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POST OFFICE LIMITED

PROSECUTION POLICY FOR ENGLAND AND WALES

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1. INTRODUCTION

- 1.1 Post Office Limited is a private limited company, wholly owned by Government.
- 1.2 It has been entrusted by Government to provide a number of services of general economic interest to the public through its branches across the UK.
- 1.3 Criminal offences against Post Office Limited's business, in particular theft, fraud and false accounting, adversely impact its customers and commercial partners, and challenge the viability of the services Post Office Limited provides.
- 1.4 Post Office Limited is committed to deterring and reducing criminal offending against its business by investigating offences, and by taking such action as it considers appropriate in the circumstances of the case.

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2. POLICY SCOPE

- 2.1 Post Office Limited has been an independent company since its separation from Royal Mail Group on 1st April 2012, retaining an investigative and prosecution function.
- 2.2 In England and Wales, Post Office Limited performs both investigative and prosecuting functions using external service providers for some of these functions.
- 2.3 In Scotland and Northern Ireland, Post Office Limited's Security Team carries out investigations and decides whether to refer a matter to the Crown Office and Procurator Fiscal Service in Scotland, or to the Public Prosecution Service in Northern Ireland. Post Office Limited does not make the decision to prosecute, nor does it carry on prosecutions, in Scotland or Northern Ireland.
- 2.4 The present policy is intended to explain the approach that Post Office Limited will adopt when it is suspected that crime has been committed against its business in England and Wales.
- 2.5 This policy applies equally to Post Office Limited employees, postmasters, operators, contractors and customers, as well as to any other person alleged to have committed a criminal offence against its business in England and Wales.

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3. POLICY OBJECTIVES

3.1 The general objectives of this policy are to:

- 3.1.1 ensure that Post Office Limited takes a fair, consistent and proportionate approach to criminal enforcement;
- 3.1.2 provide Post Office Limited decision makers with guidelines enabling them to reach appropriate criminal enforcement decisions;
- 3.1.3 inform the public and our commercial partners of the general principles Post Office Limited will use to guide its criminal enforcement decisions;
- 3.1.4 deter and reduce the commission of criminal offending against Post Office Limited's business;
- 3.1.5 preserve and maintain the viability and integrity of the services Post Office Limited provides to the public which criminal conduct comprises;
- 3.1.6 protect Post Office Limited's physical and financial assets; and
- 3.1.7 recover monetary losses and assets resulting from criminal conduct committed against its business.

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4. ENFORCEMENT OPTIONS

- 4.1 Post Office Limited's "**Contract Breach**" policy document ¹ sets out how Post Office Limited decision makers may act in relation to serious breaches of contract by postmasters operating postmaster contracts, and by operators of the New Model Contracts.
- 4.2 Where applicable, Post Office Limited will have regard to the terms of the "**Contract Breach**" policy before considering whether or not prosecution will be the most appropriate response to an allegation of crime.
- 4.3 If a criminal investigation is considered appropriate, it will be conducted by Post Office Limited's Security Team in accordance with the "**Conduct of Criminal Investigations Policy**" document.²
- 4.4 Post Office Limited often works in partnership with police forces and other enforcement agencies, particularly in cases where offences are alleged to have been committed by persons who are not Post Office Limited staff, agents or contractors, or where violence is alleged to have been threatened or used against Post Office Limited personnel or property, or where offences are alleged to have been committed against both Post Office Limited assets and/or personnel and assets of another agency.
- 4.5 In cases of the type referred to in paragraph 4.4, Post Office Limited may:
 - 4.5.1 invite the police and/or other enforcement agencies to investigate the allegation(s);
 - 4.5.2 pursue a joint investigation with police and/or other enforcement agencies;
 - 4.5.3 investigate the allegations without recourse to police or other outside agencies;

¹ Version 5.0 dated 7th April 2014, as revised or re-issued from time to time.

² Issued 29th August 2013, as revised or re-issued from time to time.

