance period.

- 3.44 However, if it proceeded on the basis of the Second Reading then the Inquiry Support Target could not be achieved because the Inquiry had not finished and the decision to determine the Inquiry Support Target as having been achieved would not be reasonable or justifiable and the recommendation presented to RemCo would be incorrect.

*How did RemCo scrutinise the recommendations made by management and reach its decision that the Inquiry Support Target had been achieved?*

- 3.45 As we have set out above, we have found that the most likely position is that the RemCo placed limited reliance on the information provided to it by POL Human Resources but rather considered information that was known to its members in other capacities at POL.

*Were those decisions made collectively or on an individual basis?*

- 3.46 The resolution in the minutes for the 22 February 2022 RemCo meeting suggest that the decision to approve POL Human Resources' recommendations in relation to the TIS was made on a collective basis. However, it is not clear to us from the evidence we have seen that the RemCo members collectively understood the basis on which the Inquiry Support Target was determined to be achieved in the same way because they expressed divergent views about the basis on which RemCo proceeded when we discussed these matters with them.
- 3.47 Further, the decision to approve the TIS framework was made by e-mail on 8 December 2020 as was the decision to approve the Implementation Approach for the TIS in July 2021. There is an argument that those decisions were not made collectively in accordance with corporate governance best practice.

*Were RemCo's decisions or directions properly actioned by POL?*

- 3.48 We have not identified instances in which RemCo's decisions or directions were not properly actioned or were ignored by POL or its management.
- 3.49 However, one of our key findings is that the quality and consistency of the support given to the RemCo is not to the standard that is required or necessary and it is clear that there is a lack of rigour in recording discussions, decisions and actions and in ensuring that papers are accurate and that appropriate continuity is achieved in the advice given to RemCo by POL Human Resources.
- 3.50 This is an issue in respect of which we have made Recommendations and we understand that it is in part caused by a significant turnover of staff (or "churn") in the POL Human Resources function.
- 3.51 Consequently, in relation to an incentive scheme such as the TIS with a two-year performance period, there is insufficient consistency in the treatment of matters and a frequent loss of institutional knowledge that would otherwise positively support and benefit the RemCo in its decision-making duties. This is compounded by the instances of poor

record-keeping that we have identified which mean that decisions made at the outset of a scheme are not always recorded for future reference and tracked through which can make later decision-making more difficult.

What was RemCo's interaction with and reporting to the POL Board in relation to the Incident?

- 3.52 In summary, and as described in further detail below, the Directors' Remuneration Report was prepared by POL Human Resources and reviewed by the RemCo Chair with drafts commented on by the RemCo. As the process has been described to us, the point at which the POL Board received the Directors' Remuneration Report was when it was included in the Annual Report and Accounts having been approved by the RemCo.
- 3.53 Had the RemCo proceeded on the basis of the First Reading of the Second Limb then the Directors' Remuneration Report as included in the Annual Report and Accounts was accurate. It would, however, have been good practice for RemCo to include a clarification explaining how it had read the Inquiry Support Target given that there are two ways of reading it and given that POL proceeded on the basis that this target would be validated using internal evidence and not a formal confirmation from Sir Wyn Williams and his team.
- 3.54 For the reasons that we have explained in this Report, if the RemCo proceeded on the basis of the Second Reading of the Second Limb, then the assessment of the Inquiry Support Target as having been achieved was incorrect.
- 3.55 The documentary record in relation to the preparation of the Directors' Remuneration Report is relatively limited and we have not identified any direct engagement with the POL Board in relation to its preparation. The documents indicate that the position is as follows:
- (A) Due to a delay in signing the 2020/21 Annual Report and Accounts and a change in the RemCo Chair, the formal process for completing the Annual Report and Accounts did not commence until the middle of May 2022 and the Directors' Remuneration Report was not formally shared with the RemCo until the meeting on 5 July 2022, though we understand that drafts had been shared from late 2021 and into the early part of 2022.
  - (B) The Directors' Remuneration Report was considered at the 5 July 2022 meeting as follows:
    - (1) The paper for the 5 July 2022 meeting directed the RemCo to review particular sections of the Directors' Remuneration Report. In relation to the 2021/22 remuneration outcomes, including the targets outcomes and awards, the RemCo was advised that this section was not a priority area for feedback because these had been presented to the RemCo previously and because the POL Communications team had reviewed that section. The RemCo was, however "asked to feedback on the presentation of the rationale for the Committee decisions on awards".
    - (2) An early draft of the Directors' Remuneration Report was provided to the RemCo in the papers.

- (3) The minutes of the 5 July 2022 meeting record that the RemCo was not in a position to approve the Directors' Remuneration Report in the form in which it was presented to the committee and that, in particular, there was concern about a lack of consistency between the Directors' Remuneration Report and the Chair and CEO statements in the remainder of the Annual Report and Accounts. There is no mention of the substantive content of the Directors' Remuneration Report in the minutes of this meeting.
- (C) At the time of the 26 July 2022 RemCo meeting, Lisa Harrington is recorded as having been "*in the process of completing*" the Directors' Remuneration Report. The Directors' Remuneration Report was not presented to this meeting.
- (D) The Directors' Remuneration Report was next presented to the RemCo and approved as part of the final Annual Report and Accounts at the 16 August 2022 RemCo meeting. The relevant part of the minutes for the 16 August 2022 meeting records the discussion in relation to the Directors' Remuneration Report as follows:
- "The Chair invited comment on the Directors' Remuneration Report, which had been circulated in advance of the meeting and subject to approval, would be included within the 2021/22 Annual Report and Accounts. The Chair and BT confirmed that their comments had been addressed in advance of the meeting and included within the report presented for approval. TC and TF were content to support the report as drafted."*
- (E) Once approved by RemCo, the Directors' Remuneration Report was included in the Annual Report and Accounts, the preparation of which was overseen by POL's Audit, Risk and Compliance Committee and was ultimately approved by POL's Board.
- 3.56 From our review, it therefore appears that the RemCo members had reviewed the document and raised comments with the Chair and that these comments had been addressed. Those comments do not appear from the documents to have related to the way in which the Inquiry Support Target, or the decision that had been made in relation to it, was described. That position was reflected in our discussions with interviewees in the course of our Review.
- 3.57 It therefore appears that attention was not given to the description of the TIS metrics which had already been approved at the 22 February 2022 meeting and which were, it seems, directly copied into the Directors' Remuneration Report from the papers provided to the RemCo in advance of the 22 February 2022 meeting. The RemCo's focus was instead on other aspects of the Directors' Remuneration Report such as ensuring that the message that it presented was consistent with the remainder of the Annual Report and Accounts.
- 3.58 It is surprising that no-one at POL considered Sir Wyn Williams and his team or the way that the language of the Inquiry Support Target would likely be construed by those not involved in POL's own processes. That being said, we have not identified any evidence to suggest that this was the consequence of any deliberate act but rather was more likely the product of the governance and process failings that we have identified in the course of



preparing this Report and in respect of which we have identified a number of Recommendations in Section 4.

*Did POL and RemCo operate within its UK Government Investments mandate and in accordance with RemCo's ToRs?*

- 3.59 The mandate afforded to POL and RemCo in respect of the decision to determine the Inquiry Support Target as having been achieved was determined by POL's Articles and the Framework Document as well as the approval given in relation to the TIS on 12 November 2021 in respect of the addition of POL's CEO and CFO to the TIS.
- 3.60 For the purposes of this Review, which is limited to the decision-making and governance in relation to the award of bonuses on the basis of the Inquiry Support Target, we consider that if RemCo operated on the basis of the First Reading then it operated within its mandate.
- 3.61 However, if it operated on the basis of the Second Reading then it would have wrongly determined that the Inquiry Support Target had been achieved in circumstances whereby the Second Limb had not been met and could not be met. It would follow that the decision to make an award of 100% in relation to the Inquiry Metric would be outside of RemCo's mandate.

*Was RemCo's decision that the Inquiry Metric had been achieved and that bonuses should be awarded in accordance with it justifiable?*

- 3.62 It is important to note that because of the poor standard of RemCo minutes it is not clear precisely what decision the RemCo took at the relevant RemCo meetings held on 25 January 2022 and 22 February 2022. Further, the recollections of those involved are sufficiently different that we cannot be certain that those attending those meetings were clear about how the RemCo in fact read the Second Limb of the Inquiry Support Target, though there is evidence to support a conclusion that RemCo took the First Reading.
- 3.63 This lack of transparency around RemCo's decision-making creates risk for POL (for example where RemCo decisions are challenged by scheme participants). This should be addressed and we have made a corresponding Recommendation in Section 4.
- 3.64 In terms of our review, this governance weakness has meant that it has been extremely challenging to reach a firm conclusion about the basis for RemCo's decisions and therefore to determine whether those decisions were justifiable. Had RemCo followed proper processes and had in place adequate governance arrangements then it would not have been so difficult for us to determine how RemCo approached these matters because there would have been sufficient evidence of RemCo's decision-making.
- 3.65 As a result, we have had to apply our judgement to the available evidence, which includes documentation available to us and the explanations of those that we interviewed.
- 3.66 In respect of the First Limb, we have concluded that RemCo reached a justifiable determination that, at the point at which it made its decision, POL had provided to the

Inquiry all the evidence and information that the Inquiry had required of it and that it had done so in the required timeframes.

3.67 As to the Second Limb:

- (A) On the basis of the documentation alone, it is not possible to determine conclusively whether the RemCo took the First Reading or the Second Reading of the Second Limb when deciding whether that sub-metric should be assessed as having been achieved.
- (B) It appears from the documents that, ahead of the 22 February 2022 RemCo meeting, POL Human Resources collated evidence in support of the Inquiry Support Target on the basis of the First Reading.
- (C) However, POL Human Resources was not the relevant decision maker and the recollections of those that we interviewed are imprecise and, in some instances, divergent. Some people that we spoke with explained their recollections of RemCo's decisions in terms very similar to the First Reading whereas others were clearly of the view that RemCo had proceeded on the basis of the Second Reading. Because the documentary evidence is so lacking, it is not possible to reliably determine which recollection is correct.

3.68 If RemCo did proceed on the basis of the First Reading, then we consider that its decision was justifiable and that the awards made in relation to the Inquiry Metric were appropriate. As we have set out above, there is evidence to support that version of events.

3.69 However, if the RemCo had proceeded on the basis of the Second Reading, as at least one RemCo member considered was the case, then the Inquiry Support Target could not be achieved and the RemCo's decision was not justified. It would follow that the awards made under the Inquiry Metric would have had to have been made on the basis of a lesser percentage than the maximum 25% award. It is of note that this is the approach that RemCo took in respect of the Postmaster Satisfaction Metric and the Organisational Design Metric in relation to which the overall awards were respectively 50% and 75% of the maximum payable.

