



Update on POL Post-GLO Litigation

Briefing for BEIS Ministers, Permanent Secretary and Special Advisors

1 September 2020



Agenda

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- 1.Approach to Court of Appeal Criminal Division (CACD)/Crown Court – Timings and Key Issues
- 2.Likely Outcomes for Cases In Front of CACD/Crown Court and POL Response Plan
- 3.Potential Future Liability and Compensation

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 - ii. POL Response to the Criminal Appeal Cases and Likely Outcomes
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- 3.Historical Shortfalls Scheme - Status and Next Steps
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1i. Approach to Criminal Appeal Cases:

POL's duties as prosecutor, Limb 1 abuse, Limb 2 abuse, bad faith

1. Duty of Disclosure

- a. In cases where POL has accepted/assumed responsibility as prosecutor, POL's duty of disclosure following conviction (whether by way of a verdict or guilty plea) is to (in accordance with Supreme Court authority):
 - i. disclose to the defendant any material which has come to light that might cast doubt on the safety of the conviction; and
 - ii. where there is a real prospect that further inquiry might reveal such material, to make that inquiry.
- b. In accordance with that duty POL has conducted a Post-Conviction Disclosure Exercise (PCDE), applying a wider test (in accordance with the Criminal Procedure and Investigations Act 1996) and disclosing any material that might reasonably be considered capable of undermining the case for the prosecution or of assisting the case for the accused.

2. Court of Appeal (Criminal Division) (CACD) Cases – 41 referred by the CCRC

- a. The CACD will consider whether a Crown Court conviction is unsafe on the grounds of:
 - i. Material non-disclosure; and/or
 - ii. Limb 1 abuse: a fair trial did not take place; and/or
 - iii. Limb 2 abuse: it was unfair for the prosecution to have been brought at all.
- b. Bad faith may be alleged/made out in an appeal case/s, but is not a pre-requisite for a finding that a conviction is unsafe.
- c. The CCRC's Statements of Reason set out why it considers the referred convictions to be unsafe on Limb 1 and Limb 2 grounds. POL is obliged to respond to these, and to any additional grounds of appeal permitted by the CACD (e.g. as raised by an individual appellant).
- d. There will be a hearing before the full CACD who will give a reasoned judgment, irrespective of the stance POL takes on the appeals. The court must rule on each appellant individually but can deal with them all in a single judgment, especially if there are common issues of fact and law applicable to them all.

3. Southwark Crown Court Cases – 6 referred by the CCRC

- a. Appeals from Magistrates Courts to the Crown Court proceed by way of retrial.
- b. An appeal can be opposed if the case meets the Code for Crown Prosecutors the Full Code Test (which includes considering the potential safety issues at point 2(a) above). If the case cannot meet that test, it must not be opposed.
- c. Unopposed appeals result in the overturning of the conviction but not a reasoned judgment.
- d. An opposed appeal will result in a full re-trial in the Crown Court. POL will be obliged to re-investigate and prosecute any such case in accordance with all prosecutorial duties.



1iii. Approach to Criminal Appeal Cases:

POL Response to the Criminal Appeal Cases and Likely Outcomes

- CCRC has referred all 47 cases on grounds of both limb 1 and limb 2 abuse of process, but does not allege systemic misconduct or bad faith.
- POL's Board is meeting on 4 and 8 September 2020 to decide the stance to be taken on each case i.e. whether it will "oppose" or "not oppose" each appeal.
- POL will set out its stance to the court and defence in "Respondent's Notices" to be filed on 2 October 2020, by when the defence will have received substantial disclosure through the PCDE. The Respondent's Notices need only respond to the grounds of appeal in the CCRC's Statement of Reasons.

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- 41 Cases before the CACD

- i. [Redacted]
- ii. [Redacted]
- iii. [Redacted]
- iv. Timings for CACD cases is set out in the "Timetable Slide". POL must indicate its stance in Respondent's Notices by 2 October 2020. The appellants then have 14 days (extendable) to apply to widen or add to the CCRC's grounds. The CACD will hold a directions hearing in November 2020 at the earliest. If the CACD permits the defense to argue systemic limb 2 abuse it will set a timetable for further written submissions, likely no earlier than December 2020. By then, the PCDE will be concluded and the Board will receive further advice on stance.

- 6 Cases before the Crown Court

- i. [Redacted]
- ii. Any appeal not opposed would result in the conviction being overturned at a hearing arranged shortly thereafter, but without a reasoned judgment.
- iii. [Redacted]
- iv. Any opposed case would first require a full re-investigation of the alleged offending and then be subject to a full re-trial in the Crown Court.



