



POST OFFICE LIMITED GROUP EXECUTIVE REPORT

Title:	Post Office Investigations: Next Steps	Meeting Date:	6 th July 2022
Author:	Sarah Gray, Group Legal Director John Bartlett, Head of Central Investigations Unit	Sponsor:	Ben Foat, Group General Counsel

Input Sought: Approval

The GE is asked to **approve** for onward distribution to Board:

- POL, POL Staff, Postmasters, and Postmasters' staff all being within the remit of the Post Office Investigation Branch.
- CIU to conduct criminal investigations
- Mobilizing a new partnership model with the relevant bodies across the UK to facilitate the investigation and referral of suspected criminal misconduct.

Previous Governance Oversight

- ARC approval of Law Enforcement Policy
- Group Executive Tactical Meeting of 5 May 2021
- Group Executive Tactical Meeting of 15 September 2021
- Group Executive Tactical Meeting of 20 April 2022

Executive Summary

- CIU will be staffed¹ from September 2022 and fully operational by January 2023.
- CIU is working with other departments to identify the types of cases likely to be escalated to CIU, identify potential sources of digital evidence, and to test the reliability of that evidence.
- A virtual Post Office Investigations Branch develops a one-team approach to Post Office investigations, ensuring the application of best practice across the organisation.
- CIU provides investigative training, mentoring, and coaching to the de-centralised teams; will introduce and carry out quality assurance of the lower risk investigations; and conduct the higher risk or more complex investigations.
- It is proposed that the Investigations Branch's remit includes POL and POL staff, Postmasters, and Postmaster's staff for a range of matters based on employment, ownership of property, and practical factors.
- Post Office has no appetite to pursue private prosecutions. However, it is proposed that Post Office investigators conduct investigations into suspected criminality and to report what has been evidenced to law enforcement and prosecutors in all four nations of the UK. The rationale being to act as a deterrent and to seek financial restitution through the independent and external criminal justice system.
- At present, Post Office is at risk of not discharging our duty as an organisation in receipt of public funds to investigate and then refer suspected criminal conduct. The Cooperation with Law Enforcement Policy permits reporting to law enforcement, but criminal

¹ 1x Head of CIU, 2x Senior Investigations Managers



investigations are not currently actual practice which is preventing pro-active reports being made to law enforcement. The solution to the broader context within which Post Office operates is to discontinue the practice of not performing criminal investigations, but rather to ensure they are carried out correctly by appropriately qualified and experienced individuals, working closely with the relevant external bodies and to report matters to the appropriate authorities if and when evidence has been established.

- BEIS assistance is to be sought to establish strategic relationships with law enforcement and public prosecutors in the three UK jurisdictions.

Questions addressed

- How has the establishment of the investigation model progressed?
- How should Post Office manage criminal investigations?

Report

1. Operating Model – Current Status Up-date

- 1.1. Post Office is committed to undertake ethically executed, evidence-led, and transparent investigations which can withstand internal and external scrutiny. We will apply best practice, applicable laws, and guidance so that we instil confidence in those who would consider themselves as being investigated that they are being treated fairly, and to external agencies that we have applied the highest possible standards in the conduct of our investigations.
- 1.2. As part of this commitment, GE agreed on 20 April 2022 to the forming of the virtual Post Office investigations Branch (IB²). This will consist, starting in September 2022, of two levels of investigative capability within Post Office³. The first level is a small group of experienced and trained professional investigators who set standards for investigations across POL, provide a quality assurance role, and conduct investigations into matters presenting the greatest risk to Post Office or which are the most complex to carry out (e.g. failings of critical processes or allegations of senior staff misconduct). The CIU forms this group of investigators.
- 1.3. The other strata of investigators are based in the business and will continue to either conduct volume investigations as part of their BAU (e.g. in to shortfalls), or conduct investigations less frequently and/or carry lower risk. These investigators will be trained where appropriate to the best standards as set by CIU.
- 1.4. Moreover, the CIU will be the escalation point for the other teams.

² The Post Office Investigations Branch was the first recognised investigation unit in the world dating back to near the foundation of the Post Office itself. It has an unblemished reputation. Its motto was *Suaviter in Modo, Fortiter in Re* meaning *Gentle in Manner, Resolute in Deed* which is very much in keeping with the intended approach of the new investigation function. The IB underwent many changes over the years and the name fell out of use in the mid 20th century.

