

Avene Regan

From: Ben Foat
Sent: 20 January 2020 18:13
To: Nick Read; Avene Regan
Cc: Diane Blanchard
Subject: GLO - CCRC, Lord Arbuthnot Response, GLO Programme Approach
Attachments: GLO Post Settlement Program.pptx; GLO Timeline - Confidential & Subject to Legal Privilege CLEAN.docx; GE Jan 2020 GLO paper.docx

Importance: High

Hi Nick

Apologies for the delay in getting a response to you on the CCRC. Below sets out a high level summary of the CCRC for your discussion with Tim. I understand that he will not be in tomorrow now but will be in on Wednesday from 2.30 onwards.

1. CCRC

Overview

- The CCRC is an independent, publicly funded body which investigates suspected miscarriages of justice in England, Wales and Northern Ireland. It was established under the Criminal Appeal Act 1995 and began work in 1997.
- There are currently 12 Commissioners, appointed by the Queen on the Prime Minister's recommendation "for their professional experience and ability to make important decisions in complicated matters." Cases are generally passed to Commissioners on a 'cab rank' basis.
- The CCRC has the power to refer a criminal cases back to an appeal court if it considers there is a "real possibility" that an appeal against conviction or sentence will succeed.
- The appeal court must hear an appeal referred to it by the CCRC.
- It is the appeal court, not the CCRC, which determines whether a conviction is unsafe, and only the appeal court can quash a conviction.
- The CCRC typically considers cases where the applicant has exhausted their appeal rights but maintains they were wrongly convicted or sentenced.
- If an applicant has not exhausted their appeal rights, the CCRC can still refer a case if it considers there are "exceptional circumstances", e.g. where an applicant can only make progress with the CCRC's assistance (e.g. because there is relevant information which the applicant could not obtain directly), and the CCRC's involvement is in the public interest.
- The CCRC approaches "post-appeal" and "exceptional circumstances" cases in the same way.
- By end March 2019, the CCRC had reviewed 24,078 cases, 663 (c.3%) of which were referred to appeal courts. Of the 663 cases referred, 439 resulted in successful appeals (66% of referrals; 2% of all reviewed cases).

How the CCRC works

- Reviews are undertaken by "Case Review Managers", who conduct whatever investigations are necessary to decide whether or not a case should be referred to an appeal court.
- The CCRC's statutory powers enable it to obtain any material it considers necessary for its work, including legally privileged and other confidential material (the CCRC must however maintain that confidentiality). It can also interview witnesses and arrange for new expert evidence.
- The Case Review Manager will put the review before:

- a committee of three Commissioner if the review identifies new information capable of raising a “real possibility” that an appeal will succeed, such that the case should be referred to an appeal court; or
- a single Commissioner if there is no prospect of a referral.
- If the Commissioner/s decide not to refer a case to an appeal court, this will be explained to the applicant in writing. The applicant can then try to persuade the Commissioner/s that the provisional decision not to refer is incorrect, which the Commissioner/s will consider before making a final decision.
- It does not appear that the reasons not to refer a case are shared with the prosecutor. We will obtain clarification of this from the CCRC when we meet them on 29 January 2020.

“Post Office ‘Horizon Computer’ cases”

- Post Office first responded to a request for information from the CCRC in July 2013, following publication of the “Second Sight Interim Report” which made public two bugs in the Horizon system.
- The CCRC contacted Post Office again in April 2015 (around the time the first Mediation Scheme was closing) when it first started receiving applications for case reviews from individual postmasters.
- The CCRC has in total received 35 applications from former postmasters convicted of offences such as theft and false accounting. 34 remain active. One was closed by the CCRC on 7 August 2019 without being referred to the appeal courts and without further explanation (i.e. we do not know why this particular case was closed).
- All of these “Post Office ‘Horizon Computer’ cases” (as the CCRC describes them) are being considered under the CCRC’s “exceptional circumstances” jurisdiction, as none of the applicants have appealed their convictions or sentences.
- To date, Post Office has disclosed 31,534 documents to the CCRC to assist it with its investigations, and has not refused or failed to provide any requested material.
- In its 2018/19 Annual report, the CCRC stated that it was “acutely aware of the need to ensure that relevant matters from the [GLO] High Court proceedings are considered in the review of the applications to the CCRC, and will be paying close attention as matters continue to unfold”.
- We are scheduled to meet with the CCRC on 22 January 2020 to discuss how to progress matters following the receipt of the Horizon Issues Judgment and settlement of the GLO.

https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1/uploads/2019/07/CCRC-Annual-Report-and-Accounts-2018-19_Web-Accessible.pdf

2. Lord Arbuthnot Response

The email chain below sets out the content for your response to Arbuthnot which I am working with Patrick in putting in an appropriate communication. We will have that draft for you this week.

3. Previous Investigations - Dossier

Finally, I attach a draft timeline which sets out a review of the major milestones of POL’s previous investigations into the GLO issues. A summary of which is also contained in my email below.

4. GLO GE Paper and GLO Post Settlement Strawman

The GE paper sets out executive management’s approach to GLO. I also attached the original draft strawman. I have interviewed a candidate today for GLO Programme Director role so further progress is being made.

