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## **POST OFFICE LTD**

### **BRIEFING NOTE**

I am asked to comment on the following matters:

- i. Current statistics and a brief explanation of the current position.
- ii. Provide a short explanation of the Criminal Appeal process to be followed by a defendant who, having received disclosure material from POL, wishes to appeal against his conviction.
- iii. Provide a copy of the disclosure letter sent to those defendants whom the Review Process requires disclosure of the Second Sight Interim Report and/or the Helen Rose report.
- iv. Provide a short explanation of the status of the Helen Rose report. In addition to comment on the fact that this report which, unlike the Second Sight Interim Report, is not in public domain. Detail those measures preventing a defendant or his representatives from placing the Helen Rose report into public domain and any consequences should he do so.

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1. The current Review position is as follows:

Initial Sifts conducted	-	301
Second Sifts conducted	-	74
Cases subjected to Full Review	-	35
Cases where Disclosure advised	-	15
Cases where Disclosure Provided	-	10*
Cases Discontinued	-	4**

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\* Disclosure was advised in the case of Thomas Brown but not made as the case was discontinued. Disclosure has been advised in Hutchings and Robinson but not yet made, as the disclosure letter is with BAQC pending approval. Disclosure will be required in the cases of King & Jewson and Williams (Persis) if these defendants are charged.

\*\* The cases of Patel (Jishaan), Brown (Thomas), Wylie and Knight have been terminated.

2. The prescribed process for Appealing against any conviction in the Crown Court is as follows:

- a. In order to launch an appeal a defendant must have the written advice of counsel stating that in counsel's opinion he has Grounds of Appeal. A

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defendant may appeal unrepresented but this is a rare occurrence and probably outside the scope of this short explanation.

- b. Once counsel has settled his Advice and written Grounds of Appeal, the defendant, through his solicitors, must apply to the Court of Appeal for Leave to Appeal (permission) against his conviction. He must also seek the permission of the Court to apply 'out-of-time'. Both of these applications are made on paper – a Form NG must be completed and supported by counsel's Advice on Appeal and a Grounds of Appeal documents, setting out why the defendant (through his representatives) believes his conviction to be unsafe.
- c. These applications are considered on paper by a Single Judge of the Court of Appeal, who determines whether there is any merit in the appeal. If (s)he considers that the application is without merit the Single Judge refuses permission to appeal. Where permission is refused, the defendant may 'renew' his application for permission to the Full Court of Appeal: this is an oral application to the Court, usually made by counsel. The Full Court may grant or refuse permission. Where the Full Court refuses permission to appeal, that is the end of the matter.
- d. If the Single Judge, or the Full Court, grants permission the appeal hearing is listed for full argument before a three-judge Court. Both prosecution and defence provide written submissions and, on the day of the hearing, advance oral argument as to the merits of the appeal. The Court usually (but not always) gives judgement there and then.
- e. An appeal will only succeed where the Court considers a conviction to be 'Unsafe'. In cases where the main issue of one of disclosure, or the failure to disclose, the question for the Court will be whether the non-disclosure had a material effect on the outcome of the case, regardless of whether the defendant was convicted or pleaded guilty. In cases where the defendant pleaded guilty to his offences, as is the case with almost every POL case, he is much less likely to succeed in the Court of Appeal.

3. Appended hereto.

4. The Helen Rose report is not in the public domain and should not be placed in the public domain. Nevertheless is subject to the disclosure rules set out in my earlier advices, and as such should be disclosed in (rare) appropriate cases.

As a matter of law, a defendant to whom any material (including this report) is disclosed is constrained from using that material for any purpose other than that for which it was disclosed. This means that a defendant (and his representatives) may not place the Helen Rose report into the public domain. To do so would be to attract consequences which include prosecution, both of the defendant and his

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representatives, were they to be complicit in any publication of the document. This restriction applies to any part of the report.

Because this report goes only to the apparent knowledge of GJ at the time of his writing of his expert court reports, its status as a disclosable document ends where he no longer provides such reports. Accordingly it is unlikely to require disclosure in any further cases and will not be disclosed in any pending or future prosecution.

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Simon Clarke  
Andrew Bolc  
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23<sup>rd</sup> October 2013