2i. Potential Future Liabilities:

Number of past convictions / potential claimants

No. of Cases	Comment
41 CACD Appellants (currently)	Legal Privilege
6 Crown Court Appellants (currently)	
10 cases provisionally not referred	
4 cases still under consideration by CCRC	Only 2 prosecuted by POL (other 2 prosecuted by DWP/CPS).
2 new applicants to CCRC	There are 2 additional CCRC applicants about which we are aware although POL has not yet been formally notified of them.
838 other cases in the PCDE not yet referred	Legal Privilege



2ii. Potential Future Liabilities: Follow-on Civil Claims

Potential Civil Claims

- Individuals whose convictions are overturned by the criminal appeal courts may have a resultant civil claim for damages against POL.
- If a conviction is overturned, the two main possible causes of action available to the claimants are:
 - 1. Malicious prosecution:** The claimant would need to demonstrate (i) a "lack of reasonable and proper cause" and "malice" (i.e. improper/wrongful motive) on the part of POL in bringing the prosecution.
 - 2. Breach of General Good Faith Duties** (available to non-GLO claimants). Possible claims include claims for shortfalls, loss of remuneration, personal injury and stigma.

IRRELEVANT

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Subject to defences on liability, the damages recoverable in respect of these different causes of action are:

Legal Privilege

Legal Privilege

Potential Values

Legal Privilege



2ii. ctd. Potential Future Liabilities: Follow-on Civil Claims

POL's options

- Broadly there are four options open to POL to deal with any civil claims:

Legal Privilege

- A summary table setting out the advantages and disadvantages of each option is at Appendix 1.
- To work out now, at this early stage, which scenario would best will involve a delicate exercise of judgement, and it is difficult to provide any definitive estimates of POL's likely quantum exposure and legal costs given the number of current variables. Nevertheless:

Legal Privilege

- A summary table setting out our modelling in various scenarios is at Appendix 2.



2ii. ctd. Potential Future Liabilities: Follow-on Civil Claims

POL's options and proposals for public communications

- If POL were to take a wholly reactive approach to these cases (vis. simply waiting for litigation), it would likely be said that POL was reneging on its commitment to right the wrongs of the past and instead forcing postmasters to proceed down a further lengthy and expensive court process at taxpayers' expense. This is obviously undesirable. As such, POL is in favour of taking a proactive approach.
- Attached at Appendix 3 is a proposed draft press announcement which could be made at the time POL files its Respondents' Notices on 4 October. The thinking behind the approach taken in the draft is that:
 - It makes clear that POL will deal with cases proactively and responsibly.
 - It leaves open the question of which of the proactive approaches (i.e. options 1, 2, or 3 on the previous slide) will be adopted so that POL can take a final decision in light of developments in the criminal appeals.
 - It avoids bald statements to the effect that affected postmasters will be compensated which could be taken as an acceptance of liability across the board, encouraging a large number of claimants with speculative claims to come forward in expectation of being given a pay-out.



3. Historical Shortfalls Scheme Status and Next Steps

Historical Shortfalls Scheme

- The scheme closed to applications at midnight BST on 14 August 2020.
- There will be some flexibility regarding any late applications and we have promoted a message that current or former postmasters who feel they have special circumstances that delayed their application beyond the closing date should contact the scheme.
- As of 8am on Tuesday 25 August there were 2013 applications. Multiple applications received shortly before the deadline are still to be logged, which could bring the total number of applicants to c.2,200.
- More detailed MI setting out the type and value of the claims received to date is at Appendix 4.
- Draft Terms of Reference for the 3 person Independent Advisory Panel are being finalised. The panel comprises legal, accounting and retail experts, whose role is to advise POL on the fairness of its responses to applicants.
- Following the formal closure of the scheme, work is being undertaken to understand the aggregate financial value (or “envelope”) of the applications, including formal principles for assessing claims for various heads of loss.
- Rory Phillips QC has been instructed to provide additional assurance for the scheme.