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- 4.5.4 invite another prosecuting agency to prosecute the matter;
 - 4.5.5 pursue a joint prosecution with another prosecuting agency; or
 - 4.5.6 pursue a prosecution without recourse to another prosecuting agency.
- 4.6 The choice of enforcement option may depend on factors such as, but not limited to, those matters set out in paragraphs 5.7 and 6.3 below, as well as the likelihood of non-compliance with, and the likely effectiveness or consequences of, any other enforcement options available.
- 4.7 Where the nature of the offence is so serious or the shortage or loss so substantial that enforcement action other than criminal action is inadequate and might lead to delaying criminal investigation and enforcement, Post Office Limited may move expeditiously to take criminal enforcement action.

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5. GENERAL PRINCIPLES OF CRIMINAL ENFORCEMENT

- 5.1 When making any decision whether to prosecute a person for a criminal offence, Post Office Limited will apply the Code for Crown Prosecutors issued by the Director of Public Prosecutions,³ as well as the further considerations set out in this policy document.
- 5.2 The decision whether to prosecute in any individual case will be taken with due diligence and expedition.
- 5.3 Post Office Limited will have regard to the Human Rights Act 1998 and the European Convention on Human Rights.
- 5.4 Post Office Limited will comply with the:⁴
- disclosure obligations under the Criminal Procedure and Investigations Act 1996 (and the Code of Practice issued thereunder);
 - Protocol for the Control and Management of Unused Material in the Crown Court;
 - Attorney General's guidelines on Disclosure and on the Disclosure of Digitally-Stored Material;
 - Criminal Procedure Rules and the Criminal Practice Directions;
 - Attorney General's guidelines on the Acceptance of Pleas; and
- 5.5 Each case will be approached according to general principles of fairness, consistency and proportionality.
- 5.6 Fairness and consistency do not require Post Office Limited to take a uniform approach in every case; rather it means adopting a similar approach in similar circumstances to achieve similar ends, taking into account the particular circumstances of each case.

³ Currently the 7th Edition, issued January 2013, but revised and re-issued from time to time.

⁴ As may be revised and re-issued from time to time

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- 5.7 Proportionality means that Post Office Limited action will be proportionate to the seriousness of the offence, the strength of the evidence against the alleged offender, the harm done by the offence, the impact of the offence on the community and on the services Post Office Limited provides and its business, taking into account the costs to Post Office Limited of investigation and prosecution as weighed against the likely outcome.

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6. THE DECISION TO PROSECUTE

6.1 A prosecution can only be brought where the evidence passes the two-stage test for prosecution set out in the Code for Crown Prosecutors.⁵

6.2 In order to satisfy the two-stage test referred to above (the “Full Code test”):

6.2.1 there must be evidence sufficient to provide a realistic prospect of conviction (the “evidential stage”); and

6.2.2 the prosecution must be in the public interest (the “public interest stage”).

6.3 Where the evidential stage of the Full Code test is satisfied, in addition to the public interest factors set out in the Code for Crown Prosecutors, additional public interest factors that might justify a prosecution by Post Office Limited include where:

- members of the public have suffered loss;
- a victim of the offence was particularly vulnerable (for example by reason of age, infirmity or physical or mental disability);
- the offence involves a serious or significant breach of trust;
- the actual amount of the shortage or loss to Post Office Limited, in particular where the conduct has resulted in a significant or substantial financial shortage or loss;
- the offence has or is likely to have an adverse impact on Post Office Limited’s business, brand, image or reputation;
- the offence (or the concealment of the offence) is sophisticated, involves multiple transactions, or was committed over a lengthy period of time;
- there is a history of similar past offences or misconduct;
- an innocent party has been falsely blamed or accused;
- the particular circumstances of the offender (such as his/her age, physical or mental condition, his/her general character or

⁵ Currently the 7th Edition, issued January 2013, but revised and re-issued from time to time.

