

STRICTLY PRIVATE & CONFIDENTIAL – SUBJECT TO LEGAL PRIVILEGE

**SPEAKING NOTE FOR POST OFFICE MEETING WITH CRIMINAL CASES
REVIEW COMMISSION – 6 NOVEMBER 2015**

Attendees

Frazer Stuart, Legal Advisor (CCRC)
Amanda Pearce, Group Leader (CCRC)
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Rodric Williams, Solicitor, Corporate Services (POL)
Andrew Parsons, Solicitor (Bond Dickinson)

Objectives

1. Ensure that the CCRC are being effectively supported by POL.
2. Get an insight into the CCRC's current lines of enquiry. What is the question that the CCRC is trying to answer?
3. Try to set some parameters around future disclosures and timings. Get answers to POL's letters of 10 September and 2 October.
4. Reinforce the message that (i) there is no problem with Horizon and (ii) false accounting is about SPMRs manually submitting false figures; not about the probity of IT systems.

Topics

1. Documents provided by Post Office to date

1.1 Where available, the following documents have been provided for all 20 cases:

- Mediation Scheme documents
- Hardcopy POL security file (green jackets)
- Hardcopy POL / RM legal file (buff jacket)
- Hardcopy CK file (orange jacket)
- Hardcopy POCA file (red jacket)
- Electronic – RM and POL legal file
- CD / tape recordings (interview recordings)
- CK case reviews

- Total number of docs disclosed: 7,648

1.2 Unless it discovers something new, POL does not expect to be providing any more documents in the above categories.

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1.3 Data room

- Is it working for the CCRC?
- Hosting cost to POL so need to keep this under review.

2. Further documents to be provided

2.1 Civil litigation files

- Issue:
 - o POL is holding various litigation files that were created in around 2011 when POL was threatened with civil legal action by Shoosmiths.
 - o These files may contain some prosecution documents and there are, what appears to be, copies of old prosecution files.
 - o The files may be duplicate material already provided to the CCRC.
- Applicable cases:
 - o Jo Hamilton: 380 docs
 - o Julian Wilson: 1498 docs
 - o Scott Darlington: 726 docs
 - o Seema Misra: 2608 docs
- POL raised this issue with the CCRC in our letter of 2 October 2015 – no response yet.
- Recommended approach:
 - o Provide those files that are obvious copies of prosecution papers – approximately 23 files.
 - o POL to preserve the remaining civil litigation files in case the CCRC needs them at a later date – 9 files.

2.2 Electronic files from CK and POL security

- Volume:
 - o CK: 2,700 documents
 - o POL security: 184,000 documents
- Issue:
 - o Documents are not held in any useful structure for the CCRC's purposes.
 - o May contain material related to cases outside the 20 cases under review.

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- Giving the CCRC unfettered access would be a breach of the DPA unless clearly mandated under a valid s17 request.
- POL raised this issue with the CCRC in our letter of 10 September 2015 – no response yet other than a request to preserve documents.
- Options:

(1) Provide full access to all documents – not recommended.

- Unhelpful for CCRC.
- Risky from a DPA compliance perspective.
- Not consistent with the approach taken to other disclosures.

(2) Conduct keyword searches for relevant material. For example:

Keyword	Docs	Docs inc family*
Hamilton	6,177	11,318
Jo* w/2 Hamilton	767	905
Josephine Hamilton	572	663
Josephine Hamilton AND between 1 March 2006 (audit) and 30 Nov 2007 (conviction)	31	31

*family docs are those connected to documents having a keyword eg. an email may contain a keyword; the attachments to the email (which do not contain a keyword) will be family documents.

(3) Conduct ad hoc searches for particular documents as required by the CCRC

- If the CCRC is looking for specific documents or information on particular cases, POL could:
 - Design bespoke search criteria to find such documents.
 - Agree that criteria with the CCRC.
 - Disclose the responsive documents under cover of bespoke s17 notices.

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3. Other material that POL could provide

3.1 Key point: POL needs to understand why the CCRC needs documents so that it can then make informed searches for possibly relevant documents.

