

Post Office Limited - Document Classification: INTERNAL

## Postmaster Contract Termination Decision Committee

David Southall, Head of Contract Management & Deployment  
6 June 2024

Attendee:  
Ross Borkett



## Introduction

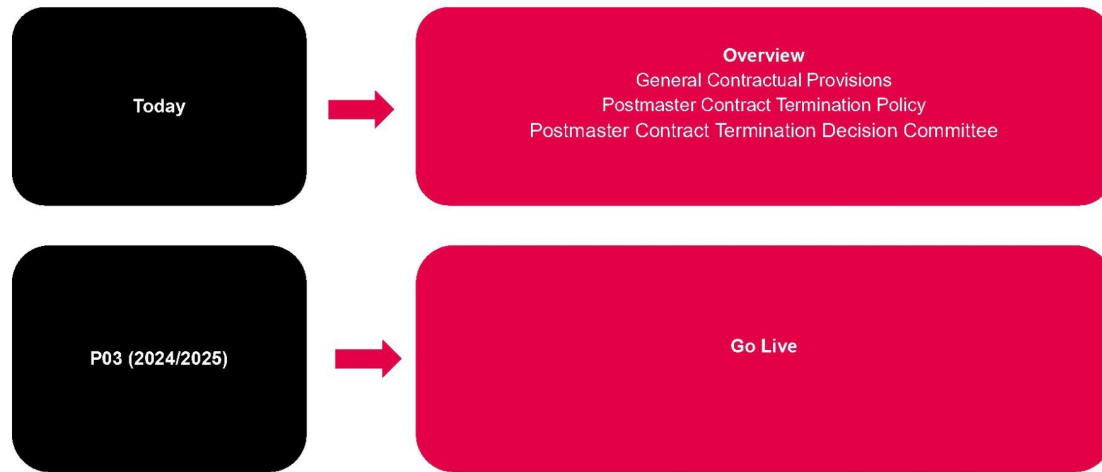
Post Office Ltd has policies governing the management of its contractual agreements with postmasters. These policies explain that, in certain circumstances, there may be situations where Post Office needs to terminate a Postmaster's Agreement. To ensure our policies are implemented as fairly as possible, as well as providing the proper support to Post Office colleagues who implement the policies, additional governance is needed on these decisions. To this end the Postmaster Termination Decision Committee is being set up as approved through Post Office governance (IDG, GE, RCC and ARC).

The purpose of this session is provide an overview of both the general contractual provisions that surround these decisions as well the policy that supports the decisions. In addition to this it will explain the committee meetings itself with a further session being arranged to provide a practice run through with a live example.



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## Route to Completion



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# Part One – General Contractual Provisions





## Postmaster Contracts – General Provisions

- The term 'postmaster' may refer to a limited company, partnership, limited liability partnership or individual that contracts with the Post Office in its or their capacity as a postmaster in the network
- From humble beginnings where a postmaster signed for an appointment and were given instructions and books of rules covering the transactions they would perform at the branch we now have, broadly speaking, three contract types – Subpostmasters Contract (SPMC – the SPSO) Main and Local.
- There are variations amongst these and additional contract types (Independent Franchise Agreements, Community) and addendums to them (hosted, partner and mobile outreaches)
- Postmasters and Post Office are responsible for deploying their respective obligations as set out in their contract
- A postmaster is not obliged to offer 'personal service' and how they deploy these obligations may differ (for example through the use of staff)
- There are two parts to the Main and Local contracts – the Preface (the page the postmaster signs and contains branch specific detail e.g. opening hours) and the Standard Conditions (which contain the terms)
- The SPSO contract is one document which the postmaster doesn't sign (instead they sign an acknowledgement of appointment on the day the of appointment).

### Key Documents:

[Doc  
1-Subpostmaster  
Contract.pdf](#)

[Doc 2- Main  
Agreement.pdf](#)

[Doc 3- Local  
Agreement.pdf](#)

[Key Obligation  
Documents - Draft](#)

## Postmaster Contract – Decision Making

In taking any decision in respect of a postmaster's contract Post Office needs to exercise any discretion in accordance with the obligations of fair dealing, transparency, co-operation and trust and confidence ensuring the following are considered

**Duty of 'Good Faith'** - both Post Office Ltd and the postmaster to act in good faith in the performance of its obligations and exercise of its rights under the contract.

The decisions taken by Post Office Ltd must not be taken **arbitrarily, irrationally or capriciously** and not without reasonable and proper cause.

Post Office must not itself be in '**material breach of duty**' (for example has any action or inaction by Post Office given rise to the matter that is being considered).

