



PETERS & PETERS

Peters & Peters Solicitors LLP
15 Fetter Lane, London EC4A 1BW
DX 407 London Chancery Lane
T +44 (0)20 7822 7777
F +44 (0)20 7822 7788
E law@petersandpeters.com
www.petersandpeters.com

**STRICTLY PRIVATE & CONFIDENTIAL
TO BE OPENED BY ADDRESSEE ONLY**

FAO: Miles Trent & Anona Bispong
Criminal Cases Review Commission
5 St Philip's Place
Birmingham
B3 2PW

Our Ref NPV/HKL/CKT/PO6388.1

Your Ref

Date 26 February 2021

Email nvamos GRO
hlaming GRO
ctregunna GRO
wgreen GRO

Direct Line GRO-D

BY EMAIL:

TrentM GRO
anona.bisping GRO

Dear Miles, Anona,

**RE: POST OFFICE LIMITED – CONCERNS RAISED BY CCRC ABOUT POL'S
RESPONSE TO S17 NOTICES**

1. We write further to our telephone conversation on 15 January 2021. The purpose of this letter is to:
 - a. Address the CCRC's criticism of POL's responses to notices issued by the CCRC pursuant to s17 of the Criminal Appeal Act 1995 ("s17 Notices");
 - b. Set out the approach to the current post-conviction disclosure exercise ("PCDE") and outline the steps that POL and/or Peters & Peters has taken with regard to s17 Notices;
 - c. Ensure that the CCRC has seen all material for the outstanding CCRC applicants prior to making a final decision in those individuals' cases; and
 - d. Set out proposals for managing POL's response to s17 Notices in the future.

2. We were in the process of responding to the concerns raised by the CCRC during the call on 15 January 2021 when we received your correspondence dated 23 February 2021, addressed to Nick Read, CEO of POL. We did not want to delay the provision of our response to those initial concerns and so we are sending this letter which deals with the points raised during that call. We will revert in due course in relation to any additional points raised in the CCRC's letter dated 23 February 2021

Partners

A C Bradshaw	M C Cronin	S L Gabriel*	H K Laming	H J McDowell	J K Nakhwal
M O'Kane	K E Oliver	N T Swift	J Tickner	N P Vamos	J J Woodland

Peters & Peters Solicitors LLP is a limited liability partnership registered in England and Wales under registered number OC352134. Its registered office is at 15 Fetter Lane, London, EC4A 1BW. Authorised and regulated by the Solicitors Regulation Authority (SRA number 525192). We use the word "partner" to refer to a member of the LLP or an employee or consultant who is a lawyer with equivalent standing and qualifications.

* non-member of the LLP

3. We would welcome a further call following receipt of this letter to discuss the points it raises, and to set down an agreed way forward with regard to future compliance with s17 Notices. POL reiterates its commitment to cooperate fully with the CCRC in an open and transparent manner.

POL's responses to s17 Notices historically

4. During the call on 15 January, you set out a number of criticisms in the way in which s17 Notices had been responded to by POL historically. Broadly, you queried:
 - a. Why a PCDE of the scale and magnitude now being undertaken was not done when the first s17 Notices were issued in 2015; and
 - b. Why a large number of documents relevant to CCRC applicants had been disclosed either after their referrals had been made, or after the CCRC had provisionally decided to reject their case, in particular why documents that were 'highly relevant' to an individual (in this case, Oyetuju Adedayo) and that were in POL's possession and/or control in 2015, had not been disclosed in response to s17 Notices issued at that time.
5. We respond to each of these queries in turn, in the hope that this will help assuage some of the CCRC's concerns that POL has not provided a comprehensive response to s17 Notices to date.

Why a PCDE was not undertaken in 2015

6. As discussed further below, POL has at all times sought to respond properly and transparently to the CCRC's s17 Notices, including by keeping the CCRC apprised of the methodology being employed in the responses.
7. It has been suggested that a review as extensive as the current PCDE should have been undertaken when the first s17 Notices were issued in 2015. However, it is important to understand POL's response in the context of a situation that evolved significantly from 2015 to date. In particular, we note that the scope and nature of the issues giving rise to the PCDE only crystallised when the Horizon Issues Judgment ("HIJ") was handed down in December 2019. Against that background, we note that:
 - a. In 2013, a post-conviction disclosure exercise was conducted by an external law firm engaged by POL. Whilst that exercise was limited in

scope, it was based on POL's understanding of potential issues with Horizon at that time. As the CCRC is aware, the fact of this post-conviction disclosure exercise was disclosed to the CCRC on 26 July 2013 and its scope was disclosed to the CCRC on 27 February 2015 (by virtue of the provision of the advice of Brian Altman QC dated 15 October 2013).