*On the basis of our conclusions in relation to the above matters, were the conclusions set out in Amanda Burton's review justified?*

3.70 Before considering the conclusions reached by Amanda Burton's review it is important to first put what she was asked to do into context. We understand that when Amanda Burton was asked to undertake her review, she had only recently joined POL and, accordingly, had no knowledge of the TIS. She was asked to undertake her review within a short period of time and it would have been a difficult undertaking with an unclear and incomplete documentary record, as we have explained in our Report.

3.71 Amanda Burton's primary conclusion relevant to our Review is set out at finding five of her report and is that the Inquiry Support Target was assessed on the basis of the Second Reading ("*a black and white reading of the first sub-metric*"). However, notwithstanding that, she considers that "*it does seem that*" RemCo "*exercised discretion bearing in mind*



*events had changed and that they were pleased with progress, which is why they rated the overall metric as achieved”.*

- 3.72 Whilst we agree with Amanda Burton that “*Remco did have discretion to look at whether the metrics/sub metrics had been met*”, RemCo’s discretion under the TIS did not extend to determining that a target that had not factually been met could be assessed as having been achieved (e.g. because the Inquiry had not yet completed). Rather, the discretion available to the RemCo was to determine whether the performance of the participants had been sufficient to achieve the performance metric as RemCo understood it. If RemCo read the Inquiry Support Target in the way that Amanda Burton suggests, then RemCo should have determined that the Inquiry Support Target had not been achieved and then applied its discretion in respect of the amount of the award payable under the Inquiry Metric.
- 3.73 We do, however, consider that there was a justifiable basis on which the RemCo could have determined that the Inquiry Support Target had been achieved which was to take the First Reading and to then apply RemCo’s discretion that POL’s performance against the Inquiry Support Target was sufficient for it to be assessed as achieved. We therefore agree with Amanda Burton’s ultimate conclusion but not the basis on which she reached it. As we have set out in this Section, we do not consider that it is possible at this point in time and with the evidence that is now available to reach a definitive conclusion about whether POL did in fact make its decision on that basis.

## 4. RECOMMENDATIONS

- 4.1 The scope of our Review is limited to the events related to RemCo's decision determining that the Inquiry Support Target had been achieved such that a full award should be made against the Inquiry Metric.
- 4.2 Our intention is to provide firm recommendations that will enable POL and/or UK Government Investments to consider whether to make appropriate changes to its processes or, where the limitations of our Review do not allow us to make a broad recommendation, to undertake their own further review to address our observations.
- 4.3 Our recommendations are focussed on POL given that our Review has focussed on its governance but given POL's ownership and governance structures, it is expected that engagement with both the Shareholder and UK Government Investments will be necessary in considering them fully.

### **Recommendation 1 - Review of governance structures, processes and systems in place at POL in relation to remuneration to ensure best practice is being followed consistently and is in alignment with the role of the Shareholder**

- 4.4 We have set out at paragraphs 6.25 to 6.32 an overview of some of the considerations that arise from POL's public ownership structure. In light of those observations, and the observations made at paragraphs 6.41 and 6.42, we recommend that POL should conduct a review of its governance structures, processes and systems in relation to remuneration to assess whether they remain appropriate to enable POL to achieve its purpose, to provide clarity to the RemCo as to how the processes will work so that the RemCo can enhance its own understanding and find ways to work within those constraints, and to consider if it is possible to speed up the consent process whilst maintaining an appropriate level of Shareholder oversight and control.
- 4.5 Any enhancement to the role of the RemCo should be subject to making the procedural improvement set out at paragraphs (C) to (E) below and Recommendations 2 and Recommendations 3:
  - (A) Consider the RemCo's role in light of the Shareholder consent requirement (as set out in Articles 8.1(E) and (S) of POL's Articles) and the process for seeking consent set out in Article 8.3. This is not to say that the RemCo is not necessary, but instead considering how it should perform its role to ensure that it operates in alignment with the Shareholder role in giving consent.
  - (B) Review of the RemCo terms of reference to ensure that:
    - (1) the role of the RemCo as described in the TOR gives it the power to shape remuneration policy (some changes made to the terms of reference in March 2023 seek to achieve this);

- (2) it is clear from the terms of reference of the RemCo when Shareholder consent is required and the process to obtain it (some changes made to the terms of reference in March 2023 seek to achieve this); and
  - (3) the membership of the RemCo includes reference to the Shareholder Non-Executive Director and their role (in line with our comment in paragraph 3.18 above).
- (C) Review the current procedure in place for setting the agenda for RemCo meetings and compiling and checking papers that are submitted to RemCo.
  - (D) Review of the scheduling of RemCo meetings including regularity, amount of notice required.
  - (E) Consider how the POL Board and POL executives interact with RemCo to ensure that the right information is exchanged between them.

### **Recommendation 2 - review the support provided to the RemCo**

- 4.6 We recommend that POL undertakes an assessment of the way in which the RemCo is supported in its work and the ways in which that support can be improved.
- 4.7 That review should ensure that the relevant processes and procedures, including in relation to POL Human Resources, are adequate, including in relation the recording of decisions made in respect of scheme design, implementation and assessment and ensuring that management information provided to the RemCo is accurate and complete.
- 4.8 Further, better communication between the parts of POL involved in the tracking and monitoring of the Inquiry Support Target would have assisted POL Human Resources in understanding developments such as the Inquiry moving onto a statutory basis. POL should therefore ensure going forward that POL Human Resources itself receives the necessary assistance from other parts of the business from which it requires input and assistance.

### **Recommendation 3 – accurate and complete minuting of RemCo meetings**

- 4.9 RemCo decisions in respect of a Short-Term Incentive Plan or Long-Term Incentive Plan awards should be carefully minuted, especially where they involve the exercise of any discretion by the RemCo.
- 4.10 The quality of the minutes of RemCo meetings should be improved to ensure that minutes of meetings accurately reflect the discussions and decisions to facilitate proper recording of decision-making. We also recommend that processes for signing-off minutes are improved to ensure the RemCo members have the opportunity to ensure that minutes accurately reflect the discussion that has taken place.
- 4.11 Further, POL should ensure that on the occasions where decisions are made by e-mail outside of the RemCo, those decisions are properly recorded and the content of any discussion is brought within proper RemCo processes and governance.

#### **Recommendation 4 – review the process for the creation incentive of schemes**

- 4.12 It is clear from our Review that insufficient time and attention was given to the creation of the TIS framework in the fourth quarter of 2020 such that the first clause of the Inquiry Metric was included in the TIS with insufficient consideration of how it would be assessed. We recommend that future processes for the creation of incentive schemes should allow for appropriate governance, time and attention and for proper review and testing of proposed metrics to determine whether they are viable.

#### **Recommendation 5 – reduce the amount of time between the agreement of a scheme framework and the design of its metrics and measures**

- 4.13 Too much time elapsed between the approval of the TIS framework in December 2020 and the approval of the Implementation Approach in July 2021. We agree with Amanda Burton's second recommendation that the *"timeline between the initial proposal, design and approval of variable pay schemes needs to be shortened..."*.
- 4.14 The applicable performance metrics and targets should be clear to incentive scheme participants from the start of, or at the latest from early in, the performance period for a particular award. Any time delay due to the requirement to follow governance processes and receive Shareholder consent should be minimised as a matter of best practice and ensuring prompt conclusion of the measures and metrics to begin the approval process in a reasonable time period will assist in achieving that.

#### **Recommendation 6 – ensure clarity as to scheme rules**

- 4.15 From our review we conclude that the scheme rules, being the basis on which RemCo could determine that the TIS metrics and targets, including Inquiry Support Target, had been achieved was not sufficiently clear.
- 4.16 POL should reconsider its processes and procedures to ensure that for each scheme RemCo is able to quickly and easily determine: (i) the applicable rules and terms; and (ii) the respective legal rights of POL and the award holder(s).

#### **Recommendation 7 – ensure scheme rules are applied appropriately**

- 4.17 Papers presented to RemCo to support its decision-making should accurately and clearly present any relevant plan rules and any relevant provisions of the award documentation such that RemCo is able to make an informed decision and can properly consider and apply the relevant terms of the incentive plan and award documentation and any factors relevant to the decision that is to be made.
- 4.18 We therefore recommend that POL Human Resources reviews its approach to recording prior decisions and producing management information to ensure that RemCo is clear as to the basis on which it is being asked to, and is able to, take a decision.

### **Recommendation 8 – ensure that schemes are sufficiently clear and simple**

- 4.19 The TIS contained a number of performance targets below the four metrics, each of which were challenging to track performance against making the TIS a complex and relatively ill-defined incentive scheme. Short-Term Incentive Plan and Long-Term Incentive Plan awards that are subject to multiple, complex performance metrics and targets that apply in the same way to the entire participant population are likely to be less effective incentives than awards with fewer, simpler performance metrics and targets. We recommend that:
- (A) it should be clear to each incentive award holder throughout the performance period what the relevant scheme requires of them, and this is less likely to be the case as the number and complexity of targets increases; and
  - (B) each incentive award holder's performance metrics and targets should be designed to motivate that person to excel at the aspects of their work which are most likely to make a significant difference to the overall performance of the business. It may well be beneficial for all of POL's executive directors, Group Executive and Senior Leadership populations to have some of their Short-Term Incentive Plan and Long-Term Incentive Plan performance metrics and targets in common, but it is unlikely that it is optimal for all of their metrics and targets to be the same given their different roles and responsibilities.
- 4.20 Further, RemCo should ensure that scheme metrics and targets are sufficiently clear and that they accurately reflect the intention behind them. For example, on a plain reading of the Inquiry Support Target, the Second Limb required a confirmation to be obtained from Sir Wyn Williams and his team. However, when we reviewed contemporaneous materials, it was apparent to us that POL in fact intended for the Inquiry Support Target to be validated using internal evidence such that no such confirmation was intended to be obtained.

### **Recommendation 9 – consider applying separate schemes to Executive Directors and the broader Group Executive and Senior Leadership populations**

- 4.21 At present, the POL executive directors generally participate in the same Short-Term Incentive Plan and Long-Term Incentive Plan awards as the rest of the Group Executive and Senior Leadership populations and, as such, it is possible for the Shareholder consent process to cause a delay in the finalisation of schemes as they relate to the non-executive population.
- 4.22 It may be that decisions in respect of the metrics and targets of Short-Term Incentive Plan and Long-Term Incentive Plan awards for the Group Executive and Senior Leadership populations would be simplified if only some of the CEO's and CFO's metrics and targets were also applicable to all Short-Term Incentive Plan and Long-Term Incentive Plan participants or if the CEO and CFO were to participate in separate schemes altogether. This would mean that Shareholder consents in respect of the CEO's and CFO's awards would have less of an impact on the schemes applicable to the broader population of participants.

