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From:

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cc. Belinda Crowe

To the Directors, Post Office Limited

[Date]

### **Project Sparrow – Paper on Prosecutions going forward**

#### **1. Introduction**

- a. This paper relates to whether, and if so how, we prosecute criminal cases in the future.
- b. There are various entry points by which a possible issue with a financial loss in a Post Office branch becomes apparent to us as a company (see Appendix A for how an issue may be raised with us, and Appendix B for an example of how we may progress an issue through the company).
- c. Historically we have prosecuted a large number of cases alleging theft, fraud and/or false accounting. Subpostmasters (SPMs) or their employees are the main persons prosecuted. We have on occasion investigated the conduct of our own Crown employees.
- d. Over time, defendants have increasingly sought to raise issues with the Horizon system as a defence to the allegations against them, e.g. by saying that an apparent financial loss was caused by an error in the Horizon system rather than by the SPM's conduct.
- e. This has led to MP and interest group lobbying, the Second Sight report, and most recently the Mediation Scheme to try to resolve historic complaints about Horizon.

#### **2. Numbers of cases:** Typically, we:

- a. conduct on average 250 criminal investigations a year; and
- b. end up bringing around 50 criminal prosecutions a year.

By comparison, in 2012-2013 we had 100 civil debt recovery cases in the civil courts.

3. **Losses:** The financial losses in question in the cases we prosecute ranged between £1,738 and £175,260 per incident in 2012/2013, and £2,347 and £192,990 per incident in 2013/2014.

4. **Costs of prosecuting**

- a. The average cost to bring each criminal prosecution in 2012-2013 was approx. £7,500 (£3,600 for the costs of our internal security investigators, plus £3,900 for our external solicitors).

In 2012/13, the Court ordered payments totalling £45,705 be made towards our costs of prosecuting, averaging £2,078 per case (£6,947; £1,737 in ytd 2013/14). However it is not clear how much of these awarded sums are actually recovered as cash in to the company.

- b. The average cost to bring each civil debt case in 2012-2013 was approx. £1,200 (£400 for the costs of Former Agent Accounting Team, plus £800 for our external solicitors).

In these civil proceedings we get judgments for our losses, plus interest and a contribution to our costs. **[[Chris – we're trying to get a breakdown of the costs component]]**

5. **Our current process & policy:**

- a. Possible issues with a financial loss become apparent to us as a company through various entry points, including the Finance Service Centre, the National Business Support Centre, and Field Support and Branch Standards Teams (see Appendix A).
- b. Where criminal conduct is suspected, the case is referred to our Security team for investigation. The Security team's investigations typically include witness interviews (often under caution) and branch audits. This may lead to a formal criminal prosecution being commenced. Freezing of assets may also occur.
- c. In parallel to a security investigation the management of the subpostmaster's contract will also be reviewed, which may lead to their suspension and/or termination.
- d. Normally our debt recovery teams will wait until the security investigation has concluded before deciding whether or not to take civil debt recovery proceedings.
- e. An example of how we may progress an issue with a financial loss is set out in Appendix B.
- f. Currently we do not prosecute for losses under £5,000.
- g. We have been prosecuting to a policy inherited from Royal Mail (see Appendix C). We have also drafted an improved, revised policy which has yet to be adopted, pending the outcome of this paper - see Appendix D. This revised draft policy can be

amended as appropriate to reflect the Board's direction on our future prosecution practices.

h. Brian Altman QC has undertaken a legal review of our criminal prosecution practices, and concluded that:

- our approach to prosecutions has been appropriate and robust;
- if we want to prosecute criminal conduct, in the majority of cases we should do so in-house rather than through a public prosecuting authority, e.g. the Crown Prosecution Service ("CPS").

Brian Altman's review did not consider commercial, reputational or non-legal strategic factors which may influence our criminal prosecution practices.

i. We continued [29] "in flight" prosecution cases already underway at the time of the Second Sight July Report. Currently, there are only [5] live criminal cases before the courts (of which 3 concern post-conviction financial recovery only). We have also "stacked" [40] potential prosecutions, which are the subject of the "Project Sparrow – Paper on Stacked Cases", also for this Board meeting.

## 6. **We choose to do this**

We are not mandated by any law to bring criminal prosecutions. We choose to do so, and have since 1985 used the right to bring a private prosecution (in our company name), which is a right available to other companies. Criminal prosecutions are brought to punish and deter wrongdoing. Criminal prosecutions can also assist recovery of misappropriated assets through the Proceeds of Crime Act procedure.

## 7. **The Alternatives**

The options open to us to deal with criminal conduct include:

- a. All POL - Prosecute all cases ourselves (using external lawyers), i.e. the status quo.
- b. All CPS - Send all cases to public prosecuting authority.
- c. Some CPS/Some POL - Prosecute some cases ourselves (using external lawyers) and send others to a public prosecuting authority.
- d. Fewer Cases - Prosecute some cases ourselves (using external lawyers) by reference to new, more stringent criteria (see further at para. 11 below).
- e. Stop - Cease prosecuting all cases.

The main pros and cons of each option are set out in Appendix F. We can also use the civil courts if we want to try to recover losses. The civil court route can be pursued at the same time as, or more usually after, the criminal court route.

## 8. **The main differences between the criminal and the civil routes**

The criminal and civil routes differ in both procedure and consequences. The main differences are set out in Appendix G. However, the court orders for financial recovery are broadly similar (£1.5million in criminal; £1.1million in civil).