- b. The first s17 Notices were received in 2015/2016 which was during the currency of the mediation scheme and on the cusp of the group litigation, before the challenges and questions raised regarding Horizon in the context of those processes had been fully aired or litigated. The scope and methodology of the PCDE that had taken place in 2013/14 had been approved by former Senior Treasury Counsel, and was therefore understandably considered by POL to have been appropriate. Although additional information had come to light by 2015/16, the nature and scope of the issues forming the basis for the CCRC's referrals were still not known to POL at this time. Given the fact that the issues were to be fully explored through the civil litigation, there was no reasonable basis for POL to have considered that a further PCDE, separate to and in parallel with the civil litigation, was required at that time.
 - c. It is noteworthy that whilst some of the individual claimants in the group litigation were convicted individuals, their cases were not selected as any of the "lead cases" for the purpose of either the Common and Horizon Issues trials, and therefore there was no wholesale collection or review of data relevant to those convicted claimants (or any other convicted individuals) until after the findings of Fraser J in the HIJ.¹
8. It was therefore the HIJ which triggered the initiation and scope of the current PCDE, as well as the ensuing referrals the CCRC made in March and June 2020 to the various courts of appeal.

Why documents were disclosed after CCRC decisions were made in March 2020

9. POL engaged Peters & Peters to conduct the PCDE, shortly after the HIJ was handed down. This PCDE has been a more extensive exercise than previous reviews conducted, based on the information arising out of the group litigation and judgments. This has resulted in the identification and collation of a wider

¹ Fraser J made it clear that matters of criminal law were outside the scope of the Group Litigation (see for example, paragraph 10 of the Common Issues Judgment in *Bates & Others v. Post Office Limited* [2019] EWHC 606 (QB)).

range of repositories, the review of a substantially broader data set and a more exhaustive interrogation of the data subject to review. To understand the extent of this exercise, we refer you to the Disclosure Management Document dated 19 August 2020 and its Addendum dated 13 January 2021 (together, “**the DMD**”), which have been previously disclosed to you, but for ease of reference are enclosed with this letter.

10. Inevitably, this more wide-ranging PCDE has identified additional documentation to be disclosed to the CCRC and to the applicants/appellants, which was not identified at the time the earliest s17 Notices were issued.
11. Some repositories were only identified shortly before or after the referrals were made by the CCRC in March 2020. The CCRC has asserted that these ‘newly identified’ repositories should have been considered earlier on the basis that they were within the possession or control of POL at the time the first s17 Notices were issued. However, this does not acknowledge the much wider scope of this exercise to those previously undertaken (as above) as well as the scale and complexity of data storage within POL. POL is a sizeable organisation, spanning multiple locations with disparate data systems, processes and data storage, all of which have evolved over time. The identification and collation of data is further exacerbated by the historic nature of the matters under review, the length of the potentially relevant time period, the migration, development and transformation of business systems over time and the separation of POL from Royal Mail Group in 2012 (as expanded on below). The identification, collection, and review of new or previously inaccessible repositories continues to this day (e.g. legacy systems; archived data; back up tapes; documents from third parties previously inaccessible due to COVID etc.).
12. Despite these difficulties, however, POL has tried to manage this process as effectively, proportionately, and as cooperatively as possible since the outset of the CCRC’s involvement in 2015. As can be seen by correspondence between POL and the CCRC following the receipt of the first wave of s17 Notices, POL consistently sought to keep the CCRC apprised of the methodology being employed in its response, including:

