

Post Office Ltd – Strictly Confidential

DRAFT – Legally privileged and confidential

POST OFFICE LTD BOARD

Subject: Post Office Ltd – Prosecution Policy Paper

1. Purpose

The purpose of this paper is to:

- 1.1 Detail the current Post Office Ltd prosecution policy in regards to dishonesty by agents and employees.
- 1.2 Outline the benefits and disadvantages of the current approach.
- 1.3 Provide a number of alternative approaches for consideration.
- 1.4 Provide a recommendation for a prosecution policy that is fit for purpose for Post Office Ltd.

2. Current Situation

- 2.1 **Current policy:** Post Office Ltd currently adheres to the prosecution policy set out in Annex 1 (which is largely based on the previously applied Royal Mail Group policy) as regards the prosecution of staff and agents involved in dishonesty affecting the business. This policy sees Security Team personnel investigate suspected internal crime (adhering to relevant legislation) and privately prosecuting individuals through the Criminal Courts.
- 2.2 **Criminal Prosecutions in 2011/12:** The year 2011/12 saw 50 prosecutions concluded of which 48 resulted in guilty pleas or verdicts. The costs and recovery figures for that period are:

Sums Stolen	£1.4m
Costs recovered	£878k (including £90K towards costs)
Cost of Prosecuting	£951k being £180k legal costs and £771k apportioned Security Team costs)

Apportioning the time spent on fraud activity (Security Team operational personnel also perform physical crime activity across the estate) the costs for 2011/12 would appear as follows:

Role	Total Salary £	Workload investigation related	Cost (£) related to all investigations
F.I. 3b x 3	135,000	85%	115,000
Team Ldr 3b x 3	135,000	30%	40,000
Sec Mgr 2a x 22	880,000	70%	616,000
Total Cost £	1,150,000		771,000

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2.3 Civil Debt Recovery comparison for 2011/12:

Debts arising	£8.9m
Costs recovered	£2.1m
Cost of Suing	£140k approximately for legal costs

2.4 **Staffing:** Post Office Ltd currently utilise one in house Criminal Lawyer (supported in part by a paralegal) and a network of external legal agents and counsel in order to manage the prosecution process. The Police and the CPS are not normally utilised in the course of investigation and prosecution. This is not a unique process and similar approaches are adopted by a number of organisations such as Department for Business, Innovation and Skills, Department for the Environment, Food and Rural Affairs, Environment Agency, Financial Services Authority and Gambling Commission. The CPS would rarely become involved in a Post Office Ltd prosecution to the point of performing the lead prosecuting role. This would be based on the fact that the Police do not conduct the majority of our investigations nor do they manage the majority of the exhibits as traditionally both areas are performed by Security Team personnel.

2.5 **Proceeds of Crime:** Since 2005 a number of Post Office Security Team personnel have held accreditation in regards to Proceeds of Crime Act legislation (PoCAL). This enables Post Office Ltd to apply various techniques to facilitate the identification, restraint and the recovery of funds dishonestly obtained by agents and employees. The restraint and recovery elements Post Office Ltd utilised are reliant on the subject being prosecuted for acquisitive offences, in essence proving monetary gain. Post Office Ltd does not apply PoCAL for civil cases as this ability would be reserved to an audience before the High Court only. The successful application of PoCAL supported by internal prosecution processes have seen fraud losses versus recovery rates rise from 20% recovered (2005/06) to 66% recovered (2011/12). Intervening years have seen:

2005 - 06	2006 - 07	2007 - 08	2008 – 09	2009 - 10	2010 - 11	2011 - 12
20.23%	44.54%	27.15%	34.29%	48.91%	49.31%	66.4%

2.6 **Northern Ireland and Scotland:** Cases originating in Northern Ireland and Scotland are dealt with differently with far greater reliance being placed on the involvement of outside agencies (Police and Procurator Fiscal respectively) in order to bring prosecutions. Relatively low numbers of prosecutions in these two geographical areas provide insufficient management information as to whether recovery amounts suffer as a result.

3. Benefits & Disadvantages of the Current Situation

Pros	Cons
A clear deterrent: this form of sanction is clearly understood within the organisation and is the strongest deterrent in regards to preventing crime from those in positions of trust.	Erosion of Deterrent Effect – if prosecution is over used it can lose impact and therefore it is appropriate to adopt a policy for prosecution which is proportionate, focused and transparent. Post Office Ltd is currently reviewing its Criminal Prosecution Policy following