[Doc 4. Postmaster Contract Termination Policy](#)  
V9.9.pdf

**Good Faith** - This is a legal concept that relates to how the parties must behave. This means that Post Office (or the postmaster) is not entitled to act in a way that would be considered commercially unacceptable by reasonable and honest people.

**Capriciously** - This is generally taken to mean acting in an erratic and unpredictable manner, subject to whim.

**Arbitrarily** - This is generally taken to refer to decisions or actions being taken purely on the basis of the personal preference of whoever is taking the decision, as opposed to resulting from any systematic consideration.

**Irrationally** - This is generally taken to mean acting in a way that is not based on reason or logic.

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## Part Two – Contract Termination Policy



## Purpose

The Postmaster Contract Termination Policy is in place to support the decision making process in determining whether to terminate the agreement we hold with a postmaster and sets out clear guidelines to support that:

- a review is carried out to establish the applicable facts before Post Office exercises any termination rights, to provide the postmaster with the opportunity to identify and address any issues of concern and to determine whether Post Office has the right to terminate;
- consideration is given to the postmaster's particular circumstances before deciding, acting in good faith, that Post Office should terminate the contract;
- termination only happens when it is necessary and alternatives have been considered; and
- termination only happens where Post Office has reasonable and proper cause and Post Office itself is not in material breach of duty in respect of matters that give Post Office the right to terminate.

It also sets out the need for Post Office to handle these situations in good faith and apply the principles of fairness, transparency, and professionalism.

The policy is reviewed and approved annually through RCC and ARC (last approval given on the 27 November 2023)

## Key Roles

### Contract Advisor

- Responsible for deploying the procedures set out in the policy.
- Gathering as much preliminary information as possible relating to the issue which has caused termination to be considered, this would normally mean holding a meeting with the postmaster to seek further information
- Completing the Contract Termination Decision Rationale before recommending the termination of a postmaster's contract.
- Considering the options available as an alternative to termination (captured in the Decision Rationale)

### Postmaster

- Being transparent and open towards Post Office
- Ensuring they respond to written correspondence and telephone calls in a timely manner in order to assist the Contract Advisor in reaching a decision.
- Being flexible and available for meetings with the Contract Advisor.
- They may contact their NFSP representative to support them through the process or arrange legal or other support

### Head of Contract Management & Deployment

- Accountable for the deployment of the policy and supporting Post Office personnel who carry out actions under the policy.

### Postmaster Contract Termination Decision Committee

## Review Before Termination

When considering termination of a postmaster's contract Post Office must carry out a thorough review before exercising any termination rights. This review will be completed by the Contract Advisor and allows Post Office to establish facts and gives the postmaster the opportunity to identify and answer any issues of concern. This will include the Contract Advisor seeking further information from the postmaster through written correspondence, telephone conversation(s) or face to face meetings (either in person or by electronic means).

To support this review, and whenever termination of a postmaster's contract is considered, the Contract Termination Decision Rationale document is completed by the Contract Advisor. This document sets out:

- a) The background
- b) The review undertaken
- c) The outputs of any meetings
- d) Breaches of contract
- e) The recommendation and rationale behind the decision to be taken

It is used as a basis for establishing:

- a) Whether Post Office has the right to terminate the contract; and
- b) If so, whether Post Office considers, acting in good faith, that it should terminate the contract or not.

**Key Document:**

[Doc 3\\_Contract Termination  
Decision Rationale.pdf](#)

## Legal Assurance

The Decision Rationale will be reviewed by Post Office Legal Services to determine any risk associated with Post Office taking a decision to terminate a postmaster's agreement.

This review will look to ensure that, as presented by the content in the Decision Rationale, that Post Office:

- a) has complied with the process of review (specifically in retaining all evidence gathered through the investigation and providing same to the postmaster).
- b) whether the decision being taken is at risk of being challenged for being arbitrary, irrational or capricious
- c) whether the decision is procedurally flawed

They will not make the decision, but will articulate any risk in the proposed decision and provide advice.

Key Document:  
[Doc 8. Legal Assurance  
Review Example  
Model Leaf](#)

## No Material Breach by Post Office

Post Office must consider whether it has complied with its own contractual duties in relation to the matters relevant to the reason for termination and this will be set out in the Decision Rationale, specifically asking whether any action or inaction on the part of Post Office Ltd has directly led to the issue on which it is relying to terminate.

If Post Office has materially failed to comply with its own contractual duties in relation to the matters relevant to the reason for termination, it is not entitled to terminate on notice. Relevant matters will depend on the reason for termination but might include:

- a) Whether Post Office has complied with its duty to provide adequate training and support to the postmaster.
- b) Whether Post Office has complied with its duty to investigate shortfalls; and/or checking if there were any known issues with Horizon (in the case of shortfalls).

