

**From:** Chris Aujard

**CC:** ExCo

**14/02/2014**

**To:** Post Office Limited Board

## **POST OFFICE PROSECUTION POLICY**

### **Purpose**

1. This paper accompanies the attached ARC paper which seeks the Board's approval to the adoption of the new Prosecution Policy. This paper at the Chair's request also summarises the ARC discussion and where relevant the ExCo discussion of 13 February.

### **Background**

2. The ARC first considered the Post Office's prosecution policy at its November meeting. It remitted the paper for further consideration and refinement of the options.
3. On 11 February the ARC considered the attached revised options paper and endorsed Option B to be put forward to the Board, for now, with a clear understanding that the policy would be regularly (yearly) reviewed to consider whether a further change might be appropriate later.
4. ARC also commissioned a paper from Communications on the potential narrative that could be used to communicate the change on a reactive basis. This paper is annexed today.

### **Activities/Current Situation**

5. The ARC's discussion was wide ranging and challenged the paper in a number of areas. In particular the ARC noted that that Option C represented a simpler and "cleaner" end state than Option B. The decision to endorse Option B was finely balanced, and discussion swung on a few key points including :
  - 5.1. A key driver of this decision being prudence from both a pragmatic and risk management perspective. In other words, the thinking was to try to change prosecution policy in a gradual (and potentially reversible) fashion. ARC also noted that through the Business Improvement Programme, POL is changing its approach to contract breach, suspension and the training and support it provides and that these changes have not yet worked their way through the system. Accordingly the full effect of these changes is unclear, and ideally it would be helpful to have a clearer understanding of how these changes interact with the factors set in the paper before making any decision which limits optionality. This issue was also raised at the ExCo where there was a clear steer that these changes needed very careful monitoring through the business improvement programme.
  - 5.2. The case was made at ARC that importantly there are a number of factors which distinguish Post Office from other financial institutions who are content not to pursue

their own prosecutions – scale, our unique relationship with sub-postmasters, the amount of cash that is handled by our branches (and in many cases by individuals who are not employees), our large number of vulnerable customers who are more easily defrauded, and the fact that public money is at stake.

5.3. ARC also considered the potential media impact of the change to C. With the mediation process underway and continued close interest from the media and MPs in all actions in this area, any change of policy is likely to be closely scrutinised and over-interpreted – with the likely inference drawn that this is an admission that POL were wrong to pursue prosecutions in the past. This is compounded by the fact that POL will shortly be launching the procurement process for the replacement to the Horizon system – something which was due to happen now in any case, but the media will inevitably attempt to link the two stories and suggest this is an admission of the need to fundamentally overhaul both systems and processes in the wake of the Second Sight report. ARC felt that this could potentially overshadow the positive story about the actual changes being made in the context of the Business Improvement Programme.

5.4. Finally, in terms of whether to proceed with option B or C ARC discussed the need to maintain an effective deterrent which given the stretched resource position of the CPS might be difficult with a move straight to option C.

6. At both ExCo and the ARC there was a discussion of the impact of the Civil Process and the possibility of using past performance as a guide to predict future recovery under the new prosecution policy. Given the volume of changes underway in the network it was noted that this type of extrapolation would not be possible and ExCo in particular noted that given this careful monitoring (monthly or quarterly) going forward was required.
7. The ARC questioned the make up of the applicants in the mediation scheme and the following statistics were provided in advance of the meeting:

7.1. Of the 147 applicants to the scheme **49 applicants** were subject to criminal prosecution.

7.2. Of those, no prosecutions happened within the last 2 years, but one applicant was subject to criminal prosecution in 2011, 6 applicants were subject to criminal prosecution in 2010 and 4 applicants were subject to criminal prosecution in 2009.

7.3. We believe (but are trying to verify) that **31 applicants** were subject to some form of recovery processes. This includes recovery via POL's "normal" debt recovery processes (e.g. by issuing a letter of demand) and recovery through the use of full civil court proceedings.

7.4. We are currently aware that, of those 31 cases, civil court proceedings were issued against at least **16 applicants**, of which 8 were dealt with in the last 2 years.

7.5. External solicitors also recovered debts from at least 5 applicants (without initiating court proceedings), of which 2 were dealt with in the last 2 years.

8. ExCo also discussed the impact that the change in prosecution policy would have on the so called "stacked cases" should the Board adopt the policy. Within the stacked cases there are currently 40 cases and we are already in the process of notifying around 10 of

them that there will be no further action taken in relation to their case. Of the remaining 30 cases it should be noted that any decision on the paper will have an impact on the stacked cases. If the Board should adopt Option B each case will be individually reviewed but it is expected that a number of the stacked cases will not be taken forward and the individual will be informed that no further criminal action will be taken against them. This decision not to proceed with a number of cases may lead to further media interest in Post Office's approach to prosecution either via the individuals themselves or JFSA.

9. Finally ARC discussed whether any policy change should be made available on POL's website. The feeling was that the policy should not be published but that Post Office should prepare appropriate reactive lines in case it was necessary to discuss the changes – for example if directly questioned at the forthcoming Arbuthnot meeting. To support this communications have prepared the attached draft which will be revised following feedback from the Board.

**Chris Aujard**  
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