

Post Office Prosecution Policy

England and Wales

- 1. Introduction**
- 2. Scope and Aims of this Policy**
- 3. General Principles**
- 4. The Decision to Prosecute**
- 5. Charging Suspects**
- 6. Disclosure**
- 7. The Acceptance of Guilty Pleas**
- 8. Recovery: Confiscation, Compensation & Costs**

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1. Introduction

1.1. The investigation and prosecution of crime in and against the Postal Service can be traced back at least as far as the 1680's, when an Assistant Solicitor to the General Post Office was tasked with the investigation and prosecution of those offending against the mail; thus it is possible to trace a continuous and unbroken line of investigative and prosecutorial activity by the Postal Service in its various guises for over 350 years. Upon the separation of Post Office Ltd from Royal Mail Group on the 1st April 2012 Post Office Ltd determined to retain that historic function.

1.2. In England and Wales both the investigative and the prosecuting functions are conducted by Post Office Ltd.¹ In Scotland, Post Office Ltd's representative agents² report alleged criminal activity to the Crown Office and Procurator Fiscal Service ('COPFS')³; in Northern Ireland Post Office Ltd. Security Managers report to the Public Prosecution Service following the same processes as do the police services in those jurisdictions.

1.3. This Policy statement is intended to explain the way in which Post Office Ltd. will deal with allegations of crime committed against our assets in England and Wales. We will abide by the terms of this Policy in deciding whether to prosecute in any particular case. In applying this Policy to the decision-making process we will act fairly, openly and with a high degree of transparency; we will not discriminate against, nor favour, any individual, group or organization; we will strive to act objectively, impartially and with integrity; and we will consider any relevant material brought to our attention by an interested party.

¹ Post Office Ltd. is a recognized private prosecutor by the Ministry of Justice; currently Post Office Ltd. delegates the prosecuting function to Messrs. Cartwright King Solicitors.

² Presently Messrs. **bto** Solicitors, Edinburgh.

³ COPFS recognizes Post Office Ltd. as a Special Reporting Agencies (SRA).

1.4. We use the following terms and meanings in this Policy: 'suspect' – a person who is not the subject of formal criminal proceedings; 'defendant' – a person who has been summonsed to appear in a criminal court or charged with a criminal offence; 'offender' – a person who has admitted guilt to a criminal court or who has been found guilty by a criminal court; 'prosecutor' – a person or organization instructed or retained by Post Office Ltd. to act as prosecutor on behalf of Post Office Ltd.

2. Scope and Aims of this Policy

2.1. Post Office Ltd. is a public body providing a wide range of essential public and commercial services to all those who rely upon us to deliver those services. We are answerable to Parliament, government, our commercial partners and the general public, all of whom place a very high degree of trust in the integrity of our operations. We carry a heavy responsibility for the guardianship of public and private assets⁴. We employ or are contracted to many thousands of trusted employees and small businesses who conduct millions of transactions daily across the United Kingdom. By reason of these matters it is incumbent upon us to ensure that the integrity and reputation of Post Office Ltd. and all with whom we work is protected against those who would breach the trust placed in us. The aim of this Policy is to achieve that end.

2.2. Post Office Ltd. also recognises the importance of the integrity of the mail service and the trust placed therein.

2.3. Accordingly Post Office Ltd will, subject to the terms of this Policy, prosecute under the criminal law all those who are alleged to have committed criminal offences against Post Office Ltd. and those alleged to have interfered with postal packets.⁵

2.4. This Policy applies equally to all employees of Post Office Ltd. without exception; and to non-employees, whether they are contractors, customers or those with no formal relationship with Post Office Ltd.

2.5. The aims⁶ of this policy are:

⁴ We include in this description all those who work with and for us, including those who are contracted to provide our services on our behalf.

⁵ Postal Services Act 2000, s.83

⁶ In no particular order of precedence.