3.2 Other important points re documents held by POL:

- POL is a big organisation and documents could be held in lots of places. Broad requests for types of documents will likely return significant amounts of material; much of which will likely be irrelevant for the CCRC's purposes.
- POL has changed over time - particularly since separation from RM. General documents are therefore time sensitive and may therefore only be relevant to some prosecutions and not others (eg. changes in policies, changes in Horizon, etc.)
- Best for CCRC to make narrow targeted requests. Focusing on specific cases rather than general issues is likely to return more fruitful material.

3.3 Board reports:

- Commissioning of Horizon. This happened back in the late 1990s. Highly unlikely that POL holds the board reports about this given the amount of time that has passed.
- Most recent board reports are about scheme process, costs and progress or about managing media and political enquiries. These would not be relevant to the CCRC.
- Details of specific prosecutions are not routinely reported to the board.
 - o This is a delegated function with decision making authority usually resting with the GC / Security team.
 - o The board has not typically directly authorised individual prosecutions.
 - o However, this has changed over time and may have been different when the RM board was in charge and prosecutions were effectively conducted by RM on behalf of POL.

3.4 Fujitsu material

- Fujitsu is the IT provider of Horizon.

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- A very large volume of material about the operation of Horizon is held by Fujitsu and POL IT.
- This material is probably too vast and technical to be of use to the CCRC, though specific requests for particular information could be made.
- Fujitsu did provide POL with a presentation on the main controls used to ensure that the data in Horizon is accurate. This is more user friendly and could be of use to the CCRC.

3.5 Criminal risk advice following SS' interim report - BAQC

- Key piece of advice was from BAQC - CCRC already has this.

3.6 Civil risk advice following commencement of the Scheme

- Given levels of claims that were submitted through the Scheme (£100m but massively over-inflated), POL commissioned Linklaters to provide advice on the risk of civil claims against POL.
- Linklaters found that *"absent proof that Horizon is malfunctioning (either generally or in the specific case) the Post Office has a right to recover losses from SPMRs, the SPMRs have no right to compensation for such losses and the circumstances in which there will be a consequential loss claim are limited to those in which inadequate notice of termination was given."*
- POL therefore commissioned Deloitte to undertake a desktop review of Horizon's assurance regime (essentially reviewing the control documentation produced by Fujitsu and POL) – they found no major concerns but made a few minor recommendations.
- These documents could be disclosed but may be of limited relevance given focus on civil liabilities.

3.7 Select Committee

- In February 2014, Post Office appeared by the BIS Select Committee to answer questions about the Scheme and Horizon.
- POL made a written submission to the Select Committee – could be disclosed to the CCRC.
- Ian Henderson stated at the SC hearing: *"Failures are inevitable with that infrastructure. In general, Horizon has a robust recovery mechanism to cope with those failures."*

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3.8 Panorama

- POL did make a written submission to Panorama, however this was largely based on the earlier submission to the Select Committee.
- Interaction with Panorama was otherwise fairly limited due to concerns about the BBC's impartiality.

4. Update on mediation scheme

4.1 All investigations completed. SS are no longer engaged and conducting no further work for POL.

4.2 Mediations:

- Now fully underway with dozens having taken place in the last few months and dozens more coming up shortly.
- POL aiming to complete all mediations by the New Year.
- No major compensation pay-outs – a few very minor settlements based on the particular circumstances of certain cases (eg. failure by POL to train a particular person, etc)

4.3 POL has still not found any evidence of an error in Horizon and maintains that nearly all problems have been caused by human error by Branch staff.

4.4 Other challenges

- Media interest has largely died down.
- Some MPs still engaged but much lower profile.
- DSARs – process nearly complete and conduct largely without controversy

5. Update on CCRC progress

5.1 What volumes of documents has the CCRC reviewed?

5.2 What lines of enquiry are being explored?

5.3 How is the CCRC conducting its review?

- All cases in parallel?
- Test cases first?
- Targeting particular issues?

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- 5.4 Does the CCRC still see that there are "*exceptional circumstances*" to warrant its review?
- 5.5 What output are they expecting?
- 5.6 When do they expect to reach a conclusion?
- 5.7 Can POL do anything to help?

6. Actions

- POL to circulate note of meeting?
- Other?