



POST OFFICE LIMITED BOARD REPORT

Title:	GLO Board Report (Criminal Cases)
Meeting Date:	10 th March 2019
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Sponsor:	Ben Foat, General Counsel

Input Sought

Historical Convictions	
Action Required: Decision	The Board is asked to NOTE Post Office's legal duties as former prosecutor.
Action Required: Decision	The Board is asked to APPROVE Post Office taking the widest and most generous approach to post-conviction disclosure.
Action Required: Noting	The Board is asked to APPROVE the recommendation to await the results of post-conviction disclosure and CCRC decisions before deciding on its approach in any given case.
Action Required: Noting	The Board is asked to NOTE the risks of supporting (or not opposing) weak appeals.
Action Required: Decision	The Board is asked to APPROVE the instructions to the external criminal legal team.

Executive Summary

Context:	Post Office is awaiting the decisions of the CCRC whether to refer multiple historical convictions to the Court of Appeal, likely to be on or shortly after 24 March 2020. Separately but closely linked, Post Office's external criminal legal team is conducting a post-conviction disclosure exercise to identify material that might cast doubt on the safety of any historical convictions for which it takes responsibility as former prosecutor. In due course, Post Office will need to decide whether to support, oppose or not oppose any appeals.
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Questions asked & addressed

1. What are Post Office's duties in relation to the historical convictions?
2. What choices of approach does Post Office have in discharging those duties?
3. What are the advantages and disadvantages of those choices?
4. Does Post Office need to make decisions now on its stance on any appeal?
5. What instructions should the Board give to the external criminal legal team?

Report

1. In managing the historical convictions, the Board should consider what is in the best interests of the company (mindful of its duties as the former prosecutor). If a conviction is identified as potentially unsafe by the CCRC or Post Office's own review, Post Office will want to take a supportive approach to ensure that the defendant has the best chance of overturning the conviction in the Court of Appeal Criminal Division ("CACD"). Conversely, where convictions appear to be safe following a detailed review, maintaining that position is the right thing to do. In either situation, Post Office's ultimate position should be guided by the outcomes of its post-conviction disclosure exercise and any referral decisions taken by the CCRC.
2. At its meeting on 28 February 2020 the Board was briefed by the external criminal legal team on three high-profile cases, discussed its legal duties and considered its preferred approach to historical convictions. A further briefing and discussion with the external criminal legal team will take place on 16 March 2020 to cover the remaining high-profile cases and emerging themes from the review of all historical convictions.

Post Office's legal duties as former prosecutor

3. The Board is asked to **NOTE** that, as the former prosecutor, Post Office has the following legal duties
 - (i) **To conduct a post-conviction disclosure exercise ("PCDE")** in order to disclose to the defendants any material that might cast doubt on the safety of their convictions. This includes a duty to make further inquiries that have a real prospect of revealing such material. This duty applies to all convicted defendants, not just those who were also GLO claimants.
 - (ii) **To bring obvious miscarriages of justice to the attention of the CCRC or CACD** that are revealed by the PCDE.
 - (iii) **To co-operate fully with the CCRC** in respect of the cases it is considering whether to refer to the CACD.
 - (iv) **To decide whether to support, oppose or 'not oppose' any appeal** referred to the CACD.
4. One thing that Post Office cannot do is change the past. It cannot re-decide whether it ought to have prosecuted or not. The duties at (ii) and (iii) are straightforward, whereas the duties of disclosure and 'stance' at (i) and (iv) require Post Office to decide on its preferred approach going forward. How Post Office conducts the PCDE and its stance on any appeal will determine how supportive Post Office is, and is perceived to be, in any given case.



5. The critical legal factors which will inform Post Office's approach to any given case are the outcome of PCDE and any CCRC decision to refer, given that the CCRC has access to more material than Post Office and Post Office should not be taking a less generous approach than the CCRC.
6. Outside of these legal factors, Post Office will need to understand the wider consequences of its preferred approach for example in terms of financial costs, reputational risk, further judicial criticism, undermining of the postmaster network, etc.

