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POST OFFICE LTD BOARD

Update following the publication of the Interim Report on Horizon

1. Purpose

The purpose of this paper is to:

- 1.1 update the Board on latest events; and
- 1.2 request approval of the way forward approach suggested in managing the way forward with the SS independent report;

2. Background

- 2.1 As the Board are aware in 2012 a decision was made following discussions with James Arbuthnot MP (JA) to appoint independent forensic accountants (SS) to work with Post Office in reviewing [WHAT]. They begun work immediately to an agreed TOR.
- 2.2 In November 2012 JA instructed POL and SS to work with the Justice for Subpostmasters (JFSA) saying that SS needed to make sure that the JFSA were 'happy' with their work/ report. At this time a separate agreement was entered into between POL, SS and the JFSA with the intention of allowing subpostmasters to report any concerns they had to the JFSA and/or SS.
- 2.3 It was agreed that an interim report was to be published in July 2013 before the Parliamentary summer recess.
- 2.4 By this time SS had undertaken work on 4 cases out of 47.
- 2.5 This interim report was discussed with JA plus 4 other MPs on Monday 7 July when it was subsequently released in to the public domain. Both JA and Post Office also issued press releases at the same time (attached for completeness).
- 2.6 In addition JA requested that the Postal Services Minister present a statement in the House of Commons on the following day where she was supportive of Post Office's stance.
- 2.7 Post Office has a duty to look after the public money it is entrusted with. If it decides that money has been inappropriately taken, it can take both civil and criminal proceedings.
- 2.8 Where it undertakes criminal prosecutions it does so itself without using the CPS. In doing so it does use external lawyers to advise on the specific criminal charges (usually theft, fraud or false accounting) and the likelihood of conviction. It abides by the Prosecutors Code to ensure that prosecutions are proportionate and in the public interest.

3. Current Activities already underway

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3.1 **[Central point of contact:** All queries from any persons thinking of challenging a conviction are being channelled through the Company Secretarial office for the moment.]

3.2 **Press monitoring:** The Comms team are monitoring and collating all press coverage.

3.3 **New expert:** A new expert to give evidence on Horizon in our criminal prosecutions has been obtained upon the recommendation from our external criminal lawyers that this be done.

3.4 Criminal case review:

3.4.1 We have been advised by our external criminal lawyers to undertake a review of all cases going back to the time of the migration from old Horizon to Horizon Online (aka HNGX) – 1st January 2010 - and this has already begun. They are essentially looking at whether or not anything in the SS interim report should be drawn to the attention of any defendants (current or past) and if so they will be writing to the relevant defendants providing them with a copy of the SS interim report. We have an ongoing legal duty as the prosecutors to do this. They are starting with the cases POL has itself undertake since separation last year.

3.4.2 It is important to note that we believe (precise records from RM are not available) that we will have undertaken circa 55 prosecutions a year. Our external lawyers have advised us that they believe there will be around 5-10% of these which may be successfully overturned and the convictions quashed.

3.4.3 Each individual has to seek leave to appeal to the Court of Appeal if they want to seek to overturn a conviction. The Court of the Appeal will look at each case on its merits and will consider what evidence a person was convicted on: for example there may be Horizon evidence but also other paper trail evidence or even admissions of guilt. It is by no means certain that each appeal will be successful.

3.4.4 We may also face civil suits for wrongful conviction. The consequences of this are:

3.4.4.1 Malicious Falsehood (recover financial losses plus damages)

3.4.4.2 Defamation (damages, undertakings and an apology)

3.4.4.3 Wrongful termination of their contracts (damages).

3.4.4.4 Harassment (if we have been over-zealous in recovering debts – again damages is the remedy)

3.4.5 If we abandon prosecutions we may also face claims for e.g. malicious prosecution.

Post Office's external lawyers, who act in our criminal cases, have a responsibility to notify the defence of any new evidence, "which might reasonably be considered capable of undermining the case for the prosecution..or of assisting the case for the accused". They are currently undertaking a review of our criminal cases since the introductions of the new Horizon system this will involve RMG as pre-separation RMG acted as the prosecuting authority. The case review will include all cases, whether current or those which have been resolved either by conviction or a guilty plea. Where

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they consider that the conviction may not be safe given the new evidence which is provided within the SS report they will notify the defendants or their lawyers and send a copy of the relevant information.

The initial advice is that approximately five cases (out of 55) will require to be notified and then it is up to the defence to consider the evidence and to decide whether to appeal against conviction. Such an appeal would be made to the Court of Appeal who may agree to a re-trial out of time.....