³ As well as proposing a central investigative function, the KPMG review examined the investigative activity conducted by the following teams: Network Monitoring, PM Dispute Resolution, PM Complaints, Contracts, Customer Complaints, Financial Crime, Conduct Compliance, Whistleblowing, Data Protection, and Cyber, as well as those under HR's remit eg Grievances, Code of Conduct, and Dignity at Work complaints.



- 1.5. The de-centralised investigative activity continues under their existing reporting lines but for investigative activity they have a dotted line to the centralised team. The IB as a whole will perform to the same standards and methodologies adjusted for the complexity of the cases in-hand. By using the IB brand the aim is to foster a one team approach in the conduct of investigations.
- 1.6. The CIU will set standards, provide coaching, and conduct quality assurance of lower-risk and/or volume investigations conducted by the de-centralised staff. Within appropriate parameters and with suitable support, those not in the central team can conduct quality investigations that meet the requirements of Post Office best practice.
- 1.7. Once the additional CIU staff start in September 2022 there will be sufficient capacity and capability to start increasing the volume of investigations suited to the CIU but currently carried out by a Speak Up investigator and the Head of CIU. At the same time, CIU and Triage will develop processes, procedures, systems, thresholds, and internal and external stakeholder relationships to operate the model. The aim is to be fully operating the model from January 2023.
- 1.8. The Disputes Resolution Team have provided some scenarios for CIU to sand box in order to understand how these cases would flow between the teams and what QA framework would be appropriate. A group of events from the last 18 months is being identified by the Disputes team which may have been suitable for escalation to CIU for discussion.
- 1.9. CIU is also working with the Horizon and GLO IT team, IT Security (Retail & Controls), and Legal colleagues to identify sources of evidence, how digital evidence can be accessed, and the level of reliability for use in case work.

2. *Operating Model – Extent of Investigative Remit*

- 2.1. For an internal investigation function, the Post office is not a straightforward organisation. Normally, the full extent of a corporate's activities and all "staff" would fall within the function's remit. However, the Post Office is a more complex environment for an investigation function to engage with.
- 2.2. Given this complexity, it is proposed that GE selects one of the below options (or another variation) as the remit for the investigation function for the first 12 months that it is in place and that this decision is reviewed at the one-year marker⁴.
- 2.3. This appetite would then help define the purpose of the IB e.g.: The investigation function conducts structured, transparent, objective, fair, and evidence-based collection and assessment of information with the intent to prove or disprove the

⁴ The Whistleblowing team sits outside this decision as those types of investigations are determined by the Public Interest Disclosure Act 1998 and laid out in the Whistleblowing Policy.



suspicion of wrong-doing, or assertion of a particular chain of events, that has or could affect (insert applicable categories from the table below)

Option	Extent of remit	POL & POL staff	Postmasters	Postmasters' staff	POL's Business Partners	Customers at a post office	Post Office website visitors
1		✓	✓	✓	✓	✓	✓
2		✓	✓	✓	✓	✓	
3		✓	✓	✓	✓		
4		✓	✓	✓			
5	*	✓	* ✓				
6		✓					

* Denotes current investigative activity. However, investigations which consider Postmaster conduct or activities, such as that governed by the Dispute Resolution Committee, are limited in scope.

- 2.4. It is our recommendation that the minimum remit of the investigation function is Option 4⁵. This would allow POL to act in determining facts relating to situations ranging from allegations of theft or fraud by Postmasters and/or their staff using/misusing POL systems or functions where either or both POL and the Postmaster are victims, through to misconduct or process failings in POL and the subsidiaries. The Horizon issue identified a failure to investigate beyond the Postmaster in determining culpability. Best practice (and in some situations, law) requires all reasonable lines of enquiry to be followed, whether they point away or towards the considered investigative hypothesis as it is the truth that is sought, not that a case is to be made against a selected individual. By investigating wider than the Postmasters, for example their staff when relevant, we demonstrate that POL has learned from the past and would seek to determine actual culpability, if any, which is treating the Postmasters fairly. Allegations of misconduct by Postmasters would be explicitly included in the proposed remit.
- 2.5. There may be situations where it is suitable for the investigation function to conduct an evidential investigation building on intelligence work conducted by Financial Intelligence Officers in Compliance e.g. when a post office is the venue of a serious and/or series of frauds or money laundering which uses Post Office infrastructure to facilitate the offence. Cooperation and liaison with other organisations and agencies would be essential in these circumstances.
- 2.6. POL investigators do not have the power of detention, seizure or arrest and so will not over-reach and seize personal property, will enter and remain on property only in accordance with the law, and will not seek to compel attendance to under-caution interviews but will inform interviewees that they are free to leave at any time if they do consent to a voluntary interview. The IB is not a constabulary and will not act as one.
- 2.7. It is our view that more exploratory work is required to better understand the investigation needs of Post Office's on-line presence before proposing an investigative remit in this space.

