

[DRAFT]

Update to Post Office Limited Board re: Horizon Legal Issues - 22 July 2013

1. CRIMINAL LAW

1.1 Prosecution Case Review

1.1.1 Prosecutors' Duty

- Prosecutors have a continuing duty to act properly and fairly.
- Part of that duty requires them to disclose to the Defence any material which undermines the prosecution case or assists the defence case.
- This assessment is made on a case-by-case basis.
- Through its criminal law solicitors Cartwright King (CK), POL is complying with that duty by reviewing past and present prosecutions to identify those cases where the Second Sight (SS) Interim Report ought to be disclosed.
- The Defendant will then decide whether to apply to the Court of Appeal for permission to appeal a conviction based on any fresh material disclosed.

1.1.2 Review to Date

- As at 22.07.13, CK has reviewed 124 prosecution files.
- Of the cases reviewed, CK has provided specific advice on 9 files, and will provide specific advice on a further 3 files.
- That advice has resulted in:
 - o the prosecution being discontinued in 3 cases;
 - o disclosure being provided in 6 cases;
 - o a recommendation that POL oppose any appeal made following disclosure of the fresh material.

[NB. In one case where specific advice has yet to be provided, CK has indicated that it will advise POL not to oppose any appeal made following disclosure of fresh material, but for reasons unrelated to Horizon.]

- CK has also overseen a review of the prosecutions undertaken in Scotland and Northern Ireland:
 - o CK has contacted the Scottish prosecutor about the SS Interim Report in 2 cases; and
 - o has not identified any concerns with prosecutions in Northern Ireland.

- CK will also review the pre-Separation prosecution files held by Royal Mail dating back to 01.01.10. RM requested these be retrieved from storage on 18.07.13.

1.2 Compensation for Miscarriage of Justice (s. 133 Criminal Justice Act 1988)

Compensation is payable by the Secretary of State where a newly discovered fact shows beyond a reasonable doubt that there has been a miscarriage of justice, i.e. where:

- the new facts show the defendant was innocent; or
- no reasonable jury could have convicted having considered the new facts.

CK has advised that although the SS Interim Report ought to be disclosed in some cases, it does not believe that any of those cases would satisfy this test such that compensation would be payable under the Criminal Justice Act.

1.3 Criminal Cases Review Commission (CCRC)

The CCRC has written to Paula Vennells seeking information about:

- the criminal convictions which might be affected by the SS Interim Report; and
- the steps POL is taking in response to the SS Interim Report.

The CCRC can consider criminal convictions which have been upheld following an application to the Court of Appeal, or which were based on a guilty plea made in a Magistrates (i.e. lower) Court.

POL acknowledged the CCRC's letter on **[[TO BE CONFIRMED]]**, with a substantive response to be provided by **[[26.07.13]]**.

CK has advised POL that the risk of the CCRC having jurisdiction to review any conviction is **low**.

1.4 Brian Altman QC

As part of the assessment of the overarching criminal law issues, POL will also be consulting Brian Altman QC, a leading criminal barrister and former First Treasury Counsel, to advise on:

- CK's case review (bearing in mind CK will in many cases be reviewing their own work as the original prosecutor);
- the expert evidence POL receives from Fujitsu about Horizon in criminal prosecutions;
- POL's response to the CCRC;
- Any other potential governmental / regulatory action which POL may face, e.g. from the Attorney General's office;
- POL's future prosecution strategy generally.

2. CIVIL LAW

2.1 Potential Claims against POL

There are a variety of possible claims which a SPMR could seek to pursue against POL following the SS Interim Report.

As at 22.07.13, no claims have been made based on the SS Interim Report.

Potential claims should be assessed on a case-by-case basis given:

- the different sources of, and defences to, potential liability; and
- the different remedies/compensation which could follow depending on how the claim is framed.

2.2 Resolving Second Sight Review Cases

POL continues to engage with SS with the aim of resolving the cases under its investigation by [[end October 2013]].

On 19.07.13, POL met with SS and agreed that **[[RW: is this fair in light of Susan's email of 21.07.13 at 1708?]]**:

- SS would adopt a "theme-based" review of cases, i.e. cases would be connected to the issues outlined in para. 7.2 of the SS Interim Report;
- any individual case not resolved through SS's review could then be referred to an independent mediator who would seek to facilitate a resolution between POL and the SPMR;
- if mediation did not result in a conclusive resolution, the SPMR could pursue his issues through any other independent channel, e.g. the court process.

SS has stated that it will not be able to conclude its review by the end of October 2013. POL has offered to assist SS meet this target by:

- agreeing a revised scope to focus on the key issues; and/or
- providing additional resource to SS.

To date, SS has resisted both offers.

2.3 POL Claims for Debt Recovery

Allegations concerning the accuracy of Horizon data are also made in defences to court proceedings brought by POL to recover debts from SPMRs.

These allegations are assessed on case-by-case basis to differentiate genuine concerns from general, unsubstantiated assertions which could frustrate legitimate debt recovery action.

Currently, cases which raise genuine concerns have been put on hold pending conclusion of the SS review. These cases are monitored for any statutory time limits which might become applicable.

3. DIRECTORS' DUTIES

POL's directors are subject to various personal duties including the duties to:

- act in accordance with the company's constitution and for a proper purpose;
- promote the success of the company;
- exercise independent judgment;
- exercise reasonable care, skill and diligence.

Provided a director makes fair and reasoned decisions in good faith, s/he is unlikely to breach these duties.

If a director takes a decision in bad faith or maliciously, this could create personal liabilities, e.g. for:

- malicious prosecution against an SPMR;
- breach of the Data Protection Act in misusing personal / Horizon data;
- inducing a breach of contract between POL and an SPMR.

The duties are owed to the company, i.e. POL, and can only be enforced by POL. In rare circumstances, these duties can be enforced by a shareholder (i.e. BIS) acting on behalf of POL (a "derivative action"). These duties cannot be directly enforced by others, e.g. employees, contractors and/or SPMRs.

[[Add piece from AP re: potential personal liability for POL's failure to disclose something in a prosecution case]]

Directors should be careful when externally commenting on specific SPMRs / cases as they can be held personally liable for any defamatory comments.

[[POL Legal is considering the implications of the SS Interim Report for POL's D&O Liability Insurance and will report to the Board separately on this.]]

[[22 July 2013]]