Over

Judicial review

- On 18 August 2020 Edwin Coe LLP filed and served a claim for judicial review of the scheme.
- The judicial review claim is framed as a challenge to a single decision of POL taken in relation to the design and operation of the scheme, which comprises three inter-related elements. Specifically, the Claimant challenges POL’s decision:
 - i. not to extend the time allowed for applicants for the scheme to decide whether or not to join the scheme;
 - ii. not to supply applicants with “sufficient information with which to make a fully informed decision” as to whether or not to join the scheme; and
 - iii. to require applicants to surrender civil rights when joining the scheme without first having supplied them with sufficient information with which (and with adequate time thereafter) to make a fully-formed decision.

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- POL is assessing the strategic considerations for engaging with Edwin Coe’s arguments in tandem with defending the JR.
- POL’s initial response must be filed by 10 September 2020. HSF consider that it could be at least 9 months between the issuing of the claim and any substantive hearing given that the Claimant has not applied for expedition.



4. Timetable

Ref	Timing	Decision/Event
1	2 September 2020	Advice (Civil): Draft Advice on civil liability including malicious prosecution (Helen Davies QC and Jonathan Kinnear QC)
2	4/8 September 2020	Decision: POL Board meeting to make provisional decisions on stance on Appeals.
3	By 19 September 2020	Decision: Board to confirm decisions on stance and approve draft RNs (allowing a week thereafter for any necessary amendments)
4	2 October 2020	Court proceedings: POL to file Respondent's Notices indicating which appeals it opposes and which it does not oppose. The Respondent Notices will respond only to the grounds of appeal in the CCRC's Statement of Reasons, which do not include systemic misconduct or bad faith. It is neither necessary nor advisable for POL to go further at this stage.
5	2 October 2020	Policy & Comms: POL communication – "statement of intention" re criminal compensation
6	16 October 2020	Court proceedings: Appellants to file grounds of appeal (subject to application for an extension) which will set out any additional grounds.
7	26 October 2020	Disclosure: Additional disclosure pack to be disclosed.
8	TBC November 2020	Court proceedings: Directions hearing in CACD – timetable for further written submissions from POL will be set.
9	From November*	Court proceedings: Earliest likely date for hearing at Southwark Crown Court where unopposed appeals from the Magistrates' Court will result in convictions being immediately overturned. (Formal court notification required to commence the process).
10	21-23 December 2020*	Decision: If required by the CACD process, Board to consider any additional grounds of appeal and any evidence of broader, systemic limb 2 abuse having regard to the material available from the PCDE.
11	31 December 2020	Disclosure: PCDE- review of material completed.
12	December 2020 / January 2021	Civil Compensation: First potential civil claims arising out of Magistrates' Court appeals (i.e. those appeals heard in the Crown Courts).
13	Mid-late January 2021*	Court proceedings: (Subject to CACD timetable) POL to file written response to grounds of appeal.

** Timings are provisional and will not be known until after directions hearing in the CACD and/or a hearing is listed in the Crown Court.*



4.ctd. Timetable

Ref	Timing	Decision/Event
14	5 February 2021	Disclosure: PCDE - Final planned tranche of disclosure (subject to ongoing duty of disclosure).
15	April/May 2021*	Court proceedings: Earliest likely date for substantive appeals hearings in CACD.
16	July/August 2021*	Court proceedings: Earliest likely date for CACD judgment.
17	Mid/end 2021	Civil Compensation: Earliest likely date for civil claims arising out of Crown Court appeals (i.e. those appeals heard in the CACD)
18	End 2021	Civil Compensation: Possible initial individual settlement discussions with individual claimants
19	Early 2022	Civil Compensation: Possible commencement of compensation scheme
20	Early 2022 onwards	Civil Compensation: Likely attempts at settlement of any litigation/class action
21	Early 2023	Civil Compensation: Continued attempts at settlement of litigation/class action The date of the conclusion of any scheme or tail-end litigation cases would be entirely dependent on the timeframe in which claimants apply to have their convictions quashed – time bar does not apply

** Timings are provisional and will not be known until after directions hearing in the CACD and/or a hearing is listed in the Crown Court.*



5. Costs

1. An initial estimate of Four-Year Costs was reviewed with Board on 13 August 2020 highlighting potential total costs of [Legal Privilege] made up of:
 1. [Legal Privilege] Future liabilities/Compensation payments associated with Historical convictions – see Appendix 1 for Quantum assessment
 2. [Legal Privilege] Settlement payments associated with Historical Shortfall Scheme. (N.B. This initial estimate is expected to increase following a larger than anticipated spike as Scheme closed)
 3. £116m Legal/Programme costs – these included £3.7m rate, volume and other discounts agreed against the £106m legal costs
2. Following a further review of planning assumptions based on emerging information, further savings of £26.2m have been identified, primarily as a result of revising assumptions which had previously been made for financial years 22/23 & FY 23/24, by planning to bring more work in-house and by increased use of de minimis on Schemes, bringing the Legal/Programme cost estimate down to £89.9m.
3. Key legal firms have now been challenged to further reduce costs by offering additional rate, volume and other discounts.

