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RE: POST OFFICE LTD AND THE ROYAL MAIL GROUP LTD

THE CARTWRIGHT KING REVIEW

OBSERVATIONS AND ANALYSIS OF THE CARTWRIGHT KING PROSECUTION REVIEW PROCESS
Relating to duties of disclosure in Criminal Prosecutions

The Second Sight Interim Report

1. Following a sustained campaign by disgruntled present and former postmasters, sub-postmasters and Post Office employees Second Sight Support Services Ltd were appointed to carry out a review into alleged problems with the Horizon accounting system.

2. Second Sight Support Services Ltd issued their interim report on the 8th July 2013.

3. Until the publication of the Second Sight Interim Review the Prosecutors for Post Office Ltd had adopted a firm approach to requests for disclosure in relation to the Horizon system which was treated as being robust and reliable.

4. The Second Sight Interim Report revealed that there had been two known defects in the Horizon system since the rolling out of the Horizon on Line System from January 2010. These defects impacted on 76 branches and

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created both positive and negative discrepancies. (There had been a previous defect before the roll out of the Horizon on Line System known as the "Falkirk defect" which had been fixed by Fujitsu before 2010. This was considered in a conference call on 4th October 2013 by Brian Altman QC to be fact specific as there had been a network wide fix included in a software upgrade. With the caveat that it may be relevant in cases that fell within the same parameters with the same issues he did not feel that the Falkirk Defect was relevant to this review.)

5. As a result of the Second Sight Interim Report it became apparent that some of the matters raised in the Report might have been disclosable in Criminal Prosecutions mounted by Royal Mail Group Ltd and Post Office Ltd, had these been known about by those considering disclosure in such cases.

6. Statements had been produced to the effect that the Horizon on Line system was robust in Criminal Trials and an Expert, Gareth Jenkins, from Fujitsu, the manufacturer of the Horizon System was deployed in some cases where the defendant attacked the system. It became apparent, that whilst his statements asserted that the system was robust, he, unbeknownst to Post Office Ltd or Royal Mail Group Ltd, knew of these defects.

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7. Upon publication of the Second Sight Interim Review Messrs Cartwright King were asked to commence this review of all Post Office Ltd and RMG Ltd cases since January 2010 to ascertain whether their disclosure obligations had been met.

8. This Review was completed on the 26th of November 2013 subject to Counsel finalising a couple of advices and the reconciliation exercise.

Scope of Review

9. The decision was taken to Review all cases prosecuted since January 2010 from which date the Horizon on Line system was rolled out. This was confirmed on advice from Brian Altman QC. He also made it clear that pre 2010 cases might come within the scope of the review but that decision could be made on a case by case basis. We have been careful to err on the side of caution in this regard.

10. The Review process covered England and Wales. Senior lawyers from Cartwright King went to Scotland in order to help lawyers from BTO Solicitors review Post Office Ltd prosecutions in Scotland. Contact was also made with the Procurator Fiscal's Office in relation to a case going through the Courts at the time.

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11. The Post Office prosecutions in Northern Ireland have not been reviewed as the files are prosecuted by the Northern Ireland Public Prosecution Service and those held by Post Office Limited are insufficient for the purposes of our Review. We have not reviewed files prosecuted in England and Wales by the Crown Prosecution Service for the same reason but have spoken to the Crown Prosecution Service about some of their cases.

Sources of Files Reviewed

12. The split between the businesses of Post Office Ltd and Royal Mail Group Ltd meant that there are now two prosecuting authorities rather than one as previously. The Royal Mail Group cases when they arrived were larger in number than we had been led to expect but a proportion of them were non-Horizon related as they involved postmen stealing or delaying postal packets and the evidence did not touch the Horizon system.

The Review System

13. The Review took place in three stages; Initial Sift; Second Sift and Full Review.

14. Initial Sift Reviews were conducted only by qualified solicitors and counsel with experience of prosecution and defence disclosure. Prior to conducting Sift Reviews reviewers were appraised of the circumstances giving rise to the task. They had read the Second Sight Interim report and the "Helen

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Rose Report," of 12th June 2013, in full and all had attended an induction meeting during which the terms of the written Sift Protocol were set out in full.