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	Separation. It is also difficult to measure the cost savings provided by the deterrent effect of prosecution, but it would be appropriate to take it into account as having a financial impact particularly when assessing the cost of prosecution.
Better than civil option: The application of Proceeds of Crime Act legislation offers significant recovery opportunities that far outweigh available options (in terms of scope and impact) of civil remedies. The Act is heavily weighted towards the prosecutor and provides the best possible legal framework to identify, restrain and recover stolen value.	
A recognised approach: The approach sits comfortably within the culture of compliance and indeed, echoes the FSA views on enforcement in that prosecution is a key tool to ensure that sanctions are applied when rules and principles are broken. Other, non-Police, organisations utilise the PoCAL legislation such as Local Authorities & Trading Standards, HMRC and DWP.	[Low on transparency and no independence: Whilst cases are progressed in line with Crown Prosecutor guidelines, the internal prosecution decision making fails, arguably, to provide a layer of transparent and independent decision making around the sufficiency of evidence to support a prosecution and the extent to which mitigating factors should influence progression. This is particularly pertinent to the recent JFSP appellants and subsequent Member of Parliament challenges. This can be addressed in some significant way in a revised Criminal Prosecutions Policy (and a review of the existing one is underway).] [Do we want to say this in a Board document?]
Maintains control and helps maximise recovery: The existing process of performing an end to end investigation, prosecution and recovery service in house ensures that the maximum amount of control is exercised around case conduct and asset recovery. Opportunities to maximise recovery can only be achieved by the presentation to a Court, of the acquisitive nature of the particular offence. This opportunity may not exist should elements of the existing process sit	

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externally (for example if the CPS decide it is within the public interest to accept charges of false accounting when theft would have been more appropriate).	
No dependence on Police and CPS: The existing process enables case prioritisation and progression without reliance on the Police and CPS support. This is a key advantage with, historically, considerable difficulties in successfully engaging with the Police and particularly in forces where the strategy is to apply resource primarily to public impacting offences (domestic burglary and street crime) leaving commercial white collar crime to be investigated on a best efforts and prioritised basis (particularly pertinent within the Metropolitan force area). This strategy may be further enforced with the newly created regional Police & Crime Commissioners focussing on local issues. Where there is dependence on Police to investigate there is still a need for not inconsiderable resource to be invested on behalf of a business (management time , a hidden cost) to ensure that the Police have an understanding of processes and procedures to enable them to start any investigation and this will have to be repeated on each occasion.	Blurs of the role of the Security Team: The whole concept of a prosecution process that sees employer responsible for the end to end delivery from detection through to prosecution is apt to cause angst with internal stakeholders and can cause difficulties in that it confuses the role of a security function from that of the winner of hearts and minds in regards to best practise and asset security, to that of organisational policeman with all the connotations that image portrays.
A flexible approach: The existing process allows both due cognisance of the Code of Prosecutors as regards prosecution rationale and also secondary and tertiary considerations around customer, client and wider network impacts (for example our stance on challenging each and every Horizon run defence – the CPS may not adopt a similar position).	
Synergies: The existing process promotes synergies with a number of our government clients along with the FSA; the appetite to bring internal offences to the attention of	Significant costs: The existing process involves considerable staff costs and other costs in regards to maintaining external agent services to help undertake the prosecution

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the Courts (and therefore within the public domain) matches theirs and provides complete transparency around this element of our operating landscape.	process. The year 2011/12 saw £180k incurred in relation to agents and counsel costs and this arguably may increase if Horizon challenges continue as a theme of defence with contested and protracted prosecutions. However, whilst legal costs are considerable, they are not disproportionate when if one takes account of the losses recovered in criminal proceedings.

4. Alternative Approaches

4.1 There are several alternate approaches:

Option	Pros	Cons
Pass some cases to the Police but Post Office investigate & prosecute selected cases.	<p>Reduce the costs of criminal investigations and prosecutions.</p> <p>May allow Post Office to mitigate bad PR.</p>	Post Office loses some control of those cases passed to the Police & CPS.
Pass all cases to the Police and Post Office cease prosecuting.	<p>Reduce the costs of criminal investigations and prosecutions.</p> <p>Mitigate bad PR by making the CPS and Police accountable for prosecutions.</p>	The quality of response would vary across each of the 43 force areas and the ability to influence recovery, the brokering of plea acceptance and general pace of enquiry to conclusion would diminish accordingly.
Become enabled under the CPS Prosecutor's Convention.	<p>The convention enables the CPS to lead on prosecution activity on behalf of authorities who ordinarily act as their own authority (examples include Civil Aviation Authority, Department for Business, Innovation and Skills, FSA and Office of Fair Trading).</p> <p>This may offer Post Office the ability to drive an independent layer of governance and decision making to cases which are particularly contentious.</p>	<p>CPS agreement is required.</p> <p>If successful there will need to be considerable investment in terms of Post Office specific training to each of the 13 CPS Central Casework Divisions.</p> <p>Whilst precise protocols would need to be established, it would be fair to assume that Post Office's ability to ultimately continue or discontinue prosecution</p>