Historical Matters Business Unit – Director's commentary:

4. Establishment of the separate business unit will encompass a commercial FD to manage and control the overall budget and a Programme Accountant (with the relevant experience) to manage the finances of each project but principally the external resources (legal and consultancy); both reporting to me. This revised budget presented here will be further scrutinised by the incoming FD and Programme Accountant.
5. As this unit does not generate income it will always be only a cost centre with no measurable investment case and clearly no internal rate of return or any other measure. This is work that has to be done and my responsibility is to manage the entirety including sensible, pragmatic commercial control to ensure fairness for Postmasters and with a proper regard to all stakeholders recognising that this is tax-payers money.
6. The budget will always be a range, and the range will often remain unclear because the scope of work is continually moving and decision by PO and (mainly) others will affect the volume and complexity. [For example the HSS will likely be in excess of 2,000 claims; a Judicial Review was served upon us this week; other issues discovered as part of my remit to "Shine a light back on Post Office BAU now" has already and will undoubtedly continue to add additional work.]
7. The final presentation of this budget will calendarise this per project and be reported upon each month for the Board and stakeholders, as required. There will always be a huge element of financial risk and a 10% - 20% variance range should be recognised. It will be tightly managed, reported and discussed regularly and open to internal and external audit as required.



Appendix 1

Options for financial compensation for convicted postmasters

Legal Privilege



Appendix 2

Potential Future Liability and Compensation – Quantum Assessment

Legal Privilege



Appendix 3

Appeal Position Draft – 27/08/2020

DRAFT VERSION 9 ON 27.08.2020

POST OFFICE STATEMENT ON POSTMASTERS' APPEALS OF HISTORICAL CONVICTIONS

The Post Office said today that it [will not oppose the majority of/all/ any] appeals by former postmasters against historical convictions, referred to the Court of Appeal by the Criminal Cases Review Commission (CCRC) earlier this year.

Formal responses have been provided by the Post Office to the Court of Appeal regarding [x] cases in which it acted as prosecutor. The cases span dates between [2001 and 2013].

XXXX said: "It is for the Court of Appeal to determine the safety of these convictions. We are conscious that, in the event their convictions are overturned, some postmasters may seek to bring claims against Post Office and we have no wish to put those postmasters through further litigation. We are therefore considering how we can best provide a process which allows such postmasters to obtain any compensation they are entitled to as quickly as possible without having to go through another formal Court process."

The Post Office has made strenuous efforts for postmasters with historical convictions that might be affected by High Court findings in group civil litigation that was jointly settled with claimants last year. Alongside working closely with the Criminal Cases Review Commission, the Post Office established an extensive review, by external criminal law specialists, to identify and disclose materials for all relevant historical prosecutions.

The CCRC has referred a total of [x] cases of former postmasters for appeal. [x] of these cases were prosecuted by other organisations [tbc CPS/ DWP] and therefore, whilst the Post Office is assisting these organisations, it cannot provide formal responses to the courts regarding the appeals.

[There are [x] cases which the CCRC [decided/ has provisionally decided it was/is] unable to refer for appeal.]

Fundamental Reform

The Post Office is learning the lessons from the judgments and is undertaking a programme of actions to address past events and has also made significant operational changes [TO BE UPDATED AS APPROPRIATE NEARER TIME]:

- Established claims schemes for former and current postmasters who suffered losses
- Creating a Non-Executive position on the Post Office Board to provide the opportunity influence the strategy of the Post Office and the implementation of programmes affecting postmasters

- Undertaking a programme of improvements to overhaul culture, practices and procedures throughout every part of the Post Office to forge an open and transparent relationship with our postmasters. Improvements have been made in support provided for postmasters, from initial recruitment and training, through to daily transaction accounting, with nearly 100 area managers providing personalised, individual support and dedicated teams to investigate for postmasters where they have concerns.
- Set out for every postmaster the detailed responsibilities and commitments which support them to build thriving businesses, serving the UK's communities.
- Increased postmaster remuneration by £20 million a year on top of the £17 million increases secured for banking services through our new framework with the High Street banks.