**Recommendation 10 – ensure that schemes are appropriately reviewed on an ongoing basis**

- 4.23 It is important that schemes are actively and carefully reviewed throughout their life to ensure that they remain appropriate in all the circumstances. The earlier that matters that may impact the viability of a scheme or part of it are identified the more likely that steps can be taken to ameliorate those issues, including taking steps to obtain participant consents or further Shareholder approval if that is necessary.
- 4.24 POL will be much more likely to be able to achieve this Recommendation if other of our Recommendations are properly implemented such as ensuring proper minute taking and record keeping, ensuring that schemes are clear and simple and if the quality of the support given to RemCo is improved.

## 5. TIMELINE

- 5.1 This section of our Report sets out a Timeline to frame an understanding of key relevant events:
- (A) **22 September 2020:** It was discussed and agreed at a RemCo meeting that it was not appropriate for awards to be made under POL's Short-Term Incentive Plan and Long-Term Incentive Plan, but POL's management set out its view that an incentive was still required for POL's senior leaders to promote the transformation of POL's culture and that a paper would be prepared for presentation to the RemCo setting out a proposal.
  - (B) **5 November 2020:** The Inquiry's Statement of Approach 001 set out that the Inquiry was anticipated to complete in August 2021.
  - (C) **24 November 2020:** A paper was presented to a meeting of the RemCo setting out the context and high-level framework for the TIS. RemCo approved the establishment of the TIS in principle subject to more detailed measures being provided.
  - (D) **4 December 2020:** RemCo received a paper for a meeting held by e-mail updating the TIS proposal presented to the 24 November 2020 RemCo meeting with further detail as requested by RemCo regarding the proposed targets. The Appendix to that paper set out what was at this stage indicative wording of the sub-metrics and measures, including the Inquiry Support Target.
  - (E) **8 December 2020:** The TIS framework was approved by RemCo by e-mail. In practice, this meant that the wording of the four TIS metrics had been set but not the sub-metrics that sat below them. At this point, the TIS did not therefore incorporate approved targets or methods of assessment.
  - (F) **December 2020:** Invitation letters from the POL CEO were sent to each member of the Group Executive and Senior Leadership (including the POL CEO and CFO) about their TIS enrolment, asking them to sign and return the attached copy letter to confirm their receipt and acceptance of the terms by 31 January 2021.
  - (G) **14 January 2021:** TIS rules finalised.
  - (H) **19 May 2021:** Announcement that the Inquiry would move onto a statutory footing from 1 June 2021 and that the Inquiry would likely complete in Autumn 2022.
  - (I) **June 2021:** RemCo received proposals for the detailed implementation approach to be taken in respect of the TIS. This set out the proposed targets, methods of assessment and required evidence of validation which the RemCo would require for the assessment of the sub-metrics in February 2022, including the Inquiry Support Target ("**Implementation Approach**").

- (J) **1 July 2021:** The RemCo met. The minutes of this meeting report that “*email approval had been obtained from Committee Members on the Transformation incentive Scheme*”.
- (K) **9 July 2021:** An ‘implementation paper’ summarising the Implementation Approach was approved by the RemCo by e-mail following a RemCo meeting on 1 July 2021.
- (L) **July 2021:**
  - (1) POL Human Resources prepared a draft letter requesting Shareholder approval of the POL CEO’s and CFO’s participation in the TIS. This draft was commented on by UK Government Investments.
  - (2) Letters sent to staff enrolled on the TIS setting out the metrics and measures approved by the RemCo.
- (M) **26 July 2021:** POL issued a letter to the Shareholder formally requesting approval for CEO and CFO participation in the TIS.
- (N) **12 November 2021:** POL received approval from the Shareholder for CEO and CFO participation in the TIS.
- (O) **25 January 2022:** RemCo met and was presented with a paper setting out the current status of and progress against the TIS metrics and an overview of the Implementation Approach as approved in July 2021. The minutes of this meeting record a discussion about how achievement of the Inquiry Support Target would be evidenced.
- (P) **26 January 2022 to 13 February 2022:** POL Human Resources gathered evidence to support the validation of the TIS metrics and targets, including the Inquiry Metric and the Inquiry Support Target.
- (Q) **14 February 2022:** POL Human Resources submitted the papers for a meeting of the RemCo to be held on 22 February 2022 including a paper related to the TIS assessments (the “**February RemCo Paper**”). The February RemCo Paper recommended that the Inquiry Support Target had been achieved and that a 100% award should be made in relation to the Inquiry Metric.
- (R) **22 February 2022:** RemCo met and approved the recommendations set out in the February RemCo Paper. The minutes of this meeting do not recall any discussion in relation to the Inquiry Support Target.
- (S) **5 July 2022:** A draft Annual Report and Accounts was presented to the RemCo but required further amendment and review and was not approved at this meeting.
- (T) **16 August 2022:** The RemCo approved the Directors’ Remuneration Report.



## 6. POL'S STRUCTURE AND GOVERNANCE IN RELATION TO REMUNERATION

- 6.1 The following section of our Report sets out a narrative summary of our Findings in relation to POL's structure and governance in relation to remuneration and the TIS. This section contains further findings which are supportive of, and relate to, our Findings (Section 3).

### **POL – ownership and governance structures**

- 6.2 POL is a commercial organisation structured as a private limited company which provides more than 170 products and services to the public across mails and parcels, financial services and government services both online and through its nationwide network of 11,500 post office branches.
- 6.3 POL is wholly owned by the Shareholder and is classified as a public corporation. As such, POL is required to operate within certain parameters and comply with certain obligations. These boundaries within which POL must operate are set out in the Articles and the Framework Document.
- 6.4 The POL Board is responsible, amongst other matters, for setting POL's strategy and operating POL in a way that it considers will promote its success for the benefit of the Shareholder. The POL Board delegates day to day operation of POL's business to the executive directors and their reports. The Shareholder has no involvement in the operational activity of POL.
- 6.5 UK Government Investments performs the role of the Shareholder on its behalf ("**Shareholder Representative**") in two primary ways:
- (A) via a dedicated shareholder team with appropriate expertise and experience; and
  - (B) through the appointment of the Shareholder Non-Executive Director.

The rights of the Shareholder (through the Shareholder Representative) in respect of remuneration are covered in further detail in paragraph 6.14 below.

- 6.6 The Shareholder Non-Executive Director is typically a UK Government Investments employee appointed to the POL Board to represent the Shareholder's interests. The Shareholder Non-Executive Director attends board meetings and is also appointed to POL's Audit, Risk and Compliance Committee, Remuneration Committee, Nominations Committee and HRC.

### **Role of the POL Board and the POL constitution**

- 6.7 The POL Board is responsible for setting the company's purpose, values and strategy, The directors are collectively responsible for POL's long-term success for the benefit of the Shareholder and for engaging effectively with the Shareholder (through the Shareholder Representative in this case). The directors must act within the limits set by

the Articles and should also act in accordance with the Framework Document.

- 6.8 The Articles contain a list of reserved matters which require the prior written consent of the Shareholder.<sup>16</sup> It is a statutory duty of directors to act in accordance with the constitution of a Company (to the extent that the constitution does not contain an unlawful fetter on the discretion of directors). The consent matters listed in the Articles which are relevant for the scope of this Report are unlikely to constitute an unlawful fetter on the discretion of the directors. Therefore the POL Board should not take actions in respect of these matters unless the Shareholder provides consent.
- 6.9 As set out above, the POL Board should also act in accordance with the Framework Document. Amongst other things, the Framework Document provides that POL should seek to comply with the principles and provisions of the Code. The Code sets standards of good practice for corporate governance with the aim of promoting the long-term sustainable success of companies. The Code applies to premium listed companies in the UK on a comply or explain basis. The principles of the Code must be applied and the provisions of the Code which underly those principles should operate on a comply or explain basis. This means that companies have the flexibility to comply with a provision or explain why they have not complied with it. This approach is intended to recognise that one approach does not necessarily suit all companies. The Framework Document provides that the POL Board must notify the Shareholder Representative in advance to the extent that POL does not intend to observe the Code.
- 6.10 The Framework Document also provides that in acting in accordance with standards of corporate good governance, POL shall have regard to the government-wide corporate guidance applicable to public corporations (as detailed in Appendix 2 of the Framework Document).
- 6.11 The government wide corporate governance guidance referred to in the preceding paragraph includes principles published by HM Treasury in Managing Public Money (“MPM”).<sup>17</sup> The CEO is designated as the “Accountable Officer” for POL and is expected to observe these principles. He is personally responsible for ensuring propriety, regularity and value for money in handling public funds.

### **The Remuneration Committee’s mandate**

- 6.12 The POL Board has authority pursuant to the Articles,<sup>18</sup> and as a matter of company law, to exercise all powers of the company (subject to restrictions in or pursuant to the Articles or as otherwise restricted under law). The POL Board may delegate any of its powers to any committee of one or more directors. Delegation is subject to any conditions that the POL Board may impose.<sup>19</sup> The RemCo is created pursuant to such authority.
- 6.13 The POL Board approves the RemCo’s terms of reference governing how it should operate, its membership and its duties. The RemCo ToR relevant to our review were

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<sup>16</sup> Paragraph 8.1 of the Articles

<sup>17</sup> [MPM updates .docx \(publishing.service.gov.uk\)](#)

<sup>18</sup> Article 45

<sup>19</sup> Article 49

approved on 8 April 2020.

- 6.14 In addition to the RemCo ToR, the RemCo's authority is subject to the powers and duties of the POL Board and limits in the Articles (as the POL Board cannot delegate powers that it does not itself have). As noted at paragraph 6.8 above, the Articles<sup>20</sup> provide that Shareholder approval is required in relation to certain matters. The approvals that are relevant to the scope of this Report are:
- (A) the approval of or agreement to or any material variation or amendment to the remuneration (including, without limitation, salary, share options, bonuses, benefits in kind and pension rights) paid or granted to any director of POL;
  - (B) the appointment and remuneration of any person who is not an employee of POL or its subsidiaries (the Group) as a director of any member of the Group (unless the member of the Group is regulated by the FCA); and
  - (C) the additional remuneration of any employee of a member of the Group in their capacity as a director of a member of the Group.
- 6.15 The requirement for Shareholder consent on these matters is reflected in the RemCo ToR. However, we note that the RemCo ToR in place at the relevant time address the need for Shareholder approval in respect of Long-Term Incentive Plans (of which the TIS was one) with a footnote and this requirement was not reflected in all relevant places in the ToR. Significant changes were made to the RemCo ToR in March 2023. These changes add much greater clarity on when Shareholder consent is required. We note that certain RemCo members had flagged the need for the RemCo ToR to be updated in a previous review of the ToR but no agreement was reached.
- 6.16 The Remco's duties (as set out in the RemCo ToR in place at the time) that are relevant to the scope of this Report include:
- (A) approving the implementation of or changes to Long-Term Incentive Plans for the executive directors, executives who report directly to the Group Chief executive and senior managers eligible to be invited to participate in the Long-Term Incentive Plan;
  - (B) reviewing such Long-Term Incentive Plan annually;
  - (C) approving the criteria for, any changes to an outturn against any Short-Term Incentive Plan for executive directors and any executives who report to the group chief executive officer;<sup>21</sup> and
  - (D) approving annually the performance criteria for, and any outturn of, any Short-Term Incentive Plan.<sup>22</sup>

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<sup>20</sup> Article 8.1

<sup>21</sup> Paragraph A.1.iv, RemCo ToR version 2.0

<sup>22</sup> Paragraph B.8 – B.11, RemCo ToR version 2.0 (Technically, the TIS was a Long-Term Incentive Plan as TIS awards related to performance over more than one financial year. It was, however, modelled on POL's current Short-Term Incentive Plan).