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		<p>cases would diminish (a successful Horizon challenge by virtue of a position adopted by the CPS could have disastrous consequences for prosecution and indeed civil activity going forward) along with the ability to accept or reject pleas around specific charges.</p>
Outsource all or part of the Investigations and/or Legal function dealing with criminal prosecutions.	<p>Reduce the costs of criminal investigations and prosecutions.</p>	<p>Quality may suffer if not carefully managed.</p>
Cease prosecuting all cases under a certain financial threshold (unless they have a significant client or customer impact or there are other significant reasons which favour prosecution), instead pursing those using civil procedures.	<p>Reduce the number of cases raised and the costs of servicing them.</p> <p>PR wise it would allow high profile cases to be prosecuted whilst people would no longer be sent to jail over smaller sums.</p> <p>In order to ensure that the appropriate cost saving is achieved this would involve a triage approach not only to prosecution but also to investigation.</p>	<p>May encourage agents and employees an appetite for dishonesty from the organisation (albeit reacted to using civil remedy) which itself may lead to greater individual incidences of lower level offending.</p> <p>Always a risk that greater irregularities which would have been exposed during an investigation will not be picked up. It would be appropriate to continue to measure both the cost and the benefits obtained by taking this approach so that the threshold/ criteria in relation to prosecution can be kept under review.</p> <p>Further if the threshold figure is not publicised this would mitigate the risk of encouraging low level offending/ repeat offending at a low level. People should be capable of being prosecuted to retain the</p>

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		deterrent effect.
Cease prosecuting entirely and rely instead on civil debt recovery.	Eliminates the costs of criminal investigations and prosecutions.	May encourage crime to increase. If such civil cases are defended and Horizon challenged they are still likely to involve significant costs.

5. Recommendation

[WHAT?]

6. Decision sought

The Post Office Ltd Board is asked to consider the proposals detailed within this paper and to:

5.1 Decide upon a prosecution approach proper to Post Office Ltd.

OR

5.2 Commission further research, if required, into one or more of the proposals above.

OR

5.3 If applicable, direct areas of research for Post Office Ltd Board proposals not covered above.

Name of sponsor: Susan Crichton

Month: January

Year: 2013

ANNEX 1

Post Office Prosecution Policy

Version 1.0

Effective From: 1 April 2012

Review of this policy due: 1 April 2013

Owner: Jarnail Singh, Post Office Legal

1. Purpose

1.1. The Post Office Prosecution Policy:

- 1.1.1. Supports Post Office's related crime and investigation policies in prosecuting, in all circumstances in which prosecution is appropriate, those who have been investigated and are believed to have stolen property from Post Office or to have defrauded Post Office.
- 1.1.2. Recognises the importance of the integrity of the mail and accordingly will consider prosecuting offenders who are believed to have interfered with postal packets (s83 of the Postal Services Act 2000).
- 1.1.3. Applies equally to employees at every level, whether front-line, management or executive, and to non-employees equally, whether contractors, customers or having no formal relationship with Post Office.

2. Scope of Policy

2.1. This policy applies to criminal conduct only.

2.2. This policy applies to anyone who is suspected of committing a crime as outlined in paragraph 1 above.

3. Criminal Investigation

3.1. Prosecution will normally follow a criminal investigation, conducted by members of Post Office Security and other law enforcement bodies such as the Police, with a view to ascertaining whether a person:

- 3.1.1. Should be charged with a criminal offence; or
- 3.1.2. If charged with an offence is guilty of it.

4. Prosecutorial Decisions

4.1. **England & Wales:** The decision to prosecute Post Office investigations in England and Wales will be made by the Post Office Head of Security taking advice from Post Office Legal and HR as appropriate and relevant.

- 4.2. **Scotland:** In Scotland the Procurator Fiscal's office will make all prosecution decisions on Post Office investigations.
- 4.3. **Northern Ireland:** In Northern Ireland the office of the Director of the Public Prosecution Service will make all prosecution decisions on Post Office investigations.
- 4.4. In the event of any issue or disagreement arising in relation to any investigations or prosecutions, the matter will be referred to the Director of HR & Corporate Services who will consider the case and provide guidance and advice to ensure that Post Office maintains a consistent prosecution policy.

5. Test for Prosecution and Public Interest

- 5.1. The decision to prosecute will be reached by applying the general principles and guidance offered by 'The Code for Crown Prosecutors', in particular 'The Full Code Test'.
- 5.2. 'The Full Code Test' will be applied and adhered to before commencing a criminal prosecution. The 'Test' has two stages. If the evidence passes the evidential stage, the Prosecutor must proceed to the second stage and decide if a prosecution is needed in the public interest. A prosecution will be required if it is in the public interest to do so.
- 5.3. Where a criminal investigation identifies an employee's behaviour that falls short of requiring a criminal prosecution the employee will normally be subject to the relevant HR processes.