Notes to editors

Referrals to appeal courts

The majority of the referrals are to the Court of Appeal because they relate to convictions in the Crown Court.

[TO BE UPDATED AS APPROPRIATE: There are six separate appeals referred to Southwark Crown Court relating to convictions in Magistrates Courts. Any of these convictions that POL does not oppose are likely to be overturned ahead of the Court of Appeal timetable but will not result in a public court judgment ahead of any judgment from the Court of Appeal.

Of the total [x] cases referred to the appeal courts in which the Post Office acted as prosecuted, Post Office is opposing [x].]

Post Office is not currently undertaking any private prosecutions and has not undertaken a private prosecution of a postmaster since 2015. There have been very few prosecutions since 2013.

Group Civil Litigation

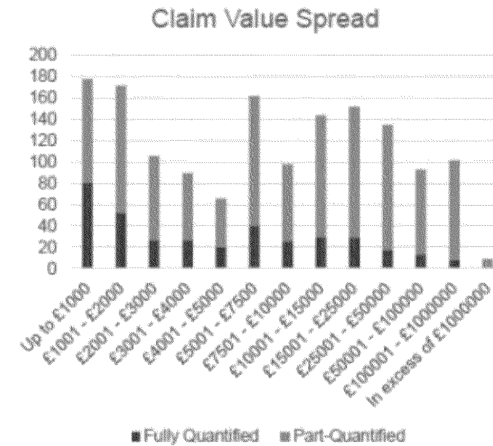
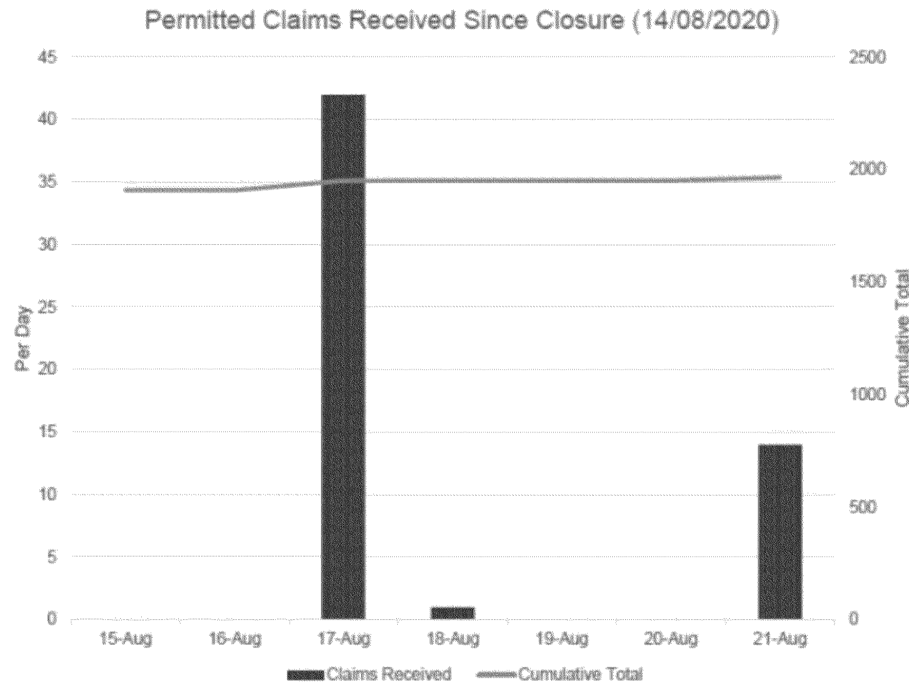
Group civil litigation between Post Office and 555 mainly former postmasters concluded following successful mediation and agreed settlement in December 2019. A joint press statement was issued on 11 December 2019 by both parties involved in the litigation. The issues in the litigation were complex and involved contractual, operational and technical matters spanning around two decades.



Appendix 4

Historical Shortfalls Scheme weekly MI as at 21 August 2020

Total number of claims received since last reporting period	485	Claimants Currently in Post	275
Total number of claims received to date	1,966	Claimants Formerly in Post	1552
Total number of claims withdrawn from Scheme	1 (Former)		



Total Value Claimed (Fully Quantified)	£9,319,884.31
Total Value Claimed (Part-Quantified)	£54,300,501.84
Total Value Claimed (Fully Quantified and Part-Quantified)	£63,620,386.15
Lowest Value Fully Quantified Claim	£15.25
Highest Value Fully Quantified Claim	£1,958,813.74