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reputation, whether there is an absence of evidence of any previous offending or default);

- the particular circumstances of the offence (such as the pattern of offending, and whether it was, for instance, the result of deliberately calculated acts to benefit the offender);
- whether any or all of the shortage or loss has been (or realistically will be) repaid to Post Office Limited;
- any early voluntary disclosure or confession by the offender;
- the deterrent effect of a prosecution on the offender and others;
- any unreasonable or inordinate delay by Post Office Limited in reaching a decision;
- the cost of prosecution to Post Office Limited relative to the likely penalty on conviction and likely recovery of loss or shortage (although no decision will be made on this factor alone).

6.4 Following a decision to prosecute, Post Office Limited will keep the case under continuous review. Should it appear to Post Office Limited at any time that the case no longer satisfies the evidential stage of the Full Code test, or should Post Office Limited conclude that a prosecution no longer satisfies the public interest stage of the Full Code test, then Post Office Limited will discontinue the case without undue delay.

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

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7. DECISION MAKING

- 7.1 The decision to authorise prosecution, or any other decision under this policy, will be taken by the General Counsel for Post Office Limited, or any other member of the Post Office Legal Team to whom the General Counsel may delegate that authority, acting from time to time on the advice of external lawyers.
- 7.2 The decision to prosecute will be taken openly and transparently. The decision and the underlying reasons for it will be recorded in writing and retained by Post Office Limited until the expiry of a period of not less than six years following the conclusion of the case.
- 7.3 Prosecutions in the Magistrates' Court and the Crown Court are conducted by Post Office Limited's in-house lawyers, external lawyers or appointed agents.

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8. RECOVERY: CONFISCATION, COMPENSATION AND COSTS

8.1 Post Office will in each case consider whether or not to exercise its rights to recover any shortage or loss resulting from the offender's criminal conduct, as well as the costs of prosecution, subject to the general principles of fairness, consistency and proportionality.

8.2 Where Post Office Limited seeks to exercise its rights to recover a shortage or loss, it will do so by seeking orders for:

- Restraint against assets owned or controlled by suspects;
- Confiscation under the provisions of the Proceeds of Crime Act 2002;
- Compensation;
- Costs covering the investigation and prosecution; or
- Any combination of such or similar orders.

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9. THE ACCEPTANCE OF GUILTY PLEAS

- 9.1 In appropriate cases prosecutors will consider whether any offer of a plea to any particular charge meets with the scope and objectives of this Policy.
- 9.2 The decision whether to accept any offer of a plea or pleas rests with Post Office Limited only, acting on the advice of the prosecutor.
- 9.3 In cases where a defendant seeks to admit guilt on a basis other than that advanced by the prosecutor, Post Office Limited will only consider an offer of a plea or pleas where the offer is expressed in writing and in the form of a recognised 'Basis of Plea' document signed by the defendant or on his/her behalf by his/her representative. Post Office Limited is not bound to accept any such offer of plea or pleas.
- 9.4 In cases where the charges are expressed in the alternative and the defendant accepts the prosecution case without qualification, Post Office Limited will consider whether to accept a plea or pleas of guilty to particular charges by reference to the scope and objectives of this Policy.
- 9.5 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 9.3 of this Policy will apply.
- 9.6 In any case where a defendant seeks to enter a guilty plea or pleas on a basis not agreed by Post Office Limited, Post Office Limited will invite the court to hear evidence to determine the facts upon which the defendant is to be sentenced.

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10. REVIEW

10.1 This policy supersedes any previous Post Office Limited criminal enforcement action or prosecution policy document.

10.2 This policy will be reviewed annually.

Policy version:	v1: 22 January 2016
Policy owner:	General Counsel
Date of policy implementation:	25 January 2016
Date for review of this policy:	The first review to occur by 31 March 2017 and thereafter the policy must be reviewed by 31 March in each year.
Formal approval of policy by:	Post Office Group Executive