A minor or trivial breach of Post Office's obligations would not be deemed as a material breach for these purposes.



## Termination Provisions – Immediate Termination (Without Notice)

Post Office can terminate a postmaster's contract immediately and without notice but only where one of the following criteria has been met:

- a) There is an immediate termination right in the contract for a specific event; and/or
- b) There is a repudiatory breach of the contract by the postmaster.

### Repudiatory Breach

A repudiatory breach is one that is so serious and fundamental to the contract that it cannot continue and, generally, these breaches are not capable of being remedied. Examples may include:

- a) Where the postmaster is bankrupt or insolvent.
- b) Sustained non-compliance by the postmaster following the issuing of written directions by Post Office.
- c) Where the postmaster has admitted theft of Post Office funds.
- d) Where the postmaster no longer holds a valid property interest.

As part of the Decision Rationale the Contract Advisor will set out the clauses in the contract that have been breached with a narrative setting out why the breach is repudiatory and provide analysis of why something not capable of remedy.

## Termination Provisions – Immediate Termination (Without Notice)

### Immediate Termination Rights

Locals and Mains contracts contain express rights for Post Office to terminate immediately on the occurrence of particular events. The following is an example of some of the immediate termination rights contained in these contracts.

Part / Clause ref	Description
Part 2, Clause 16.2.2	A repudiatory failure to provide Products or Services to the required standards
Part 2, Clause 16.2.3	Ceasing to operate the Basic Business
Part 2, Clause 16.2.4	Provision of false or misleading information or omission of any material fact prior to entering the Agreement
Part 2, Clauses 16.2.5 – 16.2.9	Insolvency events
Part 2, Clause 16.2.10	Failure to acquire or enter into a Valid Property Interest prior to taking up occupation of the Branch Premises
Part 2, Clause 16.2.11	Changes to the use of the Branch Premises in contravention of the terms of the Valid Property Interest

## Termination Provisions – Termination on Notice

Post Office can terminate a postmaster's contract on notice as long as it has considered all the applicable facts and has reasonable and proper cause. Examples of this may include:

- a) Breach or breaches by the postmaster which do not amount to a repudiatory breach.
- b) Post Office considers that the relationship with the postmaster is no longer working.
- c) Where Post Office no longer requires the branch to be operational for commercial reasons.
- d) Where Post Office wishes to remodel or restructure the branch and the postmaster does not wish to run a remodelled or restructured branch.

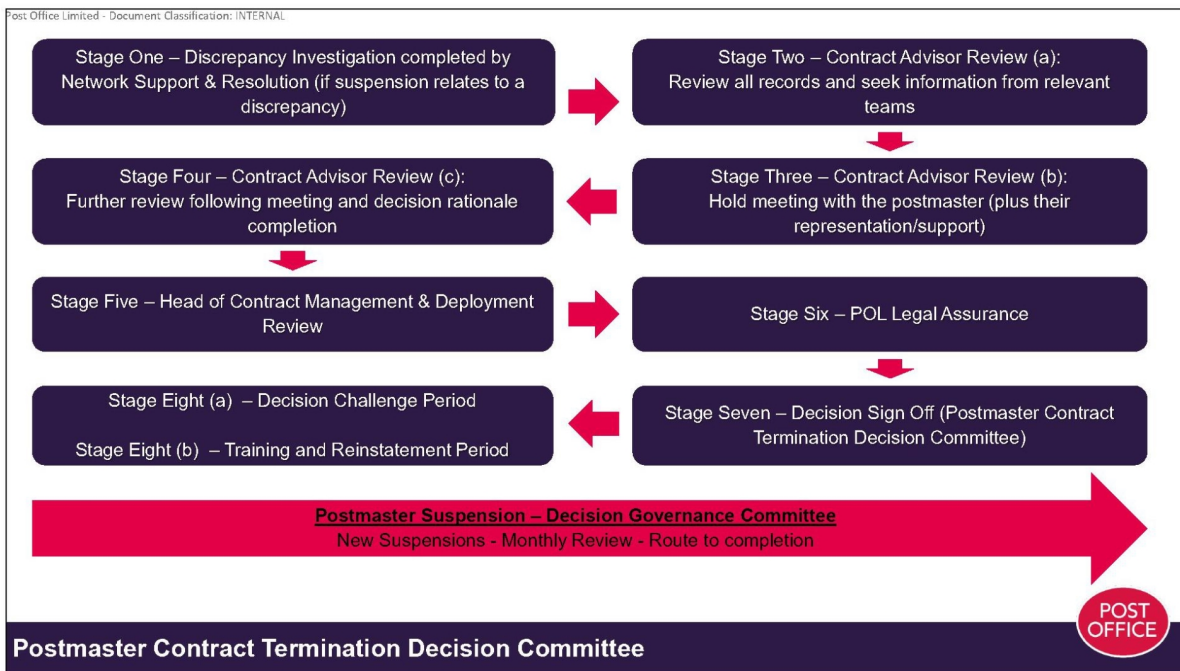
### Notice Period

Where Post Office decides to terminate a postmaster's contract on notice, it will need to consider what period of notice is appropriate to give the postmaster.