- a. Specifying the datasets that POL had interrogated (which were circulated each time documents were identified and disclosed in a “Tracker” format)²;
 - b. Agreeing with the CCRC the search terms and date parameters that would be applied to electronic datasets identified to the CCRC prior to their application;³ and
 - c. Suggesting other repositories that might be of interest to the CCRC (see, for example, Meeting Notes of 6 November 2015).
13. A substantial amount of hard copy and electronic material has been disclosed to the CCRC in response to s17 Notices, enabling the CCRC to refer for appeal or provisionally reject a significant number of cases.⁴ For example:
- a. Between January 2015 (the date of the CCRC’s first s17 Notice) and 26 March 2020 (the CCRC’s referral of 39 individuals for appeal), a total number of 40,129 documents were transferred to the CCRC;
 - b. Between 26 March 2020 to 3 June 2020 (i.e. the CCRC’s referral of 8 further individuals for appeal), a further 6,790 number of documents were disclosed to the CCRC; and
 - c. To date, a total of 49,363 documents have been transferred to the CCRC.
14. Nevertheless, during our call on 15 January 2021, you suggested that ‘highly relevant’ documents were not disclosed during the initial response to s17 Notices. You referred by way of example to a Record of Taped Interviews (“**ROTI**”) for Ms Oyetuju Adedayo (DocID 108026963) which you say should have been, but was not, disclosed to the CCRC pursuant to her s17 Notice dated 6 May 2015. We set out the detailed explanation for this omission in Annex 1, but in summary it was the result of an issue whereby the metadata of electronic material incorrectly attributed a later date to the material, resulting in its exclusion from the date parameters applied when undertaking electronic searches of material.

² The specific categories of documents that were being interrogated were also discussed during a meeting on 6 November 2015 as well as reaffirmed each time a tracker was sent to the CCRC. See also letter from POL to CCRC dated 2 October 2015.

³ Search terms were in principle agreed during the meeting at the CCRC’s offices in Birmingham on 6 November 2015, and subsequently confirmed in a series of emails including: Email from POL to CCRC dated 13 January 2016; the CCRC’s suggestion and agreement to the parameters of the application of search terms via email from Amanda Pearce to Rodric Williams on 6 February 2016; and Email from POL to CCRC dated 14 March 2016.

⁴ The CCRC noted in an email that it was “still more familiar with paper files” (see email from Amanda Pearce of the CCRC dated 6 February 2016), which suggests the volume of electronic data/files in issue in these cases was unusual for the CCRC.

This issue was identified during quality assurance checks in July 2020 and has now been rectified (by re-running search terms without date parameters).

The approach to the current PCDE and compliance with the CCRC's s17 notices

15. The CCRC has been provided with a copy of the DMD which outlines the disclosure process undertaken by POL/Peters & Peters in the PCDE. Documents disclosed to Appellants and Applicants (or those acting on their behalf) in the PCDE have also been disclosed to the CCRC. As can be gleaned from the DMD, the PCDE, and by extension, the disclosure process to the CCRC has been extensive. To gain an understanding of the magnitude of the task, we emphasise a few broad points:
 - a. Wide "Relevant Period" covering all historical Horizon based prosecutions/convictions: The Relevant Period as set out in the DMD is 1999-2013. Whilst prosecutions that occurred during this time period were recorded by POL, it was not always clear from these historic records (that were between 7 to 21 years old) whether a case resulted in a conviction and/or whether it was based on Horizon data. Consequently, at the outset of the PCDE, over 14 years' worth of data for well over 1,000 prosecutions required identification, collection and review. Prior to the Horizon Issues Judgment in December 2019, s17 Notices relating to 34 individuals had been received from the CCRC (less than 0.04% of the total number of prosecutions that were eventually reviewed), and as identified above, the wider scale PCDE only became necessary and proportionate following that Judgment, which placed the safety of *all* historical Horizon-based convictions in doubt.
 - b. Thousands of large physical and electronic repositories have been interrogated, resulting in millions of documents being made available for review. As stated in the DMD, search terms have been applied to over 3.9 million⁵ documents, with the results being reviewed by our review team. A couple of points that exemplify the scale of this task:

⁵ Whilst this number is the quantifiable number of documents that have been transferred to Peters & Peters' dataroom, it does not take into account datasets that have had search terms applied or have been interrogated outside of Peters & Peters' dataroom, including hard copy material. The actual number of documents that have had search terms applied is much higher than this figure.

