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RESPONSE TO THE INTERIM REVIEW OF CARTWRIGHT KING'S CURRENT PROCESS BY BRIAN ALTMAN QC

Introduction

i) This response is intended to address the issues highlighted by Brian Altman QC (BAQC), clarify Cartwright King's (CK's) approach to the review and to provide the further information requested by BAQC. The paragraphs in this response should be read as the response to the same numbered paragraph in BAQC's Interim Report.

Areas of concern

ii) There is a real area of concern since this review began which was addressed by the advice of Simon Clarke dated 2nd August 2013 (attached).

iii) As a result of a conference on the 3rd July 2013 POL established a weekly conference call to act as a central hub to act as the primary repository for all Horizon related issues. Participants were informed that they should bring all Horizon related issues that they had encountered – minutes were to be taken, centrally retained and disseminated to those who required the information – this list to include POL's Horizon expert witness.

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iv) I understand that as of Friday 9th August 2013 POL has yet to identify such a witness.

v) The minutes have not been circulated as far as CK are concerned and the advice of Simon Clarke deals with some worrying suggestions that the minutes should be destroyed.

vi) There have been four telephone conferences thus far which were attended by a solicitor from Cartwright King. These meetings have produced certain suggestions including inter alia:

- Concerns that Post Office Card Account transactions have been "lost in flight". (Meeting of 24/7/13 – Prestbury's)
- Mention of undefined bugs at Hordern – Not sure if they are being investigated. (Meeting of 24/7/13)
- Possible case of Horizon receipt printing incorrectly – 4 instead of a 1 (Meeting of 24/7/13)
- Issue where if the cashier presses buyback when selling Euros the loss won't be found. Will not generate transaction correction. It will be a hard loss that the SPMR will not be able to explain when audited. (Meeting of 31/7/13)
- Errors in the Bureau de Change when remmed in as a quantity not a value. (Meeting of 31/7/13)
- The issue of ATM theft by an engineer was raised at the meeting of 31/7/13. This was raised again at the meeting of 7th August

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2013 – List of this engineers activity requested – may be problems as to how far records will go.

vii) Whilst this system is still in its infancy there are issues that should be dealt with as soon as possible:

(a) An expert to replace Gareth Jenkins must be identified and instructed without delay. As almost all of our cases depend on the integrity of Horizon – even if only to the quantum of the thefts – we need to have an expert to say that the system is sound and, whilst there are and have been glitches, the system and its product are sound. Time is of the essence as there are cases in the system that will be compromised without such evidence. This is old ground so I will not go over it again.

(b) The product of the hub meetings should be collated and assessed. Much of it is raw rumour but it needs to be investigated so that we can dismiss it as that. Other material may well point to genuine flaws in either the Horizon system or the use of it by Post Office staff and needs to be addressed both to fix the flaws and be assessed as to its potential disclosability. At the moment we are in a twilight world of knowing that there are

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hares to be chased yet not knowing if anyone is doing the chasing.

(c) Eventually the system envisages that the Expert will be copied in on the minutes of the meetings so that he can address them but until he is in place someone needs to keep an eye on whether any of these meetings raise matters that should be considered as disclosure.

Comments on BAQC's Interim Review

1. It would be useful for BAQC to be given, in addition to the documents that he already has, the Review Protocol which set out the parameters given to the initial sifters in the CK review.
5. The Ishaq file was not subject of an initial shift. 5 of the initial 27 file reviews to date have gone straight to full review as the lawyers concerned knew that the requirements of the initial sift Review Protocol would be met by these cases.
6. The lawyers conducting the initial sifts include two of the regular in house prosecuting solicitors, Martin Smith (MS2) and Andrew Bolc (AB2). These two lawyers have sifted some of their own cases. As there has not been any allegation of any misconduct by CK lawyers or CK, it is submitted that it is perfectly proper for a reviewing lawyer to ask himself the question, "Had I known at the time of

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disclosure what I know now would I have disclosed the material that has now come to light?" – If BAQC is of the view that this approach is flawed then those cases that were not put forward for full review can be resifted by lawyers independent of the cases to see if a full review is justified.

The barristers conducting the full reviews have, on occasion, conducted proceedings in the Crown Court and have had dealings with some of the cases by way of providing initial advices involving charging or evidence gathering. The vast majority of cases at the Crown Court were prosecuted by members of the independent Bar. Again should BAQC consider that reviewing counsel should be completely clean of the case that he is reviewing then those cases can be rereviewed by fresh counsel. This will only affect a very small proportion of the cases currently reviewed.