15. The Second Sift Reviews and Full Reviews were only carried out by Senior Counsel with substantial prosecuting experience. Care was taken that neither Second Sift Reviews nor the Full Reviews were conducted by Counsel who had significant dealings with the case save in cases where Senior Counsel knew by virtue of his dealings with the case that disclosure would be required.

16. The Second Sift Review involved a case-by-case review of those cases that had not been recommended for full review, so as to ensure uniformity of approach and to ensure the correctness of the original Reviewer's decision.

17. Full Reviews required a full reading of all of the case papers. The only question to be considered was: would the Second Sight and other material have been disclosable during the currency of the prosecution?

18. When the review process started it was not considered necessary to consider whether or not a conviction may be said to be 'safe' – that was a decision for the Court of Appeal, if the case got there. As the process got underway however, most of the advices do in fact deal with Counsel's view of the correct response should disclosure generate grounds of appeal.

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19. Each Full Case Review contains:

- Offence description
- Case history
- A full analysis of the prosecution case
- A full analysis of the defence case
- Details of any prosecution response to the defence case
- A discussion of any issues relation to Horizon, training and Customer Support.
- A conclusion, to contain advice on disclosure.

20. In determining the issue of disclosure and the advice to be provided to POL, the reviewer had directly in mind:

- The Criminal Procedure and Investigations Act 1996, ss.1-12;
- Code of Practice enacted under the CPIA 1996;
- The Protocol for the Control and Management of Unused Material in the Crown Court;
- The Attorney-General's Guidelines on Disclosure;
- The opinion of the House of Lords in *R. v. H; R. v. C;* [2004] 2 AC 134; [2004] 2 Cr. App. R. 10.

Statistics

21. The statistics below reflect the results of the Cartwright King Review.

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	Initial Sifts	Second Sifts	Full Reviews	Disclosure Advised
England and Wales	289	229[1]	53	26
Scotland	19	0[2]	N/A[3]	N/A[4]
TOTAL	**308[5]**	**229**	**53**	**26**

General Caveats

22. The Review conducted by Messrs Cartwright King is complete subject to a number of limited qualifications as set out below.

i) Files not seen

23. We have become aware through other Post Office Ltd work that there are files in existence that have not been through the Review process.

24. Whilst the Review process was ongoing Post Office Ltd were separately complying with Data Subject Access Requests. As part of that Data Subject Access Request process Post Office Limited asked Cartwright King for two prosecution files, Sarah Burgess Boyd and Gillian Howard. Those files had

[1] Cases pre charge have usually been dealt with by way of charging advice. Those cases advised for Full Review in the Initial Sift were not resifted
[2] Scottish cases were reviewed by Cartwright King lawyers in conjunction with lawyers from BTO solicitors on 4th September 2013.
[3] This process is reserved to the Procurator Fiscal.
[4] See above.
[5] Some defendants involved in multi-handed cases were sift reviewed individually and others by the case. We have consolidated these figures into reviews by case rather than review by defendant.

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not been prosecuted by Cartwright King but by Royal Mail Group themselves and they should have been contained within the batch of 30 archive boxes forwarded by Royal Mail Group to Cartwright King for review. Unfortunately the files were not contained in those boxes – indeed we have identified that the files were contained in box numbers 68737933 and 685994004. Cartwright King did not receive these two boxes and accordingly cannot say how many other files may be missing from these boxes, in addition to those two already mentioned.

25. During the currency of the Data Subject Access Requests it became clear to Cartwright King lawyers advising on Data Subject Access Request Applications that a number of those applying for personal data had been prosecuted but their files had not been submitted to Cartwright King for review. It is not clear why we have not received these files; we do know that they were prosecuted by RMG directly and that the files should have been included in the 30 archive boxes forwarded to us by RMG. Those cases include David Hedges (sentenced 4/2/2011 at Lincoln Crown Court) and Peter Holmes (sentenced 29th January 2010).