- i. Approximately 50 physical locations have been interrogated, including archives containing over 100,000 boxes/files. Electronic searches have been conducted across the POL IT estate, which is vast, sprawling, and fragmented (as anticipated with such a large organisation). The business has seen significant expansion, IT advancement, data migration and transformation. In addition, matters are complicated by the separation from Royal Mail Group). This has resulted in a complex web of potentially relevant repositories, which are often difficult to interrogate, and due to the passage of time, has also required an in-depth retrospective investigation by current employees to understand the content and potential relevance of a repository to enable the collection and review of potentially relevant sources of data.
 - ii. The exercise has required the involvement of numerous third parties, (e.g. RMG; Fujitsu Services Limited; over 50 third party law firms) as well as other entities that have provided practical/technical assistance in obtaining data, such as third party IT providers, external companies such as those who assisted in the digitalisation and transcription of cassettes/tapes, and who conducted relevant investigations and analysis such as KPMG.
- c. Compressed timeframe in which to conduct the more wide-ranging PCDE: The entire exercise outlined above has been conducted in an exceptionally short time frame, given the size of the task, which has required the coordination of multiple third parties and POL employees, the latter of whom have assisted Peters & Peters whilst also conducting their day-to-day roles within POL.
- d. Resources required to complete the review: The review has required in excess of 60 qualified barristers at any given time reviewing documents/data to identify, tag, and analyse search term results or entire datasets to identify documents relevant to each appellant/applicant. Despite the Court of Appeal's revised disclosure deadline of 19 February 2021, the barristers continue to review material at pace and the review will continue beyond the current disclosure deadline as new datasets continue to be identified/collected that are relevant to existing CCRC applicants and potential future appellants/applicants.

16. As a consequence, the enormity and complexity of the task that has been undertaken in such a short timeframe cannot be overstated.

Steps to ensure the CCRC has received all documents relevant to an individual subject to a s17 Notice

17. Peters & Peters and POL have made every effort to ensure that the identification, collection, search and review process has identified all documents that were responsive to each s17 Notice, and from within that pool of data, those documents that are also disclosable to the appellants/applicants. However, due to the magnitude of the exercise, as outlined above, we are alive to the possibility that there may be some documents that may not yet have reached the CCRC, including those that derive from repositories that have been received and reviewed more recently.
18. Consequently, our eDiscovery provider has identified any document tagged for any of the remaining CCRC applicants that has not yet been disclosed to the CCRC, to ensure that the CCRC has had all material identified to date for that individual, in advance of a decision being taken in their case.
19. As communicated to you on 18 February 2021, we have uploaded these documents to a new folder in the CCRC dataroom for each of the remaining CCRC applicants whose cases have been provisionally rejected, to ensure that they are separate to the previous documents disclosed.
20. Where this has resulted in the provision of material that was not provided by POL in its initial response to s17 Notices (i.e. prior to the PCDE commencing), our preliminary inquiries indicate that, whilst some of this material was technically in POL's possession before the PCDE commenced, it may not have been within the scope agreed with the CCRC for the initial response to the s17 Notices and/or identified as potentially relevant and responsive to a s17 Notice at that time. This is generally a consequence of the PCDE encompassing a broader set of repositories, search terms and/or date parameters. In some specific instances, such as the one raised by the CCRC in relation to the ROTI in Adedayo (which is dealt with in Annex 1), further inquiries were necessary to explain why individual documents were not provided initially. Should the CCRC have other specific concerns, we would be happy to look into them. The fact that such issues have been picked up in the context of the PCDE and rectified should alleviate the CCRC's concerns and maintain confidence in the process going forward.

Nonetheless, we will undertake a more detailed reconciliation to ensure that any gaps have been identified and remediated going forward.