⁵ Peters & Peters have been advised of this paper and the proposed approach to criminal matters.



3. *Operating Model – Criminal Investigations*

- 3.1. Speak Up / CIU already conduct non-criminal investigations that touch Postmasters as well as POL itself. These include significant process and policy failures, root-cause analysis of significant events, allegations of discrimination, allegations of bullying and harassment, and activity which could cause reputational damage to POL. These case types will continue to be investigated once CIU is established and are assumed to continue to fall within CIU's investigative remit.
- 3.2. However, data from Speak Up reporting shows that c50% of reported matters relate to potential criminal offences. Analysis of Dispute Resolution information shows a regular and continuous identification of sometimes sizable shortfalls which may result from criminal activity conducted by Postmasters and/or their staff. Recent events around stamps shows other criminally-exploited vulnerabilities, and working with the Contracts team we are aware of multiple other potential criminal activities such as theft of cash pouches, compensation frauds against RMG, and manipulation of inputs into terminals to facilitate thefts or frauds. Resolution of these event types are currently viewed from a contractual perspective. We are proposing that these are instead viewed through a criminal investigation and referral lens. Without a criminal investigation and referral capability, POL cannot effectively provide a counter to these potential losses of public funds. Project Oberon is a clear example of where a lack of a criminal investigation and referral capability was detrimental to POL and to the interests of justice.
- 3.3. A policy decision was taken that Post Office would cease to act as a private prosecutor of alleged criminal offences in England & Wales. This paper does not seek to change that decision. The Cooperation with Law Enforcement Policy⁶ (CLEP) sets out POL's intent to report suspected criminality to law enforcement, how we support police investigations with evidence when requested by the police, and sets minimum control standards for doing so. It is silent on whether POL investigators may conduct criminal investigations in advance of applying the policy. The Group Investigations Policy is not explicit on this matter and is primarily concerned, in respect of criminal matters, with disclosure of information, referencing the CLEP.
- 3.4. As a wholly government-owned corporation in receipt of government funds, it may be viewed that we have a duty to investigate as well as report suspected criminal events to the relevant authority. We may be criticised for not doing so, particularly where POL funds have been misappropriated (and so by inference public funds are lost) and where we seek only a commercial outcome to these events. For example, where evidence obtained via an investigation supports a suspicion of someone having defrauded POL, they should be reported to the police irrespective as to whether or not the loss has been made good so that a credible deterrence may be established. Existing policies facilitates the reporting to police but not the preceding internal investigation. This paper seeks GE's approval for CIU staff to conduct criminal

⁶ A brief summary of the CLEP forms Appendix A



investigations within the IB's remit and report these matters to police when appropriate and in accordance with the CLEP.

4. *Operating Model – Criminal Referrals & Strategic Partnerships*

- 4.1. As a government organisation, Post Office is viewed by law enforcement (LEA) differently from a privately owned company. It is unfortunately fact that LEAs de-prioritise most reports of crime made by government-linked organisations if made in the traditional way. There is an expectation that a degree of self-sufficiency exists. Without recourse to private prosecutions an alternative is required if the interests of Post Office, Postmasters, our staff, our shareholder, and the public are to be protected.
- 4.2. Suspected offences with an element of criminal dishonesty would form the vast majority, if not all, of our criminal investigations and potential referrals. This would include theft, fraud of all types, and money laundering. These types of offences are those which most LEAs do not have sufficient, nor sufficiently skilled, resource allocated, and which are lengthy to investigate, often resulting in them not being prioritised. If we do not investigate these matters prior to referral then the likelihood of preventing the loss of public money significantly diminishes, as does any deterrence factor.