6.17 Approving the outturn against Long-Term Incentive Plans was not included as a duty of the RemCo in the RemCo ToR in place throughout the relevant period. We expect that this was an oversight rather than intentional and this has now been reflected in the updated ToR.

### **Composition of the RemCo**

6.18 At the relevant time, the RemCo ToR provided that:

- (A) the RemCo Chair and members will be appointed by the POL Board (acting on recommendations of the Nominations Committee and in consultation with the Chair of the RemCo);
- (B) the RemCo shall consist of at least two independent Non-Executive Directors. If considered independent at the time of appointment, the Chairman of POL may be a member of the RemCo but shall not chair it; and
- (C) only Non-Executive Directors shall be eligible to be members of the Committee so that no individual is involved in determining their own remuneration.

6.19 The composition of the RemCo is in accordance with the Code.

6.20 The RemCo members from September 2020 to December 2021 were:

- (A) Ken McCall (Chair of the RemCo);
- (B) Tim Parker (then Chair of POL);
- (C) Lisa Harrington; and
- (D) Tom Cooper (the Shareholder Non-Executive Director at the time).

6.21 At the end of 2021 Ken McCall resigned and was replaced by Lisa Harrington as Chair. Ben Tidswell joined the RemCo at the same time. In September 2022, Brian Gaunt replaced Tim Parker as a member of the RemCo.

6.22 The members of the RemCo are now:

- (A) Amanda Burton (Chair);
- (B) Henry Staunton (Chair of POL);
- (C) Ben Tidswell;
- (D) Brian Gaunt; and
- (E) Lorna Gratton (the current Shareholder Non-Executive Director).

- 6.23 The Shareholder Non-Executive Director is not considered to be an independent director for the purposes of the Code (due to their relationship with the Shareholder) and therefore their appointment to the RemCo does not comply with provision 32 of the Code which states that all remuneration committee members should be independent. This would not be considered best practice in the context of a listed company.<sup>23</sup> However, the Code provides flexibility for companies to explain non-compliance with the Code as it recognises that bespoke governance arrangements may be more appropriate in some circumstances. POL's 2021 to 2022 annual report includes an explanation that POL does not comply with the relevant provision of the Code. It explains that as POL has a single shareholder, the involvement of the Shareholder Non-Executive Director on the RemCo provides assurance to the Shareholder. This is also consistent with the Framework Document which provides that POL may depart from the Code provided that the Shareholder is notified in advance.
- 6.24 However, the Shareholder Non-Executive Director's appointment to the RemCo is required by the Framework Document.<sup>24</sup> Good governance in this context would require the RemCo ToR to be consistent with the Framework Document and therefore the RemCo ToR should be updated to refer to the appointment of the Shareholder Non-Executive Director to the RemCo.

#### **Is the scope of RemCo's remit in accordance with corporate governance best practice?**

- 6.25 From the evidence we have seen, we conclude that the mandate given to POL/RemCo in respect of remuneration and the scope of RemCo's remit as set by the ToR, when implemented by POL/RemCo in collaboration with the Shareholder and UK Government Investments, did not align fully with good corporate governance practices, even taking into account what would be appropriate adaptations for POL as a public corporation.
- 6.26 The role of the RemCo generally as set out in the RemCo ToR (and specifically in respect of incentive schemes like the TIS described in paragraph 6.15 above) is more limited than the role of a remuneration committee would generally be and more limited than is ideal from a good governance perspective. The POL RemCo is not (at least on paper according to the ToR) involved in designing or determining remuneration policy, instead its role is to approve remuneration policy presented to it. The Code envisages that the role of a remuneration committee should be to determine the policy for executive director remuneration and set remuneration for the chair, executive directors and senior management.
- 6.27 The interviews that we have conducted indicate that there is some divergence in the views of RemCo members as to the extent to which the RemCo can shape remuneration at POL, i.e. whether RemCo plays a proactive role in setting remuneration policy and schemes or whether it is reactive to management. As referred to in paragraph 6.15 above, changes

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<sup>23</sup> Provision 32 of the Code provides that all members of the Remuneration Committee should be independent, with a minimum membership of three, or in the case of smaller companies, two (smaller companies are defined as being those below the FTSE 350). The chair of the board can only be a member if they were independent before appointment and cannot chair the committee. Before appointment, as chair of the remuneration committee, the appointee should have served on a remuneration committee for at least 12 months.

<sup>24</sup> Appendix 4, paragraph 8(a)

were made to the RemCo ToR in March 2023. The changes envisage a more active role for the RemCo in setting remuneration.

- 6.28 RemCo's approval in respect of the remuneration of executive directors is subject to the requirement for consent, in advance, from the Shareholder as detailed in paragraph 6.14 above. The POL RemCo must seek shareholder consent to introduce, award or make any material changes to remuneration for executive directors. Whilst consent is only required in respect of executive director remuneration, and in this specific case in respect of the TIS as it relates to the executive directors, in practice this means that Shareholder consent is required for the TIS as a whole because the TIS applies to both executive directors and senior executives who are not directors on the same basis. Whilst it is not unusual for directors and non-directors to be part of the same scheme, it is unusual for them to be subject to the same terms in respect of the scheme (as was the case with the TIS).
- 6.29 This being the case, introducing a separate scheme (or at least separate terms) for executive directors may have created fewer challenges from a governance perspective as it would have meant that: (i) the CEO would not have been involved in discussions on the scheme as it related to him and (ii) more appropriate terms could have been designed for executive directors recognising the different role that they play at POL.
- 6.30 Listed company remuneration committees are also required to seek approval from shareholders, but the consent is very different in nature as in that circumstance the consent given is in relation to a framework within which to act (*i.e.*, a remuneration policy). Listed companies do not have to seek shareholder consent in advance of every decision in relation to remuneration. This means that the authority of the remuneration committee in listed companies is not constrained in the same way as the POL RemCo in relation to setting executive remuneration and remuneration committees in listed companies generally have a greater degree of control in determining the remuneration of executives and directors and ensuring alignment with a company's purpose and values. They are also able to act quickly to respond to specific challenges or a changing environment in a way that the POL RemCo cannot because of the need to seek advance consent from the Shareholder.
- 6.31 However, given that POL is a public corporation, it is appropriate that the Shareholder has a greater degree of control of remuneration as it needs to ensure that any public funds are used appropriately. A key principle of corporate governance is that the approach a company takes should be appropriately tailored to that company. POL is very different from listed entities in that it has one shareholder rather than multiple smaller shareholders (as a listed company would). It is therefore reasonable to expect adaptations to have been made to the approach taken by listed companies. Any assessment of POL's governance practices must be considered in the context of POL as a public corporation.
- 6.32 The Framework provides that POL should comply with the Code and the Shareholder should be notified of any departures from the Code. This means the Code was selected as the starting point for governance structures for POL by the Shareholder and POL (as they agreed the terms of the Framework). It is also a reference point for what good governance looks like. However, careful consideration is needed as to how best to adapt the remuneration governance structure expected by the Code. Specifically, POL should



consider what RemCo's role should be and how it can function effectively, whilst maintaining the oversight of the Shareholder.

## **Were RemCo proceedings conducted in accordance with best practice in relation to the TIS?**

### Information and assurance provided to RemCo

- 6.33 The RemCo ToR provided for RemCo papers to be circulated to members at least one week in advance of meetings to allow sufficient time to review the papers in advance of a given meeting. The papers should be sufficiently detailed and accurate to give the RemCo members the information needed to make decisions.
- 6.34 Management information provided to RemCo is generally produced by POL's Human Resources function. It is often drafted by the Reward Director in place at any given time and its content is signed off by the Group Chief People Officer. Nick Read (in his capacity as CEO) approves the submission of materials to RemCo but is not responsible for assessing its content in any formal sense, though we were told that he will input into the agenda for RemCo meetings in his role as CEO.
- 6.35 The final reports provided to RemCo are not necessarily the first iteration of documents and drafts are often circulated in advance of meetings and RemCo members are asked to comment or raise questions, as appropriate.
- 6.36 Our document review and the interviews conducted suggest that the relevant teams and individuals at POL tried hard to ensure that papers were provided on a timely basis. However, it became apparent during our discussions that the quality of the information provided to RemCo was variable.
- 6.37 Those we met with told us that, as a general matter, the quality of the information provided to RemCo was poor ("*patchy*", "*bumpy*", "*very up and down*") and that there is a history of poor attention to detail and information not appearing correctly in papers, particularly where quantitative calculations have been required. It is clear that there was real frustration experienced by RemCo members at the quality and inconsistency of the information provided. The consequences were that:
- (A) The RemCo Chair in particular was required to spend a great deal of time engaging with the materials that were provided to ensure that they were of an appropriate quality to be included in the RemCo papers.
  - (B) RemCo decision-making was slowed because decisions had to be held over so that further information could be obtained in relation to a particular matter where papers were incomplete.
  - (C) Long-standing projects such as the TIS were not adequately tracked such that key information was missed or the RemCo was not properly advised on the correct approach and framework for its decision-making. This is a key contributory factor in the errors which we have identified in Section 3 of this report in relation to the Inquiry Support Target.

6.38 When we spoke with Amanda Burton, the current RemCo Chair, she told us that she has identified this issue and has taken steps to address it. However, it is important to note that this issue is in part a product of what was described to us as “churn” in POL’s Human Resources function whereby there is a high turnover of staff which may have contributed to the matters that we have identified in our Review.

#### RemCo meetings

6.39 POL recognized that remuneration matters needed to be approved by the RemCo. RemCo meetings were held on a regular basis, and we have seen evidence of notice being provided in advance of RemCo meetings with agendas setting out the business to be conducted.

6.40 The registers of attendance at RemCo meetings show full attendance at RemCo meetings by members of the RemCo. Attendance at RemCo meetings is important and participation at meetings is one aspect of good governance.

6.41 Those that we have spoken with described the impact that the public and private aspects of POL’s corporate structure had on the RemCo. They described that the Shareholder Non-Executive Director, quite rightly, approaches remuneration decisions from the perspective of the Shareholder and ensuring that public money is spent appropriately. However, others emphasise that, in order to compete in a competitive commercial environment, POL also needs to be able to attract employees of the requisite caliber and to do so requires setting remuneration levels at a market-competitive rate.