The Post-Conviction Disclosure Exercise

7. The duty of post-conviction disclosure goes beyond the GLO claimants and includes all historical convictions (the precise number is not clear but is in the range of 550-600).
8. Presently, subject to further review, Post Office assumes responsibility for RMG Prosecutions in those convictions based wholly or partly on Horizon data pre-separation in April 2012.
9. The PCDE should take the widest possible approach to identifying possible grounds for arguing that a conviction is unsafe. It will identify whether there was material non-disclosure in the original case and/or whether there is fresh information now that might have changed the outcome of that case. It will look not just at bugs, errors or defects in Horizon but at systemic or institutional failures within Post Office that may have amounted to serious prosecutorial misconduct. The Board is asked to **approve** this approach.
10. Each case will turn on its own facts, although it may be possible to take a thematic approach on some issues e.g. Fujitsu evidence, guilty pleas to false accounting etc.
11. Subject to Board, Post Office intends to take a generous approach to post-conviction disclosure, over and above that which is strictly necessary according to case law. What this means in practice is that each of the convicted individuals will receive a generic disclosure pack (i.e. a series of propositions accepting the various findings in respect of the Horizon judgment) and a specific disclosure pack which could include PEAKs, KELs, ARQ data and event logs, NBSC and HSD call logs, emails from investigators and lawyers, BIMs, OCRs and OCPs. This will demonstrate a supportive approach by furnishing each convicted person with all material in Post Office's possession or control which casts doubt on the safety of the conviction. The Board is asked to **approve** this approach.

Post Office's position at the Court of Appeal

12. Once the CCRC refers a case to the CACD and states its reasons for the referral, it has no further involvement. The CACD will list the hearing and Post Office, as prosecutor, will need to decide its position. Post Office's options will be to:
 - support the appeal
 - oppose the appeal
 - "not oppose" the appeal
13. Not opposing an appeal means that Post Office recognises that the conviction might be unsafe without accepting that a miscarriage of justice has occurred. In an adversarial



system, strict neutrality is difficult to achieve. In any event, whatever position adopted by Post Office, the CACD will make its own decision, even if both prosecution and defence support the appeal.

14. It is **recommended** that Post Office await the outcome of the PCDE and the CCRC's referral decisions before taking a final view on its preferred approach. It is not clear which cases the CCRC will refer; what the purpose of any referral is (e.g. the CCRC may decide to refer a test case in the first instance); and in making any referral the CCRC will give a Statement of Reasons which will need to be taken into account in Post Office's assessment. In reaching its view, the CCRC will have had information from the applicants to which Post Office is not yet privy. Plainly Post Office would want to ensure that its position is no less generous than that taken by the CCRC.
15. Depending on the outcome of the PCDE and the basis for any CCRC referrals, the most supportive approach Post Office could adopt would be to support any reasonably arguable ground of appeal, however weak. However, such an approach overlooks the reality that some defendants pleaded guilty or were found guilty because they were guilty. Inevitably, it may lead to the overturning of convictions where there was strong evidence of guilt outside of Horizon e.g. bank deposits matching the shortfalls. The CACD may criticise Post Office for seeking to circumvent its role and Post Office would also risk further stinging criticism of its historical conduct.
16. Apparently safe guilty pleas require a high level of either material non-disclosure or prosecutorial misconduct to be overturned by the CACD. Therefore, Post Office might have to accept responsibility for very serious failings, matching some of the more extreme criticisms in the media, in order for such convictions to be quashed. The Board is asked to **NOTE** these risks.

Instructions to the external criminal legal team

17. The Board is asked to **approve** the following instructions to the external criminal legal team:
- (i) To take the widest possible approach in the PCDE to identifying potential grounds for challenging the safety of a conviction and to identifying material for disclosure that might support those grounds;
 - (ii) To make disclosure in the PCDE that goes beyond that which is strictly required by case law;
 - (iii) Once the outcomes of the PCDE and CCRC processes are known in any given case (or group of cases, if a thematic approach is possible) to advise on the likelihood of the conviction being quashed in the CACD and the advantages and disadvantages of supporting, opposing or not opposing the appeal, for the Board to make the final decision.