Approach to future s17 Notices relating to new applicants

21. We trust that the above explanation will alleviate some of the concerns that the CCRC has raised in terms of POL's historic compliance with s17 Notices and the steps being taken to ensure that the CCRC has everything in relation to its pending cases. Nevertheless, we note that the CCRC is considering how to draft future s17 Notices to ensure 'full' compliance.
22. When considering s17 Notices for future applicants, it is important for the CCRC to be aware that whilst the PCDE has prioritised the review of material relating to those individuals who had already applied to the CCRC, it also encompasses a far more extensive exercise for all individuals known to have been prosecuted and convicted by POL using Horizon evidence. Consequently, at this stage, POL has collated the majority of documentation that is in its possession or control for those individuals for whom s17 Notices may be issued in the future.⁶
23. This exercise for potential future applicants/appellants has been conducted in accordance with the DMD provided to the CCRC, which contains information as to the scope of the material collated/reviewed, including those repositories that have been interrogated either on a limited basis or have not been interrogated at all based on an assessment of the likelihood that they will yield relevant documentation.
24. In identifying material for disclosure to Appellants, we have applied the broader CPIA test for disclosure (rather than the test POL is obliged to apply under Nunn), including material subject to LPP where it meets the test for disclosure. It has also included the voluntary provision of "case papers" identified in the review.
25. In terms of what has been provided to the CCRC, it is important to note that documents that have been collated for the PCDE have all been tagged as relevant to a particular individual, regardless of whether they are 'disclosable' to that individual. The documents that have been disclosed to the CCRC to date for all individuals, therefore, are a wider set of documents than have been disclosed to

⁶ Or who may apply directly to the relevant appeal court. For further information, see letter dated 2 November 2020 to the CCRC regarding the Management of Potential Future Appeals and ensuing correspondence.

the Appellants (or their representatives) pursuant to POL's disclosure obligations within the PCDE.

26. Whilst we recognise that the scope of a s17 Notice may extend beyond that of the PCDE, we would invite the CCRC to consider whether any such extension is necessary or proportionate in the context of future s17 Notices to enable the CCRC to discharge its statutory functions. It is our view that it is reasonable and proportionate for POL to rely on the PCDE that has been conducted to date to identify the material to be provided to the CCRC in response to any future s17 Notices and that the further collation of material, searches or review is unnecessary. If the CCRC believes that the collation, review and/or disclosure of a broader data set is required, we would invite a discussion in advance so that representations can be made as to the likelihood that additional material will yield relevant material necessary for the CCRC to make a decision as to whether to refer a case for appeal.
27. As stated above, POL is committed to engaging positively, constructively and transparently with the CCRC and ensuring that the CCRC has the material it needs to discharge its statutory duties.
28. Once you have had the opportunity to digest the above, we would welcome a further discussion to resolve any points still in issue, and propose that that call be attended by Declan Salter, Director of Historical Matters so that the CCRC has direct management engagement on this issue.
29. In the interim, should you have any comments or queries regarding the above, please do not hesitate to contact Hannah Laming, Charlotte Tregunna or William Green of this office, using the details provided above.

Yours faithfully

GRO

PETERS & PETERS SOLICITORS LLP

Enc.

ANNEX 1

SUMMARY OF ISSUES RELATING TO ADEDAYO ELECTRONIC DATA

1. This annex sets out a more detailed summary of the issues relating to the review of electronic data relating to Adedayo which explain why a ROTI that was within a repository of data held by POL was not identified and disclosed to the CCRC following the initial review and disclosure of material in compliance with s17 Notices.
 - a. POL notified the CCRC that it intended to apply agreed search terms across electronic documents collected by Post Office Security during a meeting on 6 November 2015.⁷ For Ms Adedayo, POL agreed with the CCRC that it would use the term “*Adedayo*” with a date range of “*3 years preceding conviction*” (31 March 2003 to 31 March 2006).⁸ These search terms were applied across the relevant electronic dataset. However, neither of the ROTIs which we now know to be within that relevant dataset was captured, despite containing the search term “*Adedayo*”. We now understand this was because despite being drafted in 2005, the “Document Date” of the metadata of the ROTIs, is actually 12 October 2009:

Objective Coding	
Control Number:	106026962
Group Identifier:	106026962
Relationship Status:	Freestanding
Document Title:	Body in 10 or 9% (if really pushed for space)
Document Type Category:	Document
Document Type:	Microsoft Word Document
Document Date:	12/10/2009 13:08
Document Author/From:	ru@robinson

Consequently, the date parameters of the search meant that neither ROTI was captured as both documents suffered from the same defective metadata, which was unknown (and unforeseen) at that time.⁹

⁷ Which consisted of the Post Office Security Team’s shared drives/SharePoints.

⁸ See for example attendance note of meeting on 6 November 2015; correspondence from POL to the CCRC on 13 January 2016 and confirmed by the CCRC on 6 February 2016. The quote in this paragraph derives from the latter email from the CCRC.

