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Department for
Business, Energy
& Industrial Strategy

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OFFICIAL SENSITIVE AND SUBJECT TO LEGAL PRIVILEGE

POST OFFICE GROUP LITIGATION UPDATE

Summary

1. This submission updates you on the steps POL are now taking in relation to prosecutions they conducted which resulted in convictions. These include cases that are being considered by the Criminal Cases Review Commission (CCRC).

Timing

2. Routine. We will continue to work with POL to oversee their approach to these cases.

Recommendation

3. We recommend that you note the contents of this submission.

Background

4. Following the settlement of the Group Litigation Mr Justice Fraser handed down his judgment on the reliability of the Horizon accounting system on 16th December 2019.
5. Broadly, he found that today's Horizon system (operating from 2018 – present) is "relatively robust". However, previous systems were not: Legacy Horizon (2000 – 2010) was "not robust" and the robustness of its successor (2010 – 2018) was "questionable, and did not justify the confidence placed in it by Post Office". This judgment was a historic analysis of the Horizon system in relation to the period in question in the group litigation, and not a judgment upon the system in use today.
6. POL does not have any special powers to bring prosecutions but instead relies on the same right that anyone has to bring a private prosecution. POL are not currently prosecuting any cases and have not done so for some years but they have prosecuted people in the past and 61 of the claimants in the Group litigation had been convicted of criminal offences, either following a guilty plea or a trial.
7. Prior to 16th December 2019 there were 34 cases which POL prosecuted that were being considered by the CCRC. Since that date the CCRC have been asked to consider a further 21 cases. The CCRC have powers to refer convictions to the Court of Appeal and the Court of Appeal can overturn convictions which they do not consider to be safe. We



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understand the CCRC might make a decision in March on whether to refer any convictions to the Court of Appeal.

8. POL have been co-operating fully with the CCRC's investigation and met CCRC caseworkers on 29th January 2020.

Parliamentary handling

9. On 4th February 2020 Lord Duncan answered some Lord's Oral questions on the Group litigation and POL's prosecution powers. The Hansard transcript is at Annex A. The Lords Chief Whip has indicated that the following Question for Short Debate will take place in the Lords on 25th February:

Lord Berkeley to ask HMG what steps they intend to take in response to the judgment in Bates v Post Office [2019] EWHC 3408; and whether they intend to take any action against the directors responsible for the Horizon Accounting System

Next steps

10. After any conviction POL remain under a legal duty to:

(i) disclose to a defendant any material which has come to light and might cast doubt on the safety of the conviction; and

(ii) Where there is a real prospect that further inquiry might reveal such material, make that inquiry.

This duty arises irrespective of the involvement of the CCRC in any case.

11. POL are prioritising their review of the cases being considered by the CCRC but are also working on identifying other cases they prosecuted. Present estimates suggest there may be c. 574 historic prosecutions which need to be reviewed. POL have instructed solicitors specialising in criminal law (Peters and Peters) to advise them together with Brian Altman QC, a leading criminal barrister. They have also retained Sir David Calvert-Smith, a retired High Court Judge and former Director of Public Prosecutions, to provide oversight of this review process.
12. POL are taking a wide approach to their review by seeking to identify not only whether there has been non-disclosure of a bug, error or other defect in Horizon but also whether there might have been some remote access to the Horizon system that might have affected its accuracy. We are seeking to ensure their review does not just focus on Horizon but also considers whether there might have been something else that went wrong in individual cases and which should be disclosed as part of the legal duty referred to at paragraph 10 above.
13. POL are also aware of 4 four cases currently being prosecuted by the Crown Prosecution Service or their Northern Ireland equivalent and another 37 cases where the Post Office are assisting the police with investigations where Horizon issues might be relevant.
14. In each of the four CPS cases the Post Office proactively informed the responsible police officer and/or public prosecutor of the potential for the Horizon judgment to impact upon



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the prosecution. The Post Office also again sent a standard notification letter to all CPS Areas in December 2019. In many of the 37 cases where the Post Office are assisting the police, the Post Office has sent a notification letter regarding the Horizon issues directly to the police or public prosecutor. The Post Office are now working to ensure a notification letter is sent in every case.