26. The Mediation Scheme contains a number of applicants who refer to having been the subject of Criminal Process. Those files have not been received by Cartwright King and should properly form part of the Review

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process. Examples include Alison Henderson (sentenced 15/12/2010) and Jacqueline McDonald (sentenced 20/1/2011). We note in particular that these two named files were prosecuted by Royal Mail Group and agents. We have therefore requested a full list of mediation applications in order to reconcile that list against the Review Process, so as to identify any other similar missing files.

ii) Files damaged, destroyed or incomplete

27. A number of the Files received from Royal Mail Group Ltd archives were incomplete. In several cases crucial documents were missing and in others there were almost no papers. In the majority of cases this was sufficient for an Initial Sifter to establish that the case fell outwith the ambit of the Review either by date or subject (e.g. a postman delaying mail) but in a small number we were deprived of the papers dealing with the Crown Court proceedings and the relevant correspondence and pleadings such as to enable a proper Review e.g. William Giles (appeared at Southampton Crown Court 8th October 2010 but no prior history on file), Sunday Kisangara (Only a section 16 statement on file - Sentenced 8th February 2012 following a trial).

iii) Scotland

28. Senior Lawyers from Cartwright King reviewed Post Office investigation files with lawyers from BTO Solicitors on 4th September 2013, before

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meeting lawyers from The Procurator Fiscal's Office on the 5th September 2013. Post Office Ltd have been sent a Meeting Report prepared by Simon Clarke dealing with the issues arising and outcomes of those meetings.

29. We are not content that we have seen all of the Scotland cases. We believe there to be a small number of cases that were prosecuted by The Procurator Fiscal's Office since 2010 which have not been seen by BTO solicitors or Cartwright King. This does not mean that the Procurator Fiscal's Office has not themselves reviewed these cases, particularly given that senior Cartwright King Lawyers visited the Procurator Fiscal's Office in 2013 to ensure that the Procurator Fiscal's Office was fully appraised of the situation and to protect Post Office Ltd's prosecuting function. We have asked for sight of these files and await their arrival.

iv) Northern Ireland

30. There are very few cases prosecuted in Northern Ireland, where cases are prosecuted by the Northern Ireland Public Prosecution Service. Accordingly duties of disclosure touching upon Post Office Ltd prosecutions lie with the Northern Ireland Public Prosecution Service and for this reason we have not been given access to these files.

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v) CPS England and Wales Files

31. There are a number of cases which have been prosecuted by the Crown Prosecution Service. It is understood that these generally arise out of complaints to the police by commercial organisations running Post Office Branches.

32. We have liaised with a number of Crown Prosecution Service branches in relation to a number of their cases. Again as the prosecuting authority all disclosure decisions lie with them, however we have ensured that the Crown prosecution Service Branches are aware of the issues with which the review process is concerned and have disclosed to them copies of the Second Sight Interim Report and the Helen Rose Report.

vi) Miscellaneous cases (Misra)

33. In the case of Misra the issues predate January 2010 but the Trial took place in October 2010. We have received no file in relation to this case but we have received the transcripts of the trial. It would seem that this is the only case in which the Fujitsu Services Ltd Expert, Gareth Jenkins, appeared in court and gave evidence on oath. It is our view that this case clearly passes the disclosure threshold and we will be disclosing the Second Sight Interim Report and the "Helen Rose" report to Misra's lawyers. It should be said, however, that the defence were aware of the "Falkirk defect" in this case

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and it was discussed in the trial. This is the only pre-Horizon On Line bug of which we are aware.

vii) Wednesday morning conference calls.

34. This has proved a useful tool in identifying issues and material that might have a bearing on disclosure. Thus far no disclosure has arisen as a result of this process, however a useful example of the effectiveness of the process can be found in the case of a rogue ATM Cash Point engineer gluing up Cash Points to remove cash. A prosecution in Liverpool Crown Court was adjourned in order to permit checks to be made whether this man had attended the subpostoffice in that case. He had not and we were able to conclude the case with our disclosure duties properly and demonstrably complied with. (R v Ajmer Singh)

35. In future this material will be made available to the Horizon Expert, who has yet to be instructed, so that he can confidently state that he is abreast of the current state of the Horizon System.

Conclusion

36. This has been a thorough in-depth Review of over three hundred cases. Some of these cases have been reviewed by three separate solicitors and

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barristers. Of the cases that have been recommended for disclosure we have yet to hear of any application made to the Court of Appeal.

Cartwright King.

5th December 2013