

## Update to Post Office Limited Board re: Horizon Legal Issues - 22 July 2013

### 1. CRIMINAL LAW

**Post Office currently acts as a prosecutor of its own cases using an external firm.**

Following the publication of the Second Sight interim report they are carrying out the following work.

#### 1.1 Prosecution Case Review

##### 1.1.1 Prosecutors' Duty

- Prosecutors have a continuing duty to act properly and fairly.
- Part of that duty requires them to disclose to the Defence any material which undermines the prosecution case or assists the defence case.
- This assessment is made on a case-by-case basis.
- Through its criminal law solicitors Cartwright King (CK), POL is complying with that duty by reviewing past and present prosecutions to identify those cases where the Second Sight (SS) Interim Report ought to be disclosed.
- The Defendant will then decide whether to apply to the Court of Appeal for permission to appeal a conviction based on any fresh material disclosed.

##### 1.1.2 Review to Date

- As at 22.07.13, CK has reviewed 124 prosecution files.
- Of the cases reviewed, CK has provided specific advice on 9 files, and will provide specific advice on a further 3 files.
- That advice and discussion with POL Legal has resulted in:
  - o the prosecution being discontinued in 3 cases as not being in the public interest ;
  - o disclosure being provided in 6 cases;
  - o a recommendation that POL oppose any appeal made following disclosure of the fresh material.
- CK has also overseen a review of the prosecutions undertaken in Scotland and Northern Ireland:
  - o CK has contacted the Scottish prosecutor about the SS Interim Report in 2 cases; and
  - o has not identified any concerns with prosecutions in Northern Ireland.
- CK will also review the pre-Separation prosecution files held by Royal Mail dating back to 01.01.10. RM requested these be retrieved from storage on 18.07.13.

### **1.2 Compensation for Miscarriage of Justice (s. 133 Criminal Justice Act 1988)**

Compensation is payable by the Secretary of State where a newly discovered fact shows beyond a reasonable doubt that there has been a miscarriage of justice, i.e. where:

- the new facts show the defendant was innocent; or
- no reasonable jury could have convicted having considered the new facts.

CK has advised that although the SS Interim Report ought to be disclosed in some cases, it does not believe that any of those cases would satisfy this test such that compensation would be payable under the Criminal Justice Act.

### **1.3 Criminal Cases Review Commission (CCRC)**

The CCRC has written to Post Office Limited seeking information about:

- the criminal convictions which might be affected by the SS Interim Report; and
- the steps POL is taking in response to the SS Interim Report.

The CCRC can consider criminal convictions which have been upheld following an application to the Court of Appeal, or which were based on a guilty plea made in a Magistrates (i.e. lower) Court.

POL acknowledged the CCRC's letter, with a substantive response to be provided by end of July.

CK has advised POL that the risk of the CCRC having jurisdiction to review any conviction is low.

### **1.4 Brian Altman QC**

In order to provide independent oversight and give advice on specific criminal law aspects of this issues POL will also be consulting Brian Altman QC, a leading criminal barrister and former First Treasury Counsel, to advise on:

- CK's case review (bearing in mind CK will in many cases be reviewing their own work as the original prosecutor although it is their obligation to comply with the Prosecutors Code);
- the expert evidence POL receives from Fujitsu about Horizon in criminal prosecutions;
- POL's response to the CCRC;
- Any other potential governmental / regulatory action which POL may face, e.g. from the Attorney General's office;
- POLs future prosecution strategy generally.

## **2. CIVIL LAW**

### **2.1 Potential Claims against POL**

There are a variety of possible claims which a SPMR could seek to pursue against POL following the SS Interim Report.

As at 22.07.13, no claims have been made based on the SS Interim Report.

Potential claims should be assessed on a case-by-case basis given:

- the different sources of, and defences to, potential liability; and
- the different remedies/compensation which could follow depending on how the claim is framed.

### **2.2 Resolving Second Sight Review Cases**

POL continues to engage with SS with the aim of resolving the cases under its investigation by at a meeting with JA and SS on Monday, POL proposed a plan which would enable sub postmasters once a case review had been completed by SS to take part in a mediation process this would seek to facilitate a resolution between POL and the SPMR. (See flow chart ) Obviously if mediation did not result in a conclusive resolution the SPMR would pursue his issues through any independent channel. This proposal was welcomed in principle by JA and there is a workshop on Thurs to take this forward.

Ways of working – it has become apparent that if SS is going to make progress they will need to operate in a different way, so additional senior level resource with a deep understanding of the network has been allocated to work with them. She will also be responsible for

### **2.3 POL Claims for Debt Recovery**

Allegations concerning the accuracy of Horizon data are also made in defences to court proceedings brought by POL to recover debts from SPMRs.

These allegations are assessed on case-by-case basis to differentiate genuine concerns from general, unsubstantiated assertions which could frustrate legitimate debt recovery action.

Currently, cases which raise genuine concerns have been put on hold pending conclusion of the SS review. These cases are monitored for any statutory time limits which might become applicable.

## **3. DIRECTORS' DUTIES**

POL's directors are subject to various personal duties including the duties to:

- act in accordance with the company's constitution and for a proper purpose;
- promote the success of the company;
- exercise independent judgment;
- exercise reasonable care, skill and diligence.

Provided a director makes fair and reasoned decisions in good faith, s/he is unlikely to breach these duties.

If a director takes a decision in bad faith or maliciously, this could create personal liabilities, e.g. for:

- malicious prosecution against an SPMR;
- breach of the Data Protection Act in misusing personal / Horizon data;

- inducing a breach of contract between POL and an SPMR.

The duties are owed to the company, i.e. POL, and can only be enforced by POL. In rare circumstances, these duties can be enforced by a shareholder (i.e. BIS) acting on behalf of POL (a "derivative action"). These duties cannot be directly enforced by others, e.g. employees, contractors and/or SPMRs.

Directors should be careful when externally commenting on specific SPMRs / cases as they can be held personally liable for any defamatory comments.

There are no personal consequences for a director under criminal law if POL has failed to make adequate disclosure in any criminal proceedings as no director has directly and personally led the disclosure process.

23rd July 2013

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