6.42 We were told that this tension meant that discussions at the RemCo were very challenging and often quite tense such that it was a difficult environment in which to operate effectively to reach a consensus. We do not consider that this is the fault of any one person or entity in POL’s structure, but rather the natural outcome where there is a tension between complying with government policy and needing to incentivise competitively.

6.43 We should be very clear that there is no suggestion that Nick Read (in his capacity as CEO) (or anyone else in POL’s management team) placed any pressure on any RemCo member to make a particular decision in respect of the TIS. However, it is noteworthy that he attended all (or most) RemCo meetings. Whilst those that we have spoken to and the agendas for these meetings are clear that Nick Read only joined parts of RemCo meetings and did not take part in any discussions that directly impacted on his own remuneration awards, he was still a participant in the TIS and so there is a degree to which he was indirectly engaged in relation to his remuneration. As noted in paragraph 6.28 above, had their separate terms applied to schemes for executive directors, Nick Read’s involvement in all RemCo meetings in the relevant period would be less relevant.

6.44 The need for decisions to be made by all RemCo members in respect of relevant matters was recognised and there were efforts made to track approvals given by the various RemCo members. However, there is also evidence to suggest that a proportion of RemCo business was conducted by e-mail. It is an established principle of corporate governance that meetings of boards or committees should not be held by e-mail as e-mails do not allow for contemporaneous discussions on matters. Whilst for practical reasons it may be necessary for there to be e-mail exchanges on matters that the RemCo is discussing,



these e-mail exchanges should always be backed up by thorough discussion and constructive challenge in RemCo meetings.

- 6.45 Finally, the minutes of RemCo meetings do not appear to contain a full and accurate account of the proceedings. This means that the minutes of the RemCo meetings cannot be relied on as a record of what decisions were made at meetings and why those decisions were made. Specifically, in relation to the TIS and the Inquiry Support Target, it is not possible to identify from the minutes the extent and nature of the RemCo's discussion about how the Inquiry Support Target should be assessed and whether it had been met.

*Request for Shareholder consent*

- 6.46 We have seen some evidence of Shareholder approval of the TIS but e-mails disclosed suggest that not all formalities (as set out in the Articles) were complied with. Whilst the formalities in the Articles were agreed between POL and the Shareholder and should therefore have been followed, it is our view that non-compliance with certain minor formalities (in this instance failing to specify the relevant article in the request for consent) would not invalidate the consent itself.

**What discretions were afforded to the RemCo in relation to the TIS?**

- 6.47 In relation to performance metrics, the TIS rules give the RemCo discretion to determine whether the performance of the participants had achieved the performance metrics.
- 6.48 The RemCo also has a separate discretion under the TIS to determine the bonus was otherwise payable for reasons other than achievement of the set performance metrics but that discretion was not considered by the RemCo on the basis of the evidence that we have reviewed.

## 7. FINDINGS IN RELATION TO THE INQUIRY SUPPORT TARGET

### Introduction to our findings in relation to the Inquiry Support Target

- 7.1 This section sets out our findings in relation to the robustness of the approval processes and decision-making in relation to achievement of the Inquiry Support Target and whether RemCo's decision to proceed on the basis of the recommendation that it had been achieved and to therefore make a full award against the Inquiry Metric was justifiable.

### The Transformation Incentive Scheme

- 7.2 The context for the TIS is that, during 2020, as a result of market conditions, the uncertainty caused by the COVID-19 pandemic and POL's cash position, it was decided that it would not be appropriate to make Short-Term Incentive Plan awards to POL's senior leaders for the financial year 2020/21.
- 7.3 In addition, the 2018/19 Short-Term Incentive Plan pay-outs had been reduced by 20% for POL's GE, the 2019/20 Short-Term Incentive Plan had been reduced by 20% for the Group Executive and Senior Leadership populations and by 50% for Executive Directors. Further, the Short-Term Incentive Plan and Long-Term Incentive Plan Schemes would not be launched for the Group Executive and Senior Leadership in the year 2020/21.
- 7.4 Against that backdrop, POL was facing, and consciously facing up to, profound challenges both in relation to its past conduct and its future commercial viability. These included, in no particular order of importance:
- (A) The impact of the COVID-19 pandemic which put extraordinary pressures on the operation of what was already a complex business.
  - (B) The implementation of a very significant and vastly complicated IT overhaul to move away from the Horizon IT system.
  - (C) Commercial pressures and a need to improve POL's operational design and move towards a lower cost operating model.
  - (D) The need to ensure appropriate engagement with and satisfaction of Postmasters.
  - (E) The Inquiry which would require a significant amount of organisational resource.
  - (F) Engaging with the findings of the Horizon Issues Judgment and the Common Issues Judgment.
- 7.5 Taking those challenges in the round, POL was therefore in a position in which it was facing challenges which required total organisational focus. POL was therefore asking a significant amount of its staff and asking them to go, as Nick Read described it to us "*above and beyond*" for a significant period of time in circumstances in which their remuneration

did not at that point in time reflect those additional demands. Regardless of the appropriateness or otherwise of the Inquiry Metric and Inquiry Support Target (which is not within the scope of our Review), commercial necessity required a management response to the matters summarised above.

- 7.6 The TIS was therefore proposed as a replacement for the Short-Term Incentive Plan for the Group Executive and Senior Leadership with the aims of retaining senior leaders, incentivising them to focus intensely upon and deliver POL's transformation agenda and driving culture change at POL by incentivising the right behaviours.

### **The Inquiry Metric and the Inquiry Support Target**

#### *Design of the TIS*

- 7.7 The concept of a transformation incentive scheme was first suggested to RemCo by Nick Read at a RemCo meeting held on 22 September 2020 in the context of the decision not to make Short-Term Incentive Plan awards given the broader economic and commercial context. At that meeting it was agreed that POL Human Resources would produce a paper setting out a proposal for such a scheme.
- 7.8 That paper was prepared by POL Human Resources and presented to the 24 November 2020 RemCo meeting. The proposal set out the structure of the scheme and four high level metrics in much the same form as the final TIS metrics. The minutes of the meeting record that the RemCo approved the TIS in principle but requested further information as to how the scheme would be implemented and, in particular, the extent to which these metrics could be measured and evidenced and how POL would produce the evidence required to confirm that they had been satisfied.
- 7.9 In response to that request, POL Human Resources prepared a series of targets or sub-metrics against which achievement of each TIS metric would be assessed. The proposal for the Inquiry Metric was initially that its assessment would be informed by six sub-metrics or targets.
- 7.10 Our Review has identified that the Inquiry Support Target was most likely drafted on the morning of 27 November 2020 by the POL function responsible for engagement with the Inquiry following a request by the POL's then Group Chief People Officer at around 9pm on the previous evening. Having been provided to POL Human Resources on 27 November 2020, this language was immediately included, without amendment, in a document to be provided to the RemCo setting out, on an indicative basis, the measures and assessment methods for the TIS metrics.
- 7.11 We have not seen evidence this language was reviewed, discussed or analysed in terms of its suitability as an incentive target either in late 2020 or at any time prior to its inclusion in the Directors' Remuneration Report. Consequently, the Inquiry Support Target in its final form was identical to that first draft sent to POL Human Resources on 27 November 2020.

- 7.12 On 4 December 2020, the RemCo was provided with papers for a meeting to be held by e-mail. Those papers set out POL Human Resource's analysis in relation to the TIS, the broad framework of the proposal and key risks and mitigants.
- 7.13 The TIS framework set out in this document was comprised of four overarching metrics relating to: (i) Postmaster Satisfaction; (ii) the Inquiry; (iii) New Branch IT – Strategic Platform Modernisation (“**SPM**”) programme; and (iv) Organisational Design. In addition, a gateway target required that POL maintain a branch network of 11,500 branches or in line with any agreed waiver by the Shareholder before any payment would be made (the “**Gateway Target**”).
- 7.14 This paper was accompanied by an Appendix which set out the proposed wording of the more detailed sub-metrics and the way in which they would be measured and evidenced. This Appendix set out the language of both the Inquiry Metric and the Inquiry Support Target, though approval was requested only in relation to the four high-level TIS metrics at this point in time.
- 7.15 The Inquiry Metric was described as follows:
- “Delivery of all the required information and support for the Horizon inquiry satisfying the requirements of Sir Wyn Williams, ensuring there is a clear measurable plan created to demonstrate action on improving the overall culture to be Postmaster centric and to ensure processes for Postmasters are addressed in line with recommendations from the inquiry. Any actions or plans must have been endorsed by the inquiry and the Board.”*
- 7.16 It is the first clause of the Inquiry Metric that is relevant to our Review: “*Delivery of all the required information and support for the Horizon inquiry satisfying the requirements of Sir Wyn Williams*”.
- 7.17 In the Appendix, the Inquiry Support Target required that POL would produce to the Inquiry:
- “All required evidence and information supplied on time, with confirmation from Sir Wyn Williams and team that Post Office’s performance supported and enabled the Inquiry to finish in line with expectations”*
- 7.18 RemCo approved the TIS framework as set out in this paper by e-mail on 8 December 2020. The targets that sat underneath those four metrics and the way that those ought to be assessed (*i.e.*, the sub-targets, including the Inquiry Support Target) were not finalised and approved by the RemCo until June 2021.

### Invitation letters

- 7.19 Invitation letters regarding TIS enrolment were sent to each member of the Group Executive and Senior Leadership (including the POL CEO and CFO) in December 2020. Those letters requested the recipients to sign and return an attached copy letter to confirm their receipt and acceptance of the terms by 31 January 2021. This established a contingent, contractual entitlement of each TIS participant who signed and returned their

copy letter to receive 25% of the maximum amount payable to them under the TIS if the Inquiry Metric was fully achieved:

- (A) provided that they satisfied the conditions to be paid a TIS bonus at the end of the performance period (e.g., that they were still employed by POL or a good leaver at that time); and
- (B) “*subject to the detailed terms of the scheme, which will be shared in the New Year*”.

7.20 The Inquiry Support Target was not set out in the letter, as it had not yet been finalised, but the Inquiry Metric was set out, including the opening clause: “*Delivery of all the required information and support for the Horizon inquiry satisfying the requirements of Sir Wyn Williams*”. Whilst the TIS Rules, as finalised in January 2021, gave the RemCo the discretion to determine the bonus as payable for reasons other than the satisfaction of the performance metrics and an ability to make adjustments to the bonus payment, they did not give RemCo discretion to unilaterally amend any TIS target and substitute it for a different performance metric during the TIS performance period including where, for example, the RemCo concluded that the relevant target was no longer an appropriate measure of performance.

7.21 Once these invitation letters were sent out, if RemCo had considered that the Inquiry Metric was no longer appropriate and should be amended and/or substituted, POL would need to obtain the consent of each participant in the TIS to do so. In the event, no such consideration was applied.