4. Proposed Way Forward Actions:

- Assign a programme lead and internal project manager, the recommendation is that this is an external to support the working group. Ideally someone who has had previous investigative experience to enable management of SS. (note Simon is leaving the business shortly).
- Consider establishing an internal ring fenced working group to support the remaining Spot Reviews.
- The Branch User Group needs to be considered alongside the existing structure with the NFSP. Recommendation/ToR and approach.
- Agree the ToR with SS for the remaining spot reviews.
- One to one meetings with interested MPs?
- Terms of Reference to be developed for the Independent review of new cases.
- **Technical considerations (Lesley):**
 - Review the messaging and procedures when a SPMR has to deal with a communications failure – change as appropriate.
 - Review the hardware failures. Identify improvements.
 - Consider a ‘suspense account’ at a branch level. Cost/process/implementation.
- **Process (Angela):**
 - Create a central repository for all SPMR cases. All 47 cases which have been raised with SS in the first instance and then Legal cases. Review all sub post master interactions, eg P&BA, Legal, Security, NBSC.
 - Review/Create process map for support of Sub post masters and change where appropriate.
 - New cases: Reissue communications to the branches and agree mechanism for adding new cases to be reviewed
 - Consider an ‘outreach’ investigations support function. Cost/scale/responsibilities.
- **Behaviours (Angela):**
 - Check how we are dealing with cases and ensure we are handling delicately – how can we demonstrate that we are improving. Angela
 - Review our current training in light of the comments made in the SS report (process and behaviours).
 - Interventions team – change of name?
- **Communications (Mark):**
 - Communications plan for the summer to cover BBC, and computer weekly et al.
 - Communication to all MP’s who have cases.
 - JA/AB

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4.1 [A central contact point for all claims that come to us] Post Office will undoubtedly receive a number of communications from sub postmasters or ex sub postmasters who are aggrieved as to how they were treated, we need to deal with these properly, I would suggest by internally investigating the case and then inviting the sub postmaster to come in and discuss their case. This process will need to be carefully managed as again these could give rise to additional claims.

4.2 The Working Party (& the conclusion of the SS investigation and report)

- 4.2.1 We will establish a 'working party (to include the JFSA) to complete the review process and look at the thematic issues which have emerged (particularly with regard to training and support);
- 4.2.2 Following the meeting with JA and the MPs and the comments made in the House it is clear that SS will have to continue to be involved in this matter our suggestion is that we use them to give evidence to the working party. (NEED TO CHECK HOW ACCEPTABLE). In addition following our ministers statement in the House it also seems that we will need an independent chair for this group.
- 4.2.3 Timing, it was stated that the final SS report would be concluded by the Autumn so it essential that no time is wasted over the summer in setting up the working party as described in 3.1 above. That working party could focus on the 20 spot reviews that SS have completed but not delivered to Post Office.

Post Office is obliged to continue working through cases which have been generated through MPs (and others may be added to that list) and to the JFSA cases.

New MP cases may come through the JFSA or JA and we need to determine whether they should form part of the SS work, if so question whether these could be completed within the autumn deadline

To gain agreement from JA and JFSA as to how the working party is going to operate so that it can start to meet quickly. This will cover the 20 spot reviews where SS have already prepared them.

Some of the MPs cases (approximately half) have no evidence and notwithstanding that SS have tried to contact the sub postmasters involved and therefore it will not be possible for those cases to be reviewed. This has not yet been broached with the relevant MPs although JA is aware.

4.3 An independent review to consider a "safety net" option

- 4.3.1 To conduct a review as to how Post Office might set up an independent safety net to adjudicate in disputed cases in the future.

4.4 The Branch User Forum

- 4.4.1 to set up a 'Branch User Forum' involving sub-postmasters and other relevant stakeholders to provide feedback on our training and support processes on an continuing basis.

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- 4.4.2 These actions have been broadly agreed with JA and JFSA although both of those parties were pushing for more specific undertaking especially with regard to cases where Post Office had brought a criminal prosecution and for the independent adjudicator to be an “ombudsman”.

4.5 Budgeting

- 4.5.1 The activity to deal with this matter will need to be properly funded and budgeted for. At present it is estimated that this will cost somewhere in the region of [X] but there is clearly a lot which would change.
- 4.5.2 Secondly there is the possibility the Post Office might end up having to pay out compensation if legally that was the position it found itself in. In this case a fund will also need to be budgeted for and it may not be an insignificant sum.

4.6 Options on “Claims”

- 4.6.1 **Two Options:** Two approaches to this logically present themselves:

4.6.1.1 **A Reactive approach** – we wait for any criminal cases to be overturned and for claims for compensation to be made. We then decide whether to settle or fight these on probably a case by case basis.

4.6.1.2 **A Pro-active approach** – where following the publicity in the wake of the SS interim report Post Office could proactively invite sub postmasters and former sub postmasters to contact us to raise issues. There is a material and significant risk in the Pro-active approach, not least because it will lead sub postmasters to expect compensation and whilst we may have to pay compensation if we are found to be in the wrong (wording) these claims could be considerable eg excluding the criminal cases, loss of business/ home/ marriage breakdown/ ill health.

- 4.6.2 **Recommendation:** The recommendation is to adopt the Re-active approach and assess individual claims on their merits as and when they arise. Where it is considered that there is little chance of success for the defendant that Post Office should defend the claim. This could give rise to the accusation that Post Office is being “bullying and unsympathetic”. There is clearly a balance which is required with regard to legal costs and paying compensation to defendants and a policy will need to be developed.

5. Next steps

- 5.1 Implement the agreed way forward following the Board meeting to which this paper relates.

6. Risks/Mitigation**7. Conclusion****8. Recommendations**

The Board is asked to:

- 8.1 note the update and actions set out above;

Title of Paper

Name of Person Responsible
Date of Submission

Page 5 of 6

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- 8.2 approve expenditure of £m; and
- 8.3 delegate authority to X to WHAT.

Susan Crichton
10th July 2013