Happy to discuss.

Kind regards
Ben



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From: Ben Foat
Sent: 27 December 2019 13:48
To: Nick Read <GRO>
Subject: GLO - Queries: Change, Suspense Accounts, Second Sight, Suicide

Nick

Below sets out a high level summary of the queries you raised following your meeting with Lord Arbuthnot which included:

1. What changes has Post Office made and when;
2. How was the suspense account used;
3. What reviews were conducted and specifically the Second Sight Report;
4. What are the details of Mr Griffiths who reportedly committed suicide;

In addition, there are a couple of other items to note:

5. GLO Post Settlement Programme – Governance, Operational workstreams, Resourcing, Budget (attached);
6. Response to Paula Vennells, former CEO regarding D&O policy;

At the outset, I would note that there is a substantial amount of material which I have tried to synthesise in the note below but for obvious reasons not all details are set out below so it may be helpful to discuss further.

Changes

Following the handing down of the Common Issues Judgment earlier this year, the board subcommittee and the interim CEO reviewed and changed the strategy and management of the GLO.

The following strategic and personnel changes were made:

1. The former General Counsel who had been responsible for managing the day to day legal aspects was removed from role. Pragmatically a settlement agreement was entered into to achieve this. A new General Counsel was appointed.
2. The leading QC was removed and replaced by Helen Davies QC of Brick Court Chambers.
3. New external solicitors, Herbert Smith Freehills, was instructed to provide strategic and legal oversight of the proceedings.

4. The Board Sub-Committee and the interim CEO designed a new strategy to resolve the dispute through alternative dispute resolution rather than court proceedings and a more conciliatory and pragmatic approach and tone was designed and implemented under the new General Counsel. This change of strategic direction has led to the Post Office settling the proceedings and drawing a line under the existing civil proceedings which is the first stage of a longer programme to resolve the matter.

Schedule 5 of the Settlement Agreement sets out some of the material Operational changes since the handing down of the Common Issues Judgment. These include:

- New onboarding processes such as more training, more trainers, new training modules, new business support managers
- New branch support model which includes new postmaster engagement, 94 new area managers, new branch support tools (still being developed), increased agent remuneration of £20m on top of the £17m pa increases for banking, fixed remunerations for community branches, mailwork services and mails products.
- Enhanced operating model in dealing with Horizon transaction issues such as a new quality control over Transactions Correction and a dedicated team to help postmasters if they do not agree with a Transaction Correction. In addition, there are dedicated Case Handlers to investigate discrepancies if a Tier 1 call is unable to resolve the issue.
- There is a new branch insight tool to give better operational performance information to all area managers and branch support team to facilitate supportive discussions with postmasters around operational activity.

Suspense Account

Suspense accounts are accounting tools for temporarily holding differences in payments moving between Post Office and its clients, where the client and POL's view differ.

Differences are investigated but in some cases neither Post Office, the client nor the branch are able to determine the identity of the customer who performed the transaction in question or the specifics of the transaction. For example POL may not be able to determine the details of the bank account to be credited. In such situations unresolved differences are moved into suspense accounts.

In summary, it is alleged that:

- Post Office operated one of more "suspense accounts" in which unattributed surpluses including those generated from branch accounts
- After a period of 3 years, such unattributed surpluses were credited to Post Office's profits
- Post Office therefore stood to benefit and/ or did benefit from apparent shortfalls wrongly attributed to the Claimants, which did not represent real losses to Post Office (and were actually taken to POL's suspense accounts).

Second Sight requested details of the credits release to profits from 2008 to 2013 which was as follows:

10/11	£612,000
11/12	£207,000
12/13	£234,000
13/14	104,000
14/15	£8k YTD at that point

These release amounts should be considered within the overall context of Post Office performing around 2.5 billion transactions with a combined value of £60bn. The amount of unresolved credits that end up on Post Office's P&L is therefore less than 0.001% of all transactions. While that is noted it is surprising that Post Office could adopt a strong prosecutorial approach nonetheless albeit it was obliged to account for public money.

The second sight report also notes an unreconciled balance for the 2014 financial year of £96m in respect of BOI ATMs and £66m in respect of Santander. Second Sight misunderstood the information provided by POL. Those balances were taken from routine trading balances yet to be settled with other organisations at

a particular month end. In other words, they represented amounts due to other parties, not amounts that were unreconciled and which may be due to postmasters.

Work on this issue had began in preparation for the breach trial but has not yet been finalised. It is paused given that the trial settled though I do think it ought to continue as it may inform the approach we take to subsequent mediation and our position regarding convicted claimants.

Second Sight

Before commenting on Second Sight generally it may be helpful to put some context around the various investigations and the role of Second Sight.

Investigations

Given the likely call for a further investigation regarding GLO, I thought it might be helpful to set out the investigations to date. I have had no involvement – indeed some are before 2014.