### **Determination of the Implementation Approach**

7.22 Following the approval of the TIS framework in December 2020, there was a period in which POL Human Resources considered how best to set measurable targets such that the RemCo would be able to assess whether the performance metrics had been met in due course.

7.23 It is also important to note that during this period, Lisa Cherry, POL’s Group Chief People Officer left POL and was replaced on an interim basis by Angela Williams in around April 2021. When Angela Williams joined POL, she inherited a TIS that was defined only at the headline level with no agreed set of targets or basis on which RemCo would assess the TIS.

7.24 Between joining POL and June 2021, Angela Williams set about determining the Implementation Approach in relation to which she circulated relevant documentation in mid- June 2021. The RemCo discussed certain of the measures and the validation of metrics by e-mail, however we have not identified any specific discussion of the Inquiry Support Target.

7.25 The minutes of the 1 July 2021 RemCo meeting record that RemCo approval for the proposed measures and metrics had been given by e-mail in advance of the meeting and the minutes do not record any discussion of the substance of the targets.

7.26 Following RemCo approval, POL Human Resources prepared an “*Implementation Paper*” summarising the Implementation Approach, which was circulated to the RemCo by Angela Williams on 9 July 2021.

7.27 The Implementation Paper set out that the first clause of the Inquiry Metric would be assessed as follows (green lettering in original):

Focus Area	Description	Targets and Assessment
Inquiry	Delivery of all the required information and support for the Horizon inquiry satisfying the requirements of Sir Wyn Williams...	<p>All required evidence and information supplied on time, with confirmation from Sir Wyn and team that POL’s performance supported and enabled the Inquiry to finish in line with expectations.</p> <p>Assessment: Internal evidence-based validation...</p>

7.28 As set out in the green text below paragraph 7.27 above, the Implementation Approach confirmed that the Inquiry Support Target would be internally validated. This is relevant to the question of whether a letter or other written confirmation was intended to have been requested from the Inquiry regarding whether POL had enabled it to finish on time (if that had been possible at the point at which the RemCo made its decision). As to that:

- (A) Our review indicates that the Inquiry Support Target was initially drafted in November 2020 with the intention that the “*test*” of its achievement would be an internal POL document tracking responses received from the Inquiry Secretariat as POL delivered evidence to the Inquiry.
- (B) Those that we met with considered that it was inconceivable that anyone would have considered that the Inquiry (or indeed Sir Wyn Williams) would ever have been asked to provide the confirmation that the Inquiry Support Target requires on its face, or that it would have been appropriate for POL to do so, particularly once the Inquiry moved onto a statutory footing.

Taking these points together with the content of the Implementation Paper, we are satisfied that POL did not intend that the Inquiry Support Target would be validated by way of a letter received from either Sir Wyn Williams or the Inquiry Secretariat.

7.29 The Implementation Paper also set out that the RemCo would assess the TIS metrics and targets within the following parameters including the basis on which RemCo would assess the TIS targets:

<p><i>Assessment of targets</i></p>	<p><i>Each of the four focus areas will account for 25% of the payment. Achievement against one focus area will equate to 25% of the payment, two focus areas will equate to 50% of the payment and so on.</i></p> <p><i>Evidence of achievement in each of the areas will be considered by RemCo and an assessment made “in the round” as to whether the target has been achieved or not.</i></p> <p><i>The Inquiry, SPM, and Organisational Development targets comprise multiple goals. It is anticipated that RemCo will exercise some discretion in the case that there is a small slippage against one or two of these goals, rather than apply a strict formula.</i></p> <p><i>Whilst the plan operates on a “hit or miss” basis, rather than having Threshold, Target and Maximum levels, RemCo have discretion to adjust an award below the 25% level in recognition of any slippage.</i></p> <p><i>This flexibility will ensure that we maintain the motivation and commitment of the senior leadership team by taking a fair and reasonable approach.</i></p>
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## Shareholder Approval

7.30 It was on the basis of the RemCo’s final approval of this and other papers relevant to the scheme that POL wrote to the Shareholder on 26 July 2021 requesting approval of the participation of the POL CEO and CFO in the TIS (the “**Approval Letter**”). The Approval Letter, which had been prepared in discussion with the Shareholder Representative, set out in the relevant part as follows:

- (A) Payment under the TIS was subject to the achievement of: (i) the Gateway Target; (ii) the four TIS metrics.
- (B) Each TIS metric had “*a set of targets and method of assessment which will be carried out in January 2022 and includes external validation as appropriate. The detail is attached as Appendix 1 to this letter.*” Appendix 1 to the letter repeated the Inquiry Metric and the Inquiry Support Target in full but did not reference its internal validation.
- (C) As to the parameters for POL’s assessment of the TIS, the letter explained:

*“Each metric is assessed independently of the others. For the other plan participants, evidence of achievement in each of the areas will be considered by Remuneration Committee and an assessment made “in the round” as to whether the target has been achieved or not. The Inquiry, SPM, and Organisational Development targets comprise multiple goals. It is anticipated that Remuneration Committee will exercise some discretion in the case that there is a small slippage against one or two of these goals, rather than apply a strict formula, and will have*



*discretion to adjust an award below the 25% level in recognition of any slippage.<sup>25</sup> This is with the caveat that, at this juncture, the proposed budget is still pending final approval.*

*This flexibility will ensure that we maintain the motivation and commitment of the senior leadership team by taking a fair and reasonable approach. We ask that similar flexibility be applied to the CEO and CFO, supported by clear evidence with external validation as appropriate. Given that this is the first time that there has been such an emphasis on non-financial measures relative to previously approved schemes, we understand the need for assurances that the measurement of metrics will be robust enough to withstand external scrutiny. We are confident that the proposed process, using evidence-based data to support the assessment of achievement, will be fair and challenging.”*

- 7.31 On the basis of this explanation and the remainder of the Approval Letter, the Shareholder approved the TIS on 12 November 2021.

#### **The basis on which the Inquiry Support Target could be ‘achieved’**

- 7.32 Once the TIS metrics and measures were approved in July 2021, the basis on which the Inquiry Support Target could be determined as having been achieved was only that the two elements of ‘limbs’ comprising it had each been met. Those two limbs were:

- (A) *“All required evidence and information supplied [to the Inquiry] on time” (“**First Limb**”);*
- (B) *“with confirmation from Sir Wyn and team that POL’s performance supported and enabled the Inquiry to finish in line with expectations” (“**Second Limb**”).”*

- 7.33 The preconditions of the First Limb having been met were that POL had provided to the Inquiry all the evidence and information that the Inquiry had required of it and that it had done so in the required timeframes. The RemCo would require sufficient evidence to enable it to reach that determination acting reasonably.

- 7.34 As to the Second Limb, we consider that there is scope to read it in two ways.

- (A) On the basis that POL had done what it could to enable the Inquiry to finish in line with expectations, irrespective of whether or not the Inquiry had in fact finished as at the date of the assessment (the “**First Reading**”).
- (B) That POL had done what it could to enable the Inquiry to finish in line with expectations and the Inquiry had, in fact finished (the “**Second Reading**”).

- 7.35 Had RemCo proceeded on the basis of the First Reading then it would have been possible for it to use its discretion in assessing the performance of the Inquiry Support Target as read to conclude that it had been achieved. Had RemCo in fact taken the Second Reading

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<sup>25</sup> In fact, the RemCo had considerably broader discretion than this under various provisions of the TIS Rules, but the RemCo’s discretions were not fully described in the Approval Letter.

then the correct decision would have been for it to conclude that the Inquiry Support Target had not been achieved.

- 7.36 We have set out in the following paragraphs our assessment of which reading the RemCo took and the basis for that conclusion.

### **The decision to determine that the Inquiry Support Target had been achieved**

- 7.37 Having determined the Implementation Approach for the TIS in July 2021, the next point at which RemCo was required to make a formal decision in relation to the TIS was at the February 2022 RemCo meeting ahead of payments being made in March 2022.

- 7.38 It is important to state at this point in our analysis that, unfortunately, the formal records kept by POL in relation to the TIS generally and its decision-making in respect of the assessment of the TIS metrics in January and February 2022 are neither fulsome nor clear and the recollections of those that we have spoken with are divergent. It is not therefore possible to determine with certainty how the RemCo reached its determinations based on the information that is now available.

- 7.39 When considering the decisions that RemCo made, it is helpful to have in mind the high-level chronology in relation to the assessment of the Inquiry Metric.

- (A) The period for the assessment of the TIS was January and February 2022. In that period, POL Human Resources gathered the relevant evidence and provide RemCo with information about the assessments that would need to be made.
- (B) On 25 January 2022, the RemCo received an update on the status of the TIS metrics and an overview of the decisions required to be made in relation to the assessment of the TIS metrics at the 22 February 2022 RemCo meeting.
- (C) Following the 25 January 2022 RemCo meeting, POL Human Resources identified the evidence to support the TIS Metrics, including the Inquiry Metric and the Inquiry Support Target.
- (D) On or around 14 February 2022, the RemCo received a paper setting out POL Human Resources' recommendations in respect of the TIS metrics and the basis for those recommendations.
- (E) At the 22 February 2022 meeting, RemCo determined to proceed on the basis of POL Human Resources' recommendations.

### **RemCo's conclusions in relation the decision that it needed to make in respect of the Inquiry Support Target**

- 7.40 By January 2022, it was clear that the Inquiry would not complete within the period in which the TIS was to be assessed. From the documents that we have reviewed, there is no written evidence to indicate that POL Human Resources or RemCo considered that fact until the assessment period for the TIS began in January 2022.

- 7.41 We have, however, concluded that such a discussion did take place at some point prior to the 22 February 2022 meeting, though given the limitations of the available written evidence and the divergent recollections of those that we have interviewed, we cannot conclude on precisely what basis RemCo decided how the Inquiry Support metric should be assessed.
- 7.42 It appears from the documents and our discussion with Angela Williams, who was responsible for the recommendations made to RemCo in respect of the achievement of the TIS, that POL Human Resources proceeded on the basis of the First Reading.
- (A) When we spoke with Angela Williams, she told us that, once it became clear that the Inquiry would not complete before the end of the TIS period (and so would not have finished in line with expectations by that date), the assessment of the Inquiry Support Target became whether, in the period in which the TIS had operated, POL had: (i) cooperated effectively with the Inquiry; and (ii) met the Inquiry's requirements and delivered what was asked of it in a timely manner (*i.e.* the First Reading).
- (B) The work that POL Human Resources undertook to collate relevant evidence in the period after the 25 January 2022 RemCo meeting does provide some assistance in assessing what POL Human Resources understood the position to be. In particular, a subsequent e-mail sent by an external consultant working with Angela Williams on 3 February 2022 suggests that POL Human Resources applied the First Reading (**emphasis supplied**):

*“Would you be able to help provide some information to show that we have met the following measure?”*

*All required evidence and information supplied on time, with confirmation from Sir Wyn and team that POL’s performance supported and enabled the Inquiry to finish in line with expectations.*

***I know that the timeline for the Inquiry has been pushed out, so what we really need to show is that we have provided everything we were asked for, and on time [...] Is this something you could share with me? Or is there a summary your team develop that says something like “We received x requests, of which y% were responded to within x days or within the deadline set”?***

The text set out in bold above accords with Angela Williams’ and Lisa Harrington’s recollection that RemCo, and POL Human Resources, were proceeding on the basis of the First Reading.