7 BAQC states that he is proceeding "on the basis that the sole focus of possible complaint is the Horizon system." We have been operating on a slightly wider remit in that the Second Sight Interim Report expresses concerns about training issues regarding the Horizon system and the possibly ineffective support that sub postmasters (SPMRs) may have received. The initial sifters were alive to theses issues as well when considering whether a full review was necessary. The product of the Wednesday "hub"

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meetings has not been part of the sift process as it post dates most of the sifts.

8 The assumptions made by BAQC in this paragraph are not entirely correct. CK has used independent counsel and agents to prosecute in the Magistrates' Court and in the Crown Court and an in house POL lawyer, Jarnail Singh, has prosecuted cases in the Magistrates' Court. In Northern Ireland the CPS prosecute the cases and in Scotland the Procurator Fiscal's office prosecutes.

9 (b) CK have been reviewing cases which have begun since 1st January 2010.

10 (b) CK' s current progress is: 155 initial sifts and 27 fully reviewed cases.

(d) In the footnote to this subparagraph BAQC refers to the possibility that there are two Helen Rose reports. This seems to have arisen from a typographical error in Simon Clarke's review of R v Ishak where he gives the wrong date for the Helen Rose Report. The actual date is 12th June 2013.

(e) 4 English cases have been terminated. We have also liaised with CPS in two cases in England and Wales and in Scotland we have liaised with the Procurator Fiscal and BTO solicitors with results as yet unknown.

11 As above issues of training and support are already included in remit but BAQC may agree that should there be substance in some

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of the "Wednesday Hub Conference" suggestions that the net should be cast wider we would be happy to comply and rereview the cases already reviewed.

14 The post–conviction post-review letter sent in the Ishaq case was the only one sent to his solicitors as a result of this review. We took the view that the Second Sight Interim Report and the Helen Rose Report were self explanatory but should BAQC feel that a summary of the issues should be included in such letters then we will, of course, comply. The only material that we have thus far served on potential applicants is the Second Sight Interim Report and the Helen Rose Report (Redacted).

15 (a) The Horizon system extends to Scotland and Northern Ireland.

(b) We have taken the starting point of 1st January 2010 as this is the year that Horizon on line was rolled out.

16 Dr Jenkins has not given evidence whilst CK has been acting. He has attended court in one case only which subsequently pleaded out namely Ishaq. Plainly should he behave in the manner suggested by BAQC then there is potential for conflict.

17 We will identify the cases in which Dr Jenkins gave a statement for the Crown and whether he had direct contact (phone, email or face to face with prosecution counsel) and if so about the scope and content. There have been two cases where in house counsel has prosecuted and reviewed the case. In one, Ishaq, the review led to

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disclosure of the reports and in the other we intend to discontinue (the latter did not involve Dr. Jenkins).

19. The same sift criteria applies to guilty pleas as to other cases. Cases are identified as suitable for review where the defendant raises any of the specified issues in any way e.g. interview, comments to auditors or representations made by his representatives either in writing or at court. We have been alive to such issues being raised inferentially.

21 There have been no abuse of process hearings where Dr Jenkins has given evidence. There has only been one PII application in any of our cases which was in order to adjourn a case until such a time that the Second Sight Interim Report could be disclosed.

23 E.g. Ishaq which went immediately to Full Review with no initial sift.

24 (a) As discussed above we have also been considering issues such as training and support when they have been raised in any way. We are alive to the prospect that cases already sift reviewed may need to be rereviewed in the light of the "Wednesday Hub Conference" material.

(b) We are alive to this – see para 17 above.

(c) There are, at the moment, two reviewers – Simon Clarke and myself, Harry Bowyer. I have only had peripheral involvement in the Post Office cases having settled a number of early advices and

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draft charges. I have only appeared in the Crown Court on one occasion for a sentencing hearing. I have not reviewed any case in which I have had any substantial involvement.

(d) The initial sifters have been instructed to err on the side of caution, however we too agree that the sift criteria may potentially be too narrow given the information derived from the "Wednesday Hub Conferences".

(e) The guilty pleas have always been within the remit of the review.

(f) No such cases have arisen.

(g) No such cases have arisen

(h) Such cases have been prioritised.

(i) We have a spreadsheet with much of this information on – we can add the details sought by BAQC.

(j) BAQC has the sample letter. We have only served the Second Sight Interim Report and the Helen Rose Report.

Conclusion

It would be highly desirable for the senior reviewing lawyers from CK to have a conference with BAQC in order that the review process can be as watertight as we can make it. Some of his concerns had already been

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addressed and others we are now addressing. Others – I am thinking of the potential conflict point – do not require addressing immediately but could usefully be canvassed.

It would be helpful if Brian Altman QC could see this response and be furnished with my contact details in order that he can address any further concerns that he has directly to CK as if there are fixes required it would be as well that they are fixed quickly.

13th August 2013

Harry Bowyer

Barrister

Cartwright King

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