

MEETING WITH POST OFFICE LTD AND THEIR ADVISORS

Crown Office, 6 October 2015

Present: Dawn Lewington, Principal Depute, Policy
Mairi Boyle, Principal Depute, DSC's Office
Laura Irvine, BTO (Scottish solicitors for Post Office)
Martin Smith, Cartwright King (Solicitors for Post Office)
Simon Clark, Cartwright King
Roderic William, solicitor, Post Office

MS explained that he and SC had met with Paul Miele 2 years ago to discuss some issues with the Horizon system. At that time the Post Office had some work to do to demonstrate the integrity of Horizon. MS and SC have since reviewed all the English cases (Post Office cases as opposed to cases reported by the police to the CPS). This included looking at cases where there had been convictions. The purpose of today's meeting was to update COPFS on what has happened since and to allow us to "take a view".

RW said that the CRCC were looking at 20 convictions in Post Office cases in England. They have asked the Post Office for information and they are in the process of complying. These are not cases where the convicted person has exhausted their right of appeal: none of them have appealed and all but 2 cases resolved with guilty pleas. They are not sure where the CRCC is with this – a meeting is scheduled for a few weeks' time.

RW went on to explain the Horizon system. He said that, when allegations were made about the integrity of the system they invited complaints and those with a complaint were given grants to instruct a solicitor to articulate the complaint for them (mediation process). There are 136 complaints all of which had been thoroughly investigated by the Post Office (no Cartwright King involvement). Most involved postmasters who had left the Post Office. 42 of the 136 cases involved prosecutions (which included non-court disposals such as cautions). The reviews were shared with the complainer and Second Sight.

Following this review process the Post Office was confident with Horizon. SC said that Second Sight's 2 reports indicated that Horizon was fine. Second Sight have also said this on Panorama and to the Parliamentary Select Committee. (It was clear that the Post Office have issues with the Panorama programme – they have complained to the BBC about Post Office not having the opportunity to comment on the identity of the whistle-blower and say the BBC were misleading as to the recency of his involvement.) In any event Horizon is being replaced as part of a scheduled IT upgrade in 2016. The Post Office are therefore getting to the end of the line with Horizon.

RW acknowledged there had been a difference of opinion between Post Office and Second Sight. The Post Office complaint is that Second Sight went beyond their remit, which was to look at Horizon, to consider issues such as training and support and prosecution policy and practice. They did not have access to prosecution files though they had access to disclosure bundles. MS said that Second Sight had strayed into areas in which they were out of their depth.

The Post Office considered they required to instruct a "subject expert" in relation to prosecution cases to demonstrate that Horizon is robust. The subject expert was to conduct an independent, high-level review of the whole system. They never did manage to engage a subject expert. Finding someone suitable to do the work within timescales (6 months) and in a reasonable budget proved an impossible task (estimate of costs had been in 6 figures). SC said that, as a result, the Post Office have "stayed" all prosecutions in England and Wales on the basis it would be unfair to proceed without an integrity report.

SC said there were 3 categories of case (after discussion it emerged there were 4 categories):

1. Case dependent on Horizon evidence
2. The defence have suggested the defendant made a mistake or was confused
3. Case based on other evidence – Horizon does not figure (but could possibly be "blamed" for circumstances?)
4. No possible Horizon involvement

We were told that what happened with these cases was that they were continued for a while then dropped. Proceedings were effectively suspended until it would have been oppressive to continue with them because of delay. The Post Office took civil and commercial action against those people involved.

When asked by MB why they did not prosecute cases not dependent on Horizon MS said that this was part of the application of the public interest test. He suggested that someone prosecuted for a category 3 case might ask, "Why me and not them?" of category 1 and 2 cases. Category 3 defendants were starting to suggest that Horizon mistakes had relevance to their cases. Overall Post Office considered there was an issue of the public perception about how they were conducting themselves and they did not want the public to lose trust in the organisation. They want to avoid public discussion of the questions around Horizon. There was an inference that Post Office did not consider Category 3 cases worthwhile pursuing when civil recovery of funds was possible.

MS said there had been 2 exceptions – 2 cases that had been prosecuted. One of these involved a husband and wife team who documented each penny they stole and then made full admissions to stealing £100,000. In that case Post Office considered there was no risk of the defendants claiming Horizon was an issue.

Towards the end of the meeting MS said that where a case does not involve Horizon at all the Post Office will prosecute. It emerged there was a fourth category of cases – those where there is no Horizon involvement and no possible way of attributing the conduct to Horizon. They have just started looking at a case from Blackpool. A customer paid over £3,000 which was to be placed in an

ISA. The money was simply "pocketed" and the electronic system was not involved at all.

There was a discussion about cases involving vulnerable complainers and the assessment of the public interest in prosecuting. MS said that Post Office had applied the Code for Crown Prosecutors but their cases were failing at the evidential test and were not getting as far as the public interest test. They failed at the evidential test because it was assessed that, with the "apparently" unreliable Horizon evidence there was not a reasonable prospect of securing a conviction.

Having begun the discussion by saying that Post Office had stayed all of their prosecutions in England and Wales it emerged that there were a very small number of exceptions and MS said that the Post Office would think long and hard about whether to take proceedings in any new case that came to their attention and that assessments were made on a case-by-case basis.

Post Office are pursuing their civil claims against postmasters. These are being defended on the basis of the unreliability of the Horizon evidence but Post Office feel they do not require to go into such a root and branch review of Horizon in order to prove the cases to the civil standard.

RW said that Post Office have not said publicly that they will not prosecute. There would be a risk involved in this in that dishonest employees might think they could get away with dishonest behaviour at least while Horizon was still in place.

Discussion turned to the cases sitting with COPFS and involving the Post Office. MS said that if the Scottish cases were in England and Wales, Post Office would close these down. If the Scottish cases depend on someone from the Post Office (or Fujitsu who operate Horizon) to speak to the integrity of the system "then that is not going to happen because there is no subject matter expert".

MB asked whether it would be possible to isolate a particular transaction and look at the integrity of that. RW said that would not be possible. The Post Office had thought of that and considered it was not possible to isolate a single transaction or a series of transactions. Questioned by DL SC said that you would need an expert to support cases in which one part of the evidence was dependent on Horizon, even where there was evidence of an individual's password being used to access the system because that was not necessarily conclusive.

There was a short discussion about the circumstances of the cases with COPFS reported by the Post Office. BTO are aware that there are also cases reported by the police that concern dishonesty by Post Office staff. They cannot say for certain that these are the only cases in the pipeline with the police.

When asked as to whether the CPS were prosecuting cases reported to them by the police in categories 1-3 SC said that they had had a meeting with the CPS recently and advised them of the Horizon issue but that they had "no sway" and the CPS may or may not take their advice.

MS said that the Doran case had been reviewed as part of the process discussed earlier. It was not however a case investigated or reported by the Post Office and he had little to say about it.