- 7.43 However, it was not POL Human Resources that was required to make the relevant decision and there is nothing in the papers that explicitly suggests the basis on which the decision was made. In that regard, the minutes of the 25 January 2022 do not assist. They are brief (one paragraph only) and do not appear to record the full discussion in relation the Inquiry Metric. The minutes record in relevant part:

*“Tom Cooper asked how we would evidence that we were meeting the requirements of the Public Inquiry. Nick Read said that we would provide the positive feedback we have received from the Inquiry Team on the disclosures we had made. AW added that the POL team could evidence that the disclosure requests had been met and the timings of these. Ben Tidswell noted that the appendix to the Inquiry paper in the Board pack provided some helpful detail about our interactions with the Inquiry Team.”*

- 7.44 It seems likely that Tom Cooper’s sensible question would have been raised in the context of a broader discussion about the Inquiry Support Target. However this limited record of that discussion does not take us any further in understanding how the Inquiry Support Target was read by RemCo, only that RemCo was considering (at a late stage) how this target could be assessed.

*Collation of supporting evidence by POL Human Resources*

- 7.45 The further work that POL Human Resources took in collating the relevant information following the 25 January 2022 RemCo meeting and in preparation for the 22 February 2022 RemCo meeting also suggests that it was proceeding on the basis of the First Reading. POL Human Resources sought to identify documentation that would assist in evidencing POL’s compliance with the Inquiry Support Target during the period of the TIS. This evidence accords with Angela Williams’ recollection as summarised at paragraph 7.41 above.

- 7.46 POL Human Resources identified two possible sources of confirmation within the documentation held by POL:

(A) Internal records of Inquiry information requirements and POL’s engagement with them:

- (1) The TIS framework approved in December 2020 provided that the methodology for tracking progress towards the achievement of the Inquiry Support Target would be a tracker which was *“established to record the achievement of requests against delivery”*.
- (2) That tracker would have been held by the team within POL responsible for the Inquiry and Historical Matters which was, we understand, led by Ben Foat, POL’s General Counsel.
- (3) It appears that a tracker that had been intended to be kept for the purpose of the Inquiry Support Target when it was first proposed in November 2020 had not in fact been retained such that in February 2022 POL Human Resources was promised that it would be provided with a redacted copy of what was described as a *“work tracker showing the various requests and the compliance dates”*.
- (4) It is not apparent from the available documentation whether that redacted work tracker was in fact ever provided to POL Human Resources or reviewed by them. The evidence suggests that it probably was not.

- (B) Communications between the Inquiry and POL showing the Inquiry expressing in terms that POL had acted in a way that supported it:
- (1) POL identified three letters that had been sent to it by the Inquiry and which were provided to the POL Human Resources team prior to completion of the February RemCo Paper.
  - (2) Inquiry confidentiality meant that the circulation of letters within POL was limited. The team responsible for Inquiry and Historical Matters at POL therefore initially guided POL Human Resources to a statement by Sir Wyn Williams dated 16 November 2021 in relation to the waiver of legal professional privilege by POL, BEIS, UK Government Investments and FUJITSU as a source of evidence that might assist.

7.47 Taking this evidence together, we have concluded that it is likely that from at least the 25 January 2022 meeting, POL Human Resources proceeded on the basis that the Inquiry Support Target could be satisfied on the basis of the First Reading. That is to say that it could be assessed on the basis of the available evidence during the period of the TIS notwithstanding that the Inquiry had not yet finished.

Papers presented to the 22 February 2022 RemCo meeting

7.48 Having concluded its review, POL Human Resources prepared the February RemCo Paper which set out its recommendations for the assessment of the TIS metrics and the basis for them. The February RemCo Paper provided in relevant part:

- (A) The RemCo was asked to approve POL Human Resources’ recommendations:

*“Input sought: Approval*

*The Committee is asked **APPROVE** the recommendations for awards from the Transformation Incentive Scheme (TI scheme) for payment in March 2022.”*

- (B) The Executive Summary read as follows in relation to the Inquiry Metric:

*“We have carried out a detailed review and assessment of all the performance metrics and underpinning targets, using evidence provided by the metric owner in each area. A summary table is provided below. Green means that our assessment is that the target was met in full, Amber that the target was met to some degree and the Committee are requested to use their discretion to make an award:*

<b>Metric</b>	<b>RAG status<sup>26</sup></b>	<b>Proposed Award level</b>
<i>Inquiry</i>	<b>GREEN</b>	100%

<sup>26</sup> A RAG status of Green meant that the target had been assessed as having been wholly achieved.

On the basis of this paper, therefore, RemCo was not asked to exercise its discretion in relation to the Inquiry Metric.

- (C) There was then set out a section titled “1. Performance achievement for each key metric” which summarised performance against each of the four TIS metrics. In relation to the Inquiry Support Target, this provided as follows:

<b>Metric</b>	<b>Target</b>	<b>Achievement</b>
<i>Inquiry support</i>	<i>All required evidence and information supplied on time, with confirmation from Sir Wyn and team that POL’s performance supported and enabled the Inquiry to finish in line with expectations</i>	<i>Achieved</i>

...

<b>Recommendation</b>
<i>We recommend 100% award against this metric.</i>
<b>Rationale</b>
<i>Our assessment is that this objective has been achieved in spite of shifting requirements associated with the Inquiry and recognises the substantial work and efforts of our people.</i>

- 7.49 As we have concluded, POL Human Resources was most likely operating on the basis of the First Reading. In that context, the Inquiry Support Target was identified as having been “Achieved”. The basis for that recommendation was limited to a three-sentence summary set out in the February RemCo Paper:

**“How reviewed and assessed**

***Inquiry Support:*** *We have reviewed a redacted copy of the Rule 9 Notice updates to the Steering committee that indicate that we have responded in a timely fashion to all requests for information. Sir Wynn’s announcement of 16 November 2021 on the Inquiry website regarding POL’s waiver of legal privilege publicly acknowledges the efforts POL is making to support the inquiry. We have also reviewed letters sent by the Inquiry and signed by Sir Wynn which indicate that he has been pleased with the level of support provided by POL.”*

- 7.50 The documentary evidence identified by POL Human Resources was not provided to the RemCo, but rather that evidence was intended to be reviewed by POL Human Resources to assess whether it supported the recommendation being made. It is not clear whether that review was in fact fully undertaken.



RemCo's assessment of the First Limb

- 7.51 We have given consideration to the sufficiency of the information provided to the RemCo in respect of the First Limb, which required RemCo to determine whether POL had provided to the Inquiry all the evidence and information that the Inquiry had required of it and that it had done so in the required timeframes.
- 7.52 As to that assessment:
- (A) The February RemCo Paper was short (seven pages of which little more than one page relates to the Inquiry Metric), contains limited information (the three-sentence rationale for the recommendation that this metric had been achieved was the extent of the evidence provided) and RemCo was not provided with the underlying materials, although members could have asked to see that information.
  - (B) It also appears likely that those providing the information had not in fact reviewed the document tracking POL's responses to the Inquiry's Rule 9 requests or in fact received it at all, as to which:
    - (1) It was put to us that the statement "*we have reviewed*" in the February RemCo Paper (in the sentence "*we have reviewed a redacted copy of the Rule 9 Notice updates to the Steering committee that indicate that we have responded in a timely fashion to all requests for information*") should be read as meaning that the relevant POL function had reviewed that document and not only those individuals in POL Human Resources who had prepared the February RemCo Paper.
    - (2) However, we have not seen any evidence that Ben Foat or his team were asked to comment or sign off on the February RemCo Paper. Indeed, it is not clear whether a document containing redacted Rule 9 updates existed at all such that anyone could have reviewed it, though an unredacted copy does appear to have existed. We do not have access to the totality of POL's records to determine whether that is in fact the case.
  - (C) As to Sir Wyn Williams' 16 November 2021 statement regarding the responses that he had received to a request for the waiver of LPP by BEIS, UK Government Investments, POL and FUJITSU, our reading of that information is that, whilst Sir Wyn does express that he was "*very pleased to report that all four institutions responded to my request within the timescale I specified*" there is no suggestion that Sir Wyn's approval in relation to POL goes beyond that broad statement.
  - (D) We have reviewed the letters said to have been in support of the proposition that Sir Wyn Williams was "*pleased with the level of support provided by POL*". As we have set out above at paragraph 0, we consider that they do provide limited support for the notion that POL was assisting the Inquiry but were not in any way determinative.
  - (E) Taking those matters in the round, we have concluded that had the information set out in the February RemCo Paper been the only information that the RemCo had



access to then this would have been an insufficient basis for it to conclude that the First Limb had been achieved.

- 7.53 However, we do not consider that the RemCo made its decision purely on the basis of the information that POL Human Resources provided. We understand from our discussions that the RemCo members, who were well versed in POL's engagement with the Inquiry, largely disregarded the reasoning supplied by POL Human Resources and instead used information from outside of the RemCo papers to form their views.
- 7.54 The minutes of the 22 February 2022 RemCo are of no assistance in determining what was in fact considered. They do not record any discussion of the Inquiry Metric at all and so there is no written record of whether the Inquiry Support Target was discussed or the basis on which the RemCo concluded that it had been achieved. We are therefore again required to rely on the discussions that we have had with relevant individuals and other documentation to reach a conclusion as to what happened. In particular, it is relevant that:
- (A) Ben Tidswell sat on the HRC and each of Ben Tidswell, Tim Parker, Lisa Harrington and Tom Cooper had received updates in relation to the Inquiry in the course of their broader POL engagements.
  - (B) Further, the POL Board had received the Appendix which set out the Inquiry's prior and upcoming information requirements and the steps that POL had taken to engage with them. Each of the RemCo members sat on the POL Board and so would have received this paper and listened to or engaged in the relevant discussion. Ben Tidswell is recorded in the minutes of the 25 January 2022 RemCo meeting as having raised this paper as a relevant document to be considered by the committee in assessing the Inquiry Support Target.
  - (C) We have seen the Appendix and, on balance, it contains sufficient information for the RemCo to reach a view that POL had indeed been providing information to the Inquiry in accordance with the Rule 9 requests and on time and that the Inquiry had not expressed concerns about POL's engagement as of 25 January 2022.
  - (D) There had also been a number of updates at Group Executive and Senior Leadership level at which POL's engagement with the Inquiry had been described as "*good*" or "*on track*". Whilst POL Human Resources may not have reviewed the Rule 9 updates, it is likely that they would have had an understanding that requests made by the Inquiry had been complied with by POL.
- 7.55 On balance, therefore, the RemCo members likely did obtain sufficient information as to the substance of the POL's engagement with the Inquiry and that they reached their conclusions based on that information (thereby exercising their own independent judgement) but that this was notwithstanding the RemCo's own governance and the information supplied to the RemCo by POL Human Resources, which was inadequate.
- 7.56 We have therefore concluded that RemCo's decision to approve the First Limb fell within the range of reasonable decisions open to it because:

