



POST OFFICE LIMITED SEG REPORT

Title:	Passing of material to law enforcement	Meeting Date:	26.06.2024
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Input Sought: Discussion and Approval for Board Consideration

SEG approval is sought regarding the proposed change in process in governing the passing of information to law enforcement to assist them in criminal investigations and any subsequent prosecutions prior to this matter being discussed at Board in July 2024.

Executive Summary

The current Group Investigations Policy, Cooperation with Law Enforcement Policy ("**the CLEP**"), and Legal Play Book (collectively "**the old Policies**") are considered too unwieldy and unnecessarily complex as well as being drafted before the existence of the Assurance & Complex Investigations ("**A&CI**"). The CLEP has resulted in slower than needed provision of information to law enforcement and the unnecessary involvement of the Board in the authorisation process.

The old Policies have been consolidated into a draft single Investigation and Cooperation with Law Enforcement Policy ("**new Policy**"). The draft new Policy, amongst other investigative operational policy changes, proposes a streamlining of the governance of providing law enforcement with information: the Director of A&CI and the in-house criminal counsel would have to agree to providing the information and, depending on the age of the information, a caveat would also be provided.

Report

1. The conduct of non-ER investigations within POL are currently governed by the Investigations Policy. This policy was drafted at a time when POL did not have an experienced investigative function and had not carried out complex investigations for several years. In February 2022, the Central Investigations Unit, now A&CI, started to be formed. Experienced, professional, investigators were recruited, and operational practices began to go through a test-and-learn process.
2. How the Investigations Policy was implemented in respect of possible criminal matters relied upon its interaction with the CLEP and Legal Play Book. These were focused on limiting in a high-risk perception environment how POL reported matters to, and shared data with, law enforcement. Uniquely, sharing Horizon data in a witness statement or as an exhibit required the extraordinary permission of the Board.
3. The old Policies are not enabling POL to act in an agile way in moving forward with reporting instances to law enforcement where POL suspects that they may have been a victim of crime or promptly servicing lawful requests for information to aid a police investigation. A&CI recently took responsibility for being the only conduit for witness statements to be provided to police, including relieving the Security team of this activity.



This has given us the first pan-POL picture of the scale of these requests and what is required to service them objectively and in an evidenced-based way. There are currently 22 police forces requesting or awaiting Horizon-based evidence across 33 police investigations. To provide this information, A&CI will need to draw on Horizon data and often provide transaction analysis. The current approach is that Board will need to be approached in the majority of these matters as and when the data is able to be shared.

4. A draft policy is attached for the proposed replacement for the old Policies to reflect the enhanced capabilities of the A&CI and the improved governance approach to investigations generally. In particular, the draft proposes a change in the governance of passing material to law enforcement which we believe is risk balanced.
5. The below is extracted from the draft:

9.0 Categories of data, material, and evidence

Proactively and reactively supplied information will have differing profiles due to historic technology issues. The version of Horizon that was considered at fault in the Horizon IT Scandal was replaced in October 2019. In 2020, known errors and bugs identified in the Horizon Issues Judgement formed part of a review by KPMG of the system and found to not to be prevalent in the system. From 2021, a new and collaborative approach was taken to resolving reported Horizon issues in a dispute resolution process. Due to the effect of these developments, the following approach to data sharing with LEAs is:

It is policy that:

Any information originating from Horizon after 1st January 2022 may be passed as either intelligence or evidence to LEAs only after DA&CI (or their nominated deputy) and an in-house criminal lawyer both give approval. A record of both DA&CI's and the in-house criminal lawyer's rationale and decision must be recorded on the relevant case management file.

Where information is requested by LEAs that is Horizon data originating from pre-1st January 2022, the same process must be followed. In addition, the wording included in the relevant section of the *Investigator's Manual* covering the passing of information to LEAs must be included in any witness statement for evidence or in an accompanying email or letter to the LEA requesting the information in a non-evidential format.

Where information is intended to be passed to LEAs which is not Horizon data, the same process of DA&CI (or designated deputy) and in-house criminal legal counsel must be followed, irrespective of the date the information was created.

Best-evidence originating from Horizon sits with Fujitsu and so LEAs should be encouraged to request this material direct from Fujitsu.

6. The accompanying lines referenced above which caveat the material passed to law enforcement is also in draft and is:

From 31st December 2019, all Post Offices have worked on a version of Horizon that the High Court case of *Bates & others* has been considered by the High Court to be "relatively robust". In 2020, Horizon was tested for the known errors and bugs identified in the Horizon Issues Judgement and found not to be prevalent. During 2021, a process was developed to



work collegiately with Postmasters to understand the causes any shortfalls. Any Horizon data that pre-dates January 2022 cannot be shown to have benefited from all three of these checks and balances.

7. There are significant differences between the environment that existed at the time the old Policies were formed and the current and future environment. The current approach to dispute resolution and the underlying technology could be seen as supporting a more BAU-approach to passing information to law enforcement. However, the most significant difference between 2019 when the old Policies were first drafted and now is that A&CI exists and brings significant criminal investigation experience to bear, but more importantly, also considerably more objective rigour to assessing evidence. Project Panther within A&CI is solely focused on testing the reliability of data that POL investigators and law enforcement will rely upon.
8. A further check and balance to the material provided to law enforcement which enables a more proportionate governance of this is that law enforcement agencies do not just take POL's word that evidence is reliable. POL can only provide the information to law enforcement; it is for them to decide its admissibility and weight. Given this reality, it is our view that a more agile and devolved (albeit to senior staff with significant relevant experience outside of POL) approach may be taken to better serve law enforcement, Postmasters and POL.
9. SEG is asked to discuss the proposed change of approach in advance of a proposal being presented at Board in July.

Next Steps & Timelines

10. Board has asked to discuss the proposed new approach at the July 2024 meeting. Once SEG and Board feedback and instructions received, the proposed draft replacement policy will be finalised and run through the approval process via ARC for consideration.



Appendix 1