**9. How might we implement the “Fewer Cases” option outlined in Section 9 above – Possible new criteria to be applied for criminal prosecutions**

a. *Allegation*

Depending on the facts of a case, we prosecute subpostmasters for Theft, Fraud and/or False Accounting. The cases broadly fall into two fact patterns, i.e. where we have admissions or other evidence that the Defendant has:

- taken money directly from us; or
- covered up losses by falsely recording the branch’s financial position (e.g. to avoid paying losses back and/or to keep their branch), but we don’t have any evidence that they directly took money from us.

If we decided to prosecute only when we have evidence that the subpostmaster took money directly from us, the number of prosecutions brought for £5,000 or more might reduce to **[[AA]]** a year. **[Chris – proving hard to land]**

b. *Quantum*

Currently we do not prosecute cases under £5,000 – giving us a run rate of approximately 50 criminal cases a year. If we decided not to prosecute any cases under:

- £15,000 - the number of prosecutions brought might reduce to around 25 a year.
- £30,000 - the number of prosecutions brought might reduce to approximately a dozen a year.
- £100,000 - the number of prosecutions brought might reduce to one or two a year.

c. *Special Circumstances*

Any revised criteria should still enable us to bring a prosecution if the warranted by the special circumstances of a case, e.g. where the victims of the conduct are elderly or otherwise vulnerable members of the public.

**10. We are working to reduce the matters which become prosecutions:**

We are seeking to improve the way we support our subpostmasters in the running of their Post Offices from an operational and engagement perspective, including the way we identify and respond to accounting losses in our network (the “Business Improvement Programme”). This work includes:

- a. gathering better MI from the network systems;

- b. providing better training and support to subpostmasters and branch staff;
- c. identifying problem losses earlier;
- d. liaising with the relevant persons sooner; and
- e. reviewing how we respond when a subpostmaster has materially breached their obligations to us.

If we can deal with issues before they turn in to significant losses, this may be one way of reducing the number of prosecutions we bring. *The likely positive impact of this work cannot be underestimated.*

Appendix E provides an overview of the Business Improvement Programme and the actions that have and will be taken.

## 11. Other Considerations

- a. Public Money Duty: We have an obligation to protect public money, including investigating suspected wrongdoing. The action we take when an investigation suggests that public money has been put at risk should reflect that obligation, and be proportionate and necessary having regard to the seriousness of the conduct, the parties affected, and the sums involved.
- b. Deterrence: It is arguable that the fear of apprehension and prosecution (rather than the sentence consequences) acts as a deterrent to some people who would otherwise steal from us, and experience shows that a criminal prosecution can lead a defendant to make voluntary repayments to try to mitigate the consequences of their actions.

It is however questionable how much the fear of apprehension and prosecution deters false recording of branch financial data, which a subpostmaster may not perceive to be criminal conduct, especially when s/he may not accept responsibility for the actual financial loss.

- c. Expectations of Corporate Clients: Some of our government clients are comforted by the idea that we bring prosecutions. Indeed, in our agreement with UKBA we are obliged as part of the service we provided to maintain "*a team of specialist experts including Forensic Accountants and a Criminal Law Team [who] will advise on all potential sub-investigation outcomes up to and including prosecution, resultant from any malpractice, collusion or illegal activity.*"
- d. Wasted management time and money: To date, we have spent approximately £5million seeking to address the concerns raised over our Horizon system and the criminal prosecutions. It has also taken up a considerable number of man hours of senior management at a time of significant, strategic and fast change in the company.

e. Compliance with Duty of Disclosure: We have a continuing duty to act properly as a prosecutor. This required us (through our external solicitors) to review the prosecutions of 325 individuals to ensure that the information which came to light in the Second Sight report did not affect the safety of any convictions. The cost of this review was approx. £180,000.

Similar reviews would need to be undertaken every time new information comes to light which may call into question the safety of a conviction. To seek to minimise the need for such future reviews, we have instituted a weekly, cross-business conference call at which attendees (which include our external solicitors) are expected to raise all Horizon-related issues. The estimated external cost of these calls is approx. £27,000 a year.

f. Engagement with Subpostmasters: It is questionable whether the systematic prosecution of agents is consistent with a modern approach to commercial relationships. Amending our prosecution criteria to focus on fewer, but more serious, cased could therefore assist developing a less paternalistic, more commercial working relationship with subpostmasters.

g. Brand inconsistency: this is hard to quantify but enforcing agency relationships through systematised criminal prosecutions appears inconsistent with our brand and core values.

h. The risks of getting it wrong: It must be remembered that if we wrongly prosecute someone there are consequences. These are summarised in the table in Appendix H. It is worth noting that if we do continue to undertake any prosecutions ourselves, it would be prudent to use an external law firm to do so to minimise our exposure to adverse claims.

## 12. Recommendation:

We recommend that:

- a. We continue with the Business Improvement Programme and implement its actions as soon as possible.
- b. Revised prosecution thresholds be set where cases will be prosecuted only where we have evidence that money has been directly taken from us, or there are other special circumstances (to be defined, but could include cases involving elderly or vulnerable customers, and/or where the financial losses in issue exceed a certain threshold which will be set out as part of the Board decision).
- c. Any remaining prosecutions continue to be undertaken using an external law firm.
- d. The Comms team maintain a living strategy for dealing with all PR issues arising from any and all prosecutions.
- e. We improve our civil recovery operation to maximise the losses it can recover.

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[[DATE]]