- I. To ensure that those who steal, defraud or otherwise offend against Post Office Ltd. are brought to justice;
- II. To deter those would offend against Post Office Ltd. from doing so;
- III. To protect the physical and financial assets of Post Office Ltd.
- IV. To recover those assets, losses and shortages arising out of criminal conduct committed against us;
- V. To maintain and reinforce the trust placed in Post Office Ltd. by those for whom we provide public and commercial services and those who rely upon us to deliver those services;
- VI. To ensure consistency, in so far as possible, in the way in which we deal with those alleged to have stolen from, defrauded or otherwise offended against Post Office Ltd.

3. General Principles

3.1. Post Office Ltd. will ensure that prosecutors always apply the Code for Crown Prosecutors issued by the Director of Public Prosecutions.⁷ In addition Post Office Ltd will apply those further considerations set out in this Policy.

3.2. The decision as to whether to prosecute in any particular case, or to continue with any prosecution, will always be taken by Post Office Ltd. In arriving at such a decision Post Office Ltd. will always apply the terms of this Policy. Post Office Ltd. will never institute criminal proceedings against any person until competent legal advice has been provided by a properly qualified lawyer that such a course meets the terms of this Policy and the Code for Crown Prosecutors.

3.3. The decision-taker will be

- i. A qualified lawyer
- ii. Independent of any Post Office Ltd. department having a direct financial or other interest in prosecution.⁸

3.4. Subject to the terms of this Policy, each case will be considered solely on its own facts and on its own merits.

3.5. Prosecutors will ensure that the law is fairly and properly applied; that all disclosure obligations are fully met; that all Criminal Procedure Rules, Practice Directions and authorities are followed and that any Guidelines issued by the

⁷ 7th Edition, issued January 2013. Go to www.cps.gov.uk

⁸ This practice mirrors the approach of the Crown Prosecution Service, and is designed to ensure that the decision to prosecute is taken by someone who is independent of the victim/loser and of the investigation.

Attorney-General are followed. Prosecutors will apply the principles of the European Convention on Human Rights and the Human Rights Act 1998.

3.6. Post Office Ltd. will ensure that the decision whether to prosecute in any individual case will be taken in a timely manner, so as to avoid unnecessary stress and uncertainty in those subject to such a decision.

4. The Decision to Prosecute

4.1. Prosecutors review every case before the decision is taken to prosecute, and advise Post Office Ltd. on the decision to prosecute. Before advising as to whether a prosecution ought to be commenced, prosecutors will identify any evidential weaknesses in a case and advise Post Office Ltd. as to rectification. A prosecution will only commence when the case has passed both stages of the Full Code Test in the Code for Crown Prosecutors and accords with the provisions of this Policy.

4.2. In accordance with paragraph 3.2 of this Policy, the decision whether to prosecute, or to continue a prosecution, rests solely with Post Office Ltd. When taking that decision Post Office Ltd. will only apply this Policy and will consider and take into account all factors relevant to the particular case and contained within this Policy. Post Office Ltd. will not take into consideration any matter not contained within this Policy, or not identified as relevant by reason of any factor contained within this Policy

4.3. Once the decision to prosecute is taken, prosecutors will keep the case under a process of continuous review. Where at any time it appears to the prosecutor that a case will not meet the Evidential Stage of the Full Code Test in the Code for Crown Prosecutors, or concludes that a prosecution is not, or is no longer in the Public Interest, the prosecutor will advise Post Office Ltd. to discontinue the prosecution without undue delay.

4.4. When applying the Evidential Stage of the Full Code Test the prosecutor will have regard both to the matters set out in the Evidential Stage of the Full Code Test and, additionally, to the following factors:

- i. The reliability and credibility of witnesses and their evidence. Consideration will be given to issues of disclosure from an early stage in the decision-making process.

- ii. Particular emphasis will be given to the reliability, credibility and integrity of electronic and data-based evidence.