- a) The upper limit (the maximum notice Post Office will be expected to give to a postmaster) for notice periods is typically 12 months
- b) The lower limit (the minimum notice Post Office will need to give a postmaster) varies by contract type.

An assessment needs to be undertaken to determine the appropriate notice period in each case and factors taken into account may include the length of service of the postmaster, the level of investment made by the postmaster in purchasing the Post Office branch and the reasons why Post Office want to bring the contract to an end.

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## Part Three – Postmaster Contract Termination Decision Committee



## Purpose

The purpose of the Postmaster Contract Termination Decision Committee ("Committee") is to review and provide concurrence on decisions taken in respect of Postmaster contract terminations (and in the case where a contract has been suspended also take a decision on contract reinstatement), ensuring that any decision taken is done so within a legally and procedurally compliant, and ethical framework.

## Duties & Responsibilities

The Committee shall:

- I. **Review** all recommendations to terminate a Postmaster's Agreement and, if the decision has been taken in line with the relevant contract and Post Office policies, **approve**.
- II. **Review** all recommendations to reinstate a Postmaster's Agreement and, if the decision has been taken in line with the relevant contract and Post Office policies, **approve**.
- III. **Ensure** that the relevant team has been engaged with and there is a clear line of sight on the actions required.
- IV. **Ensure** the lessons learnt from the Committee are shared with the appropriate team(s) and monitor progress to completion.

## Meeting Preparation

14 days in advance of the meeting the following is provided to the committee for review in advance of the meeting:

a) **Executive Summary**

This outlines the matter that is being referred to the committee for review (forms part of the decision rationale document)

b) **Postmaster Contract Termination Decision Rationale**

This document sets out:

- Details of the branch
- The review undertaken by the Contract Advisor and associated findings
- What the breaches of Agreement may be
- The recommendation being made in respect of the Agreement, criteria that have been considered and the rationale for the recommendation

The Decision Rationale will have hyperlinks to a Sharepoint site that contains all the material used by the Contract Advisor in making their recommendations

c) **Post Office Ltd Legal Assurance Review document**

POL Legal will have reviewed the Postmaster Contract Termination Decision Rationale, the purpose being to determine any risk associated with Post Office taking a decision to terminate a postmaster's agreement, assessed as either low, medium or high.

**Key Documents:**

[Contract Decision Rationale - New Version](#)  
[Final 21MAY24](#)

[Doc 9 - Legal Assurance Review \(Example Master\).pdf](#)

POST  
OFFICE

## The Meeting

### Key Document:

Postmaster  
Contract  
Termination  
Decision  
Committee Terms  
of reference  
v1.1.pdf

- The committee consists of the Chief Transformation Officer, Postmaster Experience Director, Supply Chain Director as quorum members who carry a voting entitlement.
- In addition to this a representative of POL Legal will attend as well as the Head of Contract Management & Deployment to present each recommendation and answer any questions. Head of Contract Management & Deployment will act as a non-voting chair.
- The meetings will be run on a monthly basis (pre-arranged and already in people's diaries – 2 ½ hours) – it may mean that if there are no decisions to review these will be cancelled. Meetings will most likely be held by Teams but may be held in person. If held via Teams a recording of the meeting will be made.
- Having reviewed the material provided in advance, the meetings will be a means by which the committee can discuss the recommendations presented to them supported by POL Legal and ask questions of the Head of Contract Management & Deployment.
- Any decisions will be passed by majority. It may be that the committee will need further information outside of the meeting in which case the Head of Contract Management & Deployment will source and provide (with subsequent decision taken through correspondence).
- Notes will be taken by the Head of Contract Management & Deployment which will capture decision taken, any outputs and improvement opportunities. .



## Post Meeting

- Notes will be shared with the committee members for concurrence and authorisation. These notes will include:
  - i. Output of reviews of any contract termination decision.
  - ii. Output of reviews of any contract reinstatement decision.
  - iii. Lessons learned.
- Recording of the meeting (if via Teams), notes and outputs will be saved to Sharepoint - [Postmaster Contract Termination Decision Committee - Committee Meetings](#)

### Key Document:

Postmaster Contract Termination Decision Committee – Meeting Notes (to be added)