Post Office has either established or been party of three material investigations:

1. The Complaint Review Mediation Scheme which, broadly speaking, ran from August 2013- February 2016 and attracted significant political and media attention including:
 - a. Westminster Hall Debate – 17/12/14
 - b. BIS Select Committee – 03/02/2015
 - c. House of Commons Debate – 29/06/15
 - d. NNC Panorama Programme – 17/8/15
2. The Chairman's review into the adequacy of the Scheme and the investigations performed, which ran from September 2015 – June 2016 (stopped when proceedings were instituted but some principal findings were handed down in March 2016);
3. GLO Court Proceedings which formalised in April 2016

Complaint Review Mediation Scheme

Post Office was approached in 2012 but a small number of largely former postmasters and a group of MPs led by Lord Arbutnot concerning allegations including that faults in the Horizon computer system had caused branch losses. In response, Post Office appointed independent forensic accountants Second Sight to perform a "top down" examination of Horizon and in Autumn 2013 established the Mediation scheme. The Scheme was established to consider complaints about Horizon and associated issues and to determine whether the computer system that caused cash to go missing from a small number of Post Office branches (not about the contract). As the scheme progressed the level of criticism directed at Post Office intensified. This was because it became clear to campaigners that the scheme was not set up nor was it able to undo criminal convictions or pay significant amounts in compensation without reference to underlying facts.

Second Sight

Post Office appointed independent forensic accountants Second Sight to perform a "top down" examination of Horizon. At various times during the process, Post Office raised concerns with Second Sight regarding slow delivery, quality/rigour of output and their repeated commentary on matters outside of the scope of their terms of engagement, the scheme and their expertise. Although Second Sight made it clear that Horizon generally "works well" and additionally acknowledged the thoroughness of Post Office investigations, it made a number of adverse comments:

- Post Office suffers from institutional blindness and has failed to investigate properly and in detail cases where IT problems occurred.
- Post Office had adopted an overly legalistic approach and obstructed their investigation in a number of areas including withholding information (Post Office had refused certain documents on the basis of legal professional privilege).
- The Post Office approach meant that postmasters were left with no option but to commit the criminal offence of false accounting
- The Post Office unfairly narrowed the scope of the investigations to exclude the fairness of the contract and prosecutions practice.

Chairman's Review

Principal findings as at March 2016 were that:

1. Criminal prosecutions were a matter for the Court of Appeal or CCRC, though Post Office had adopted a proper approach to disclosure, such that it satisfied its duty of disclosure as prosecutor, and was co-operating with the CCRC;
2. No evidence had emerged to suggest a technical fault in Horizon resulted in a postmaster wrongly being held responsible for a loss;
3. Any allegations around training had been addressed as comprehensively as is reasonably possible.

Mr Griffiths – Suicide

Mr Griffiths was involved in a serious accident on 23 September 2013 where it is thought that he walked in front of a bus and died on 11 October 2013. The issues raised by Mr Griffiths were:

- a. The branch was losing money from 2009 (there was a cash discrepancy of £800 in April 2009, a cash discrepancy of £1,000 in May or June 2009 and a series of larger discrepancies which led to Mr Griffiths repaying the sum of £61,000 to Post Office before he was served with three months notice.
- b. Post Office offered no support
- c. The loss at the branch was due to Horizon
- d. Instead of supporting the applicant in a robbery in May 2013, Post Office added to his distress

Post Office's review found that it did provide both support and advice to the applicant in relation to the losses incurred at the branch including:

- Conducting audits
- Investigating the losses that arose
- Attending the branch to perform cash check but also provide support and assistance
- Advising him on individual stock units
- Advising him to install a CCTV in the branch which had also been advised by the Police

Mr Griffiths was suspended on 21 September 2011 after an audit of the branch revealed a shortfall of £23,782.31. In any interview he state that the losses incurred in 2009 were due to the actions of a particular member of staff though did not explain the cause of the £23K loss. He was reinstated in November 2011 subject to a number of conditions and given a final written warning. By 3 May further losses amounting to £7,147.87 had occurred. IN May 2013, a robbery occurred at branch of £54K consisting primarily of cash. The Contract Manager advised Mr Griffiths that reasonable precautions were not taken to safeguard Post Office's cash and therefor consider him liable for a £7K amount which was subsequently written off. He appealed the decision. The branch continued to incur losses. Although he was advised to install a CCTV by both POL and Police he did not do so. Despite being helped to set up individual stock units and organised training, it was later discovered that the main stock unit was not being kept under his control. This removed accountability for the discrepancies and therefore negated the purpose of the individual stock units. In view of these matters, the Post Office serve termination notice on 3 July 2013 which was due to expire on 3 October 2013. POL concluded that the shortfalls were due to theft in branch and human error.

Post Office records apparently show that he was given a significant amount of support and advice which he chose not to follow. It considered that the losses could have been controlled had he adopted them. On 30 January 2015, a settlement agreement was reached with his wife of an ex-gratia payment of £50K plus £140K NT payment. This was the amount that was offered under NT although he would not have qualified as termination notice had been given.

GLO Post Settlement Programme

A draft operational strawman has been circulated. It would be helpful to discuss the approach, resourcing and budget.

Paula Vennells – former CEO Response

I proposed to write back to Paula providing her with a copy of the D&O policy and the appropriate pleasantries but not offer any advice.

We can discuss the above at our 2pm meeting shortly.