⁹ The other relevant ROTI is DocID 108026962.

- b. After Peters & Peters was engaged in January 2020, search terms were devised for Ms Adedayo and all other CCRC applicants for application over multiple datasets. Ms Adedayo's search terms were widened to include other search terms¹⁰ and the date parameters were widened to include a year prior to the case creation date on POL's systems¹¹ and a year following conviction.¹² The widening of search terms was notified to the CCRC on 13 March 2020, which was noted by the CCRC via email on 17 March 2020. These wider searches were conducted for all CCRC applicants including Ms Adedayo across a number of newly identified and existing repositories (including the POL Security Team SharePoint), but as the date parameters for the search term application only extended to 2007, the ROTIs erroneously dated 2009 were still not captured.
- c. At this stage, however, other datasets had been identified by Peters & Peters. A duplicate of one ROTI dated 5 September 2005 was identified in one of these datasets and was disclosed to the CCRC on 3 April 2020.¹³ However, the second ROTI was not contained in these datasets and therefore was not discovered during this phase of the review.
- d. In July 2020, as a consequence of the quality assurance checks and balances in the PCDE, an issue was identified with the application of search terms across certain datasets, which is exactly the issue described above, i.e. that the date inherent in the metadata for certain documents that were drafted/dated with one date (e.g. they were drafted in 2005) was different and often much later than their metadata date (e.g. metadata states 2009). As a consequence, date parameters were removed in the future application of case specific search terms, and to rectify the position, reviewers were asked to conduct a review of documents as they appeared in situ on the POL Security Team's SharePoint. It was during this phase of the review that Ms Adedayo's second ROTI (DocID 108026963) was identified and tagged as relevant to Ms Adedayo, and marked as to be disclosed to the CCRC and to Ms Adedayo during the first Tranche of disclosure due to take place in August/September 2020.

¹⁰ Such as branch name; branch number; POL internal reference number; and RMG Criminal Law Team reference number.

¹¹ Which would therefore capture any data relevant to the alleged period of offending.

¹² To include, for example, sentencing and confiscation related documents.

¹³ GA_004_CCRC_108026962.

- e. Peters & Peters made a first Tranche of PCDE disclosure to all appellants at the end of August 2020 (i.e. after the CCRC's referral of cases) and to CCRC applicants in September 2020. Ms Adedayo's disclosure was made to her legal representatives, Hudgell Solicitors, on 18 September 2020. This disclosure included both ROTIs, including the second ROTI that had been identified in July 2020, as well as two transcripts of the audio files from which the ROTIs derived, which had only recently become available following digitisation and transcription of those tapes.¹⁴
 - f. By way of letter dated 18 September 2020 (enclosed for ease of reference), Ms Adedayo's disclosure was made available to the CCRC, and at paragraph 8, Peters & Peters notified the CCRC that there was new material in that disclosure that had "*only recently become available*" and specifically that this included transcripts of audio/video interviews that were on cassette tapes/CDs that had been recently digitalised.¹⁵ Consequently, the second ROTI, and the transcripts of the interviews for Ms Adedayo were disclosed to the CCRC on 18 September 2020.
2. Whilst we appreciate that the sequence of events meant that the disclosure of these documents was after the CCRC had made its provisional decision in Ms Adedayo's case, it is an illustrative example of the challenges POL and its external legal advisers have faced in the context of the identification, collection and review of documents for disclosure to the CCRC (and to the appellants generally), and of the steps and measures taken to respond to those challenges.
 3. As is apparent from the above, the ROTI in question was not identified initially as a consequence of an issue with the metadata. The initial response to the CCRC was based on the application of reasonable date parameters established with the CCRC at the time. The checks and balances embedded in the current PCDE led to the identification and rectification of the error, with material then disclosed to the CCRC and drawn to its attention as new material on 18 September 2020.

¹⁴ Peters & Peters had already notified the CCRC on 28 May 2020 that audio files were in the process of being digitalised and transcribed and that these would be disclosed to the CCRC as soon as they were made available (as well as any other repositories that were in the process of being collected or had been requested).

¹⁵ For ease of reference: DocIDs 171000096 and 171000098.