4.5. In applying the provisions of the Public Interest Stage of the Full Code Test the prosecutor will have regard both to the matters set out in the Public Interest Stage of the Full Code Test and, additionally, to the following factors:

- i. The quantum of any loss or shortage arising out of the alleged criminal conduct. Post Office Ltd. regard this as an important factor and accordingly consideration will be given to the following matters:
 - (a) The value in monetary terms of the loss or shortage. Whilst a lesser value⁹ may militate against prosecution it does not follow that any particular value will be determinative. A substantial or significant loss or shortage will usually result in prosecution even where other factors tend to militate against that outcome.
 - (b) Whether or not some or all of the loss or shortage has been repaid to Post Office Ltd. Again repayment may militate against prosecution but it does not follow that in all cases of repayment we will not prosecute.
- ii. The degree of sophistication employed to commit the offence(s). The higher the degree of sophistication employed in preparing, conducting or hiding any wrong-doing, or to

⁹ In general and subject to the other matters set out in this paragraph, a loss or shortage of less than £5,000 might indicate that we will not prosecute. This does not mean that we will always prosecute where the loss or shortage is greater than that sum, or that we will never prosecute where the loss or shortage is less than that sum, the value of the loss or shortage being but one factor to be considered. In appropriate cases we will prosecute where a loss or shortage is well-below that figure.

escape detection, the more likely it will be that prosecution will follow.

- iii. In cases of fraud or false accounting, the quantity or number of any multiple transactions or incidents. Again the greater the number of individual false transactions the more likely it will be that prosecution will follow.
- iv. The period over which the offending conduct has been committed. Generally, the longer the period over which the misconduct was committed, the more likely it will be that prosecution will follow. In appropriate cases a single incident of misconduct may be prosecuted.
- v. Implicating innocent parties. Attempts by a suspect to deflect guilt towards others, or to implicate others in their misconduct, or to accuse others of misconduct committed by the suspect, will usually be met with prosecution.
- vi. Vulnerable victims. Post Office Ltd. provides essential services to a number of particularly vulnerable sections of the general public, including the elderly; those who are infirm or physically disabled; those who have mental health issues or who are less competent; and those who rely upon the state benefits system for their income. Where misconduct is targeted at a particularly vulnerable section of the general public, prosecution is likely to follow.
- vii. The position and status of the suspect. Sub-postmasters hold a unique position of trust both in the eyes of Post Office Ltd. and the general public. Abuse of that trust is a serious matter and will usually attract prosecution.

viii. The circumstances of the suspect. Post Office Ltd. and prosecutors will always consider any material provided by the suspect or her representatives when determining the decision to prosecute. Such material may include, but is not limited to: bereavement; personal or family issues; and matters pertaining to the health or well-being of the suspect or someone close to them, including any mental health issues. Such material may make prosecution less likely but will not be determinative.

ix. Cost. Prosecution is an expensive process, both to Post Office Ltd. and to the public purse.¹⁰ Post Office Ltd. and prosecutors will weigh the cost of prosecuting a case against factors such as the likely penalty on conviction; the recovery or likelihood of recovery of any loss or shortage; and the wider Public Interest in prosecuting those who commit crime.

4.6. In applying the Full Code Test, no single factor will determine the decision whether or not to commence proceedings against any person alleged to have committed an offence. Each factor will be considered in the light of the other factors falling for consideration and an overall view will be taken by the prosecutor. Consequently this Policy vests a wide degree of discretion in both the prosecutor and in Post Office Ltd; accordingly the decision to prosecute will be taken in an open and transparent manner and should be readily-justifiable on both the facts of a case and in terms of those matters set out in this Policy. Best practice dictates that the decision itself and the reasons behind it are recorded in writing and retained on the file until the conclusion of a period ending 6-years after the end of the case.

¹⁰ *E.g.* where a suspect qualifies for Legal Aid.

4.7. No prosecution will be commenced or continued in circumstances where it is, or it becomes likely, that the courts would regard the prosecution as oppressive, unfair or an abuse of the process of the court.

5. Charging Suspects

5.1. Whilst the commonest offences committed against Post Office Ltd. are those of theft, fraud and false accounting, prosecutors acting on behalf of Post Office Ltd. are not limited to those charges and will consider and bring the most appropriate charge(s) which meets the circumstances of the individual case.