- (A) The terms of the TIS and the Implementation Approach approved by the Shareholder entitled RemCo to apply its discretion to determine whether the performance of participants had satisfied the Inquiry Metric as a whole together with any sub-target within it “*in the round*”.
- (B) Whilst the evidence provided to the RemCo by POL Human Resources was weak or, in the case of the Rule 9 updates, may not have been reviewed, RemCo had access to a significant amount of information outside of that provided to it as well as first-hand experience of the work that had been ongoing in relation to the Inquiry. At that time, the information that we have seen and which was available to RemCo members indicated that POL had met the Inquiry’s information requirements and had done so on time. We have concluded that it was this broader information that RemCo relied on.
- (C) Throughout the period of our review, RemCo received updates informing it that progress against the Inquiry Support Target was “*good*” or “*on track*”. We have not identified any information in the documentation that we have reviewed or in the Appendix that would suggest that those progress updates were made on anything other than a reasonable basis or that the Inquiry had suggested as of 22 February 2022 (or before 31 March 2022 when payments were made) that POL was not assisting it in accordance with the wording of the Inquiry Metric.<sup>27</sup>

7.57 Notwithstanding our conclusion that RemCo reached a justifiable decision, that was despite and not because of the governance in relation to this decision and the TIS scheme more generally. We have identified two primary failings in this regard:

- (A) POL Human Resources and RemCo failed to identify until shortly before the point at which RemCo was required to make a decision that the Inquiry would finish after the TIS performance period even though it was clear when the Implementation Approach was approved that this would be the case.
- (B) POL’s preparation of minutes of meetings in relation to the TIS, and so the Inquiry Support Target, was poor. In relation to some meetings that we discussed with those involved, they were able to describe to us discussions that took place in relation to which there is no record whatsoever.

#### RemCo’s assessment of the Second Limb

7.58 As to the basis on which the Second Limb was assessed, there is no discussion of the Inquiry Metric or the Inquiry Target in the minutes of the 22 February 2022 meeting and so there is no written evidence on which to base a conclusion as to how the Second Limb was read by RemCo. The RemCo members’ recollections varied on this point:

- (A) Ben Tidswell recalled that RemCo was clear that it was in effect assessing performance against an updated form of the metric and was now determining whether to reward POL staff who had “*worked their socks off*” to meet the Inquiry’s

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<sup>27</sup> We are aware that there has subsequently been focus on POL’s disclosure to the Inquiry and a number of documents which were responsive to Rule 9 requests or otherwise of interest to the Inquiry were not disclosed as they ought to have been. As we understand the position, POL became aware of those matters after this decision had been made.

requirements and who should not be penalised for the fact that it would no longer finish within the period relevant to the RemCo's assessment of the TIS, which was a development that they did not have control over.

- (B) Lisa Harrington told us that RemCo did not follow the Inquiry Support Target precisely as it was written down and instead interpreted it in a different way (*i.e.*, the First Reading) and that there was sufficient evidence to support the Inquiry Support Target as having been achieved on the basis of that reading. However, her view was that if the Inquiry Support Target had not been assessed in this way, then it should have been RAG rated as red and not green (*i.e.*, it would not have been achieved).
- (C) Tom Cooper's recollection was that the materials provided to the RemCo did not provide it with accurate information and that RemCo had not considered the Inquiry Support Target sufficiently closely. He considered that the metric should not have been determined as achieved and that the RemCo did not consider or discuss whether it had been a hit or a miss. As such, he considered that the decision that the RemCo reached was incorrect.

7.59 The minutes of the 22 February 2022 meeting record RemCo as having resolved that "*The recommendations for the core awards for the Transformation Incentive Scheme (TI scheme) should be approved for payment [i]n March 2022, including the recommended enhanced awards for those 7 individuals Identified as being consistently high performers.*"

#### Exercise of discretion

- 7.60 We have discussed the exercise of discretion with each person that we have spoken with. It is apparent that RemCo members are somewhat unclear about how they are to apply discretion and at which point in the process of assessing whether a metric or target has been achieved they ought to do so.
- 7.61 RemCo's decision about what the Inquiry Support Target meant was not an exercise of discretion. If a metric is drafted in such a way that it can be read in one of two ways, as we consider that the Inquiry Support Target is, then it is open to RemCo to apply the reading that it considers is reasonable.
- 7.62 The exercise of discretion by RemCo applies when it is determining whether or not participants' performance has achieved a relevant metric or target such that awards ought to be made against it. That discretion, as set out in the TIS documentation, does not extend to determining that a target had been achieved where the evidence does not support it.

#### **Preparation of the Directors' Remuneration Report**

- 7.63 Had the RemCo proceeded on the basis of the First Reading of the Second Limb then the Directors' Remuneration Report as included in the Annual Report and Accounts was accurate, albeit that it would have been sensible for RemCo to include a clarification as to the basis on which it had read the Inquiry Support Target given that there are two ways of reading it and given that POL proceeded on the basis that this target would be validated using internal evidence and not a formal confirmation from Sir Wyn Williams and his team.

- 7.64 For the reasons that we have explained in this report, if the RemCo proceeded on the basis of the Second Reading of the Second Limb, then the explanation of the Inquiry Support Target as having been achieved was incorrect.
- 7.65 The documentary record in relation to the preparation of the Directors' Remuneration Report is relatively limited. The documents indicate that the position is as follows:
- (A) Due to a delay in signing the 2021 Annual Report and Accounts, the process for completing the 2021/22 Annual Report and Accounts did not commence until the middle of May 2022 and an advanced version of the Directors' Remuneration Report was not shared with the RemCo until the 5 July 2022 RemCo meeting.
  - (B) The Directors' Remuneration Report was considered at the 5 July 2022 meeting as follows:
    - (1) The paper for the 5 July 2022 meeting directed the RemCo to review particular sections of the Directors' Remuneration Report to make best use of the RemCo's input. In relation to the 2021-22 remuneration outcomes, including the targets outcomes and awards, the RemCo was advised that this section was not a priority area for feedback because these had previously been presented to the RemCo and because the POL Communications team had reviewed that section. The RemCo was, however "*asked to feedback on the presentation of the rationale for the Committee decisions on awards*".
    - (2) A draft of the Directors' Remuneration Report was provided to the RemCo in the papers for the 5 July 2022 meeting. This draft is evidently at a relatively early stage and a number of comments are included in the margins, though no comments were recorded in relation to the description of the Inquiry Support Target. The TIS metrics are described using the same formatting as in February RemCo Paper.
    - (3) The minutes of the 5 July 2022 meeting record that the RemCo was not in a position to approve the Directors' Remuneration Report in the form in which it was presented to the committee and that, in particular, there was concern about a lack of consistency between the Directors' Remuneration Report and the Chair and CEO statements in the remainder of the Annual Report and Accounts. There is no mention of the substantive content of the Directors' Remuneration Report in the minutes of this meeting.
  - (C) At the time of the 26 July 2022 RemCo meeting, Lisa Harrington is recorded as having been "*in the process of completing*" the Directors' Remuneration Report. The Directors' Remuneration Report was not presented to this meeting.
  - (D) The Directors' Remuneration Report was next presented to the RemCo and approved as part of the final Annual Report and Accounts at the 16 August 2022 RemCo meeting. In the papers provided ahead of that meeting, it appears that the Annual Report and Accounts was provided to the RemCo in final form (we can see

only the part of the paper that sets out the Directors' Remuneration Report because the remainder is redacted).

- (E) The relevant parts of the minutes for the 16 August 2022 meeting record the discussion in relation to the Directors' Remuneration Report as follows:

*“The Chair invited comment on the Directors' Remuneration Report, which had been circulated in advance of the meeting and subject to approval, would be included within the 2021/22 Annual Report and Accounts. The Chair and BT confirmed that their comments had been addressed in advance of the meeting and included within the report presented for approval. TC and TF were content to support the report as drafted.”*

...

*“The Remuneration Committee **RESOLVED** to **APPROVE** the Directors' Remuneration Report for inclusion within the Annual Report and Accounts 2021/22.”*

- (F) Having been approved by RemCo, the Directors' Remuneration Report was incorporated into the Annual Report and Accounts and provided to the Audit and Risk Committee for final approval.

7.66 It therefore appears that the RemCo members had reviewed the document and raised comments with the Chair and that these comments had been addressed. Those comments do not appear from the documents to have related to the way in which the Inquiry Support Target, or the decision that had been made in relation to it, was described in the Directors' Remuneration Report. That reflects our discussions with interviewees in the course of our review. Those we spoke to explained in relation to the Directors' Remuneration Report that:

- (A) The Directors' Remuneration Report was primarily prepared by the POL Human Resources team and then reviewed by the RemCo Chair.
- (B) The first draft of the Directors' Remuneration Report was prepared by POL's Reward Director. When produced, it did not include reference to the TIS at all and so the RemCo Chair had to request that this information be included. The recollection of those we spoke with is that the RemCo Chair spent a lot of time on the Directors' Remuneration Report working closely with POL Human Resources.
- (C) RemCo's external remuneration advisers were given the opportunity to review the Directors' Remuneration Report prior to its finalisation.
- (D) The process of preparing the Directors' Remuneration Report was protracted particularly because of the need to align it with the remainder of the Annual Report and Accounts which was being drafted at broadly the same time. This reflects the discussion at the 5 July 2022 RemCo at which the Directors' Remuneration Report was not in a position to be approved.

(E) The Directors' Remuneration Report was circulated to the RemCo on more than one occasion and also to the UK Government Investments team and the RemCo's external remuneration advisers. None of those with whom we spoke identified in the course of their own review that the Inquiry Support Target as set out in the Directors' Remuneration Report did not reflect the basis on which that sub-metric had been determined to have been achieved by the RemCo or that a clarification ought to have been made to reflect the unclarity in its drafting and therefore how RemCo had read the Inquiry Support Target.

7.67 It therefore appears that attention was not given to the description of the TIS metrics which had already been approved at the 22 February 2022 meeting and which were, it seems, directly copied into the Directors' Remuneration Report from the papers provided to the RemCo in advance of the 22 February 2022 meeting. The RemCo's focus was instead on other aspects of the Directors' Remuneration Report such as ensuring that the message that it presented was consistent with the remainder of the Annual Report and Accounts.

**Simmons & Simmons LLP**  
**August 2023**