Jurisdiction is also relevant. Typically, authorities in Scotland are less inclined to adopt evidence collected by non-LEA investigators. England & Wales LEAs expect an almost complete case in an admissible format and Northern Ireland is likely to be somewhere between the two.

It is proposed that ahead of any specific case referrals (other than in extremis):

- 4.3. England & Wales:
- A CEO letter to BEIS, and then on with a Minister's endorsement, requests assistance from the Commissioner of the City of London Police's (CoLP) Economic Crime Directorate (ECD) (the national lead force for fraud and other economic crime) to work in partnership with CIU to investigate and then refer to the Crown Prosecution Service all strong cases of dishonesty-based offences above a certain level of complexity or monetary loss;
 - A dedicated team to be formed within CoLP ECD to work closely with CIU under a MoU would be the best-case scenario – its size would be dependent upon volumes and budget;
 - Post Office or BEIS may be asked to contribute to the cost of this team



4.4. Scotland:

- A CEO letter to BEIS and then on, with a Minister's endorsement, to the Crown Office and Procurator Fiscal Service and the Chief Constable of Police Scotland seeking a similar arrangement to England & Wales; OR
- the HCIU and CIU Senior Investigator for Scotland engage Police Scotland and seek a solution at a more operational level with their ECD;

4.5. Northern Ireland

- A CEO letter to BEIS and then on, with a Minister's endorsement, to the Public Prosecution Service Northern Ireland (PPSNI) and the Chief Constable of the Police Service of Northern Ireland (PSNI) seeking a similar arrangement to England & Wales; OR
- the HCIU and CIU Senior Investigator for Northern Ireland engage PSNI and seek a solution at a more operational level with their ECD

4.6. The purpose, as ever with criminal case work, is to act as a deterrent to prevent or limit future loss, seek punishment, and to seek compensation for the victim(s) (including Postmasters where they are the victims). By working with and through LEAs we could achieve all three, but this outcome is less predictable if we take an ad hoc approach to LEA referrals.

4.7. By seeking partnership working in this way, POL demonstrates that we do not operate as victim, investigator, and prosecutor. Conceptually, the police and the prosecutors will decide on the strength of evidence what they will (or will not) progress through the criminal justice system, not POL. To get to that point, POL will need to collect admissible evidence to assist over-stretched LEAs and that requires competent, evidence-led, ethical investigators.

5. **Next Steps**

- 5.1. If the approach is agreed, CEO letters to be drafted and sent to BEIS for the relevant authorities in all three jurisdictions.
- 5.2. Based on approvals given and decisions made as a result of this paper, The Group Investigations Policy and The Cooperation with Law Enforcement Policy will require significant up-dating.



Appendix A

The Co-operation with Law Enforcement Policy's Post Office's approach to cooperating with Law Enforcement Agencies is based upon the following core principles:

- Post Office is committed to supporting Law Enforcement Agencies in the prevention, detection, investigation and potential prosecution of alleged offences;
- Post Office will as far as possible cooperate with Law Enforcement Agencies and voluntarily provide information and evidence on request;
- Post Office is committed to ensuring that prosecutions are fair and that Prosecution Teams are made aware of, and provided with, Disclosable Material in Post Office's possession;
- Post Office will manage the risks associated with providing such cooperation, by ensuring that appropriate controls are in place in relation to the provision of information.

In accordance with these principles, and subject to the controls described in the policy, Post Office:

- will make a Victim Crime Report to the police where suspected criminal misconduct is identified in its business operations;
- will not conduct private prosecutions (Post Office's shareholder must be consulted and approval obtained from the Post Office Board if any deviation from this is contemplated);
- will provide information to Law Enforcement Agencies to assist the prevention, detection, investigation and potential prosecution of crime:
 - o voluntarily for intelligence purposes, accompanied by an Advisory Note if required to describe any known issue/s which might affect the reliability of the information;
 - o voluntarily for use as evidence, where it is classified by Legal and Compliance as 'low risk data' for the purpose of this policy (see Appendix 1);
 - o voluntarily for use as evidence, if approved by Post Office Legal or any Nominated Criminal Law Advisors acting for Post Office; or
 - o as required by a Mandatory Order or otherwise approved by the Post Office Board.