5.2. In addition to those matters set out on the Code for Crown Prosecutors, Post Office Ltd. will apply the following considerations:

- I. Alternative charges. Where a suspect is charged with offences of theft and false accounting arising out of the same basic facts, those charges will always be alternative charges.¹¹ This approach is not to be regarded as an invitation to plead guilty to any particular charge(s).
- II. Where more than one suspect is to be charged, separate consideration will be given to each suspect's case as to the most appropriate charge(s) in his case.

¹¹ This is consistent with the decision of Sachs, LJ., in *R. v. Eden* 55 Cr. App. R. 193, CA

6. Disclosure

6.1. Post Office Ltd. will be bound by all of the relevant Acts, Codes, Protocols and Guidance set out below:

- The Criminal Procedure and Investigations Act 1996
- The Protocol for the Control and Management of Unused Material in the Crown Court
- The Code of Practice issued under Part II of the Criminal Procedure and Investigations Act 1996
- The Attorney-General's Guidelines on Disclosure

6.2. Post Office Ltd. will take all reasonable steps to identify and record material which may meet the test for disclosure,¹² and will retain any such material for a period of not less than 6 years. In so doing, Post Office Ltd. will operate a continuous process designed to identify any material, whether the subject of a criminal investigation or not, which may relate to the integrity and reliability of Post Office Ltd.'s I.T and data systems. Any such material as is identified will be recorded and retained for a period of not less than 6 years.

¹² Material which "...might reasonably be considered capable of undermining the case for the prosecution ...or of assisting the case for the accused...." CPIA 1996, ss.3&7

7. The Acceptance of Guilty Pleas

- 7.1. In appropriate cases prosecutors will consider whether any offer of plea(s) to particular charge(s) meets with the Scope and Aims of this Policy.
- 7.2. The decision whether to accept any offer of plea(s) rests with Post Office Ltd. only, acting on the advice of the prosecutor.
- 7.3. In cases where a defendant seeks to admit guilt on a basis other than that advanced by the prosecutor, Post Office Ltd. will only consider an offer of plea(s) where the offer is expressed in writing and in the form of a recognised 'Basis of Pleas' document signed by the parties.¹³ Post Office Ltd. is not bound to accept any such offer of plea(s).
- 7.4. In cases where the charges are expressed in the alternative and the defendant accepts the prosecution case without qualification, Post Office Ltd. will consider whether to accept pleas of guilty to particular charges by reference to those matters set out in paragraphs 2.5 and 4 of this Policy.
- 7.5. In cases where the charges are expressed in the alternative and the defendant seeks to admit guilt to particular charges on a basis other than that advanced by the prosecutor, paragraph 7.3 of this Policy will apply.
- 7.6. In any case where a defendant seeks to enter guilty pleas on a basis not agreed by Post Office Ltd., we will invite the court to hear evidence to determine the facts upon which the defendant is to be sentenced.

¹³and which accords with the decision in *R. v. Underwood*, [2005] 1 Cr. App. R. 13 CA

8. Recovery: Confiscation, Compensation & Costs

8.1. Subject to paragraph 8.3, Post Office Ltd. will in every case seek to recover from offenders any losses, shortages and costs arising out of any criminal conduct committed by the offender.

8.2. Post Office Ltd. will in appropriate cases seek to obtain:

- i. Restraining Orders against assets owned or controlled by suspects;
- ii. Confiscation Orders against offenders under the provisions of the Proceeds of Crime Act 2002;
- iii. Compensation Orders;
- iv. Costs Orders against an offender, in the full amount of our investigation and prosecution costs;
- v. Any combination of these orders

8.3. Post Office Ltd. will only instigate and continue any recovery proceedings mentioned in paragraph 8.2 where it is fair and proportionate to do so. In assessing issues of fairness and proportionality Post Office Ltd. will consider the following factors:

- i. Those matter set out in paragraphs 2, 3, 4.1, 4.5.i, 4.5.viii and 4.7 of this Policy.
 - ii. The availability to the offender of realisable assets. In this respect it should be noted that many of those who commit offences against Post Office Ltd. own their own business and which continues to trade.
 - iii. The Cost to Post Office Ltd. Of pursuing such proceedings
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