

In Strictest Confidence

POST OFFICE LTD BOARD

Review of the Current Prosecution Policy

1. Purpose

- 1.1 This paper has been prepared following the recent meeting of the ARC in order:
 - to provide the Board with a summary of the discussions that took place at that meeting; and
 - to seek the Board's approval to the implementation of a new Prosecution Policy, "Option B" in the paper that was considered and endorsed by the ARC at that meeting (a copy of which is attached to this paper as **Appendix A**), and that the policy should be reviewed at least once a year.
- 1.2 This paper also reflects comments made by the ExCo on this matter at its meeting on 13 February at which it too endorsed Option B.

2. Background

- 2.1 The ARC first formally considered changes to the Post Office's current prosecution policy at its November meeting. Following an extensive discussion on that matter it remitted the paper for further consideration and asked for the broad options set out therein to be refined and the implications explored.
- 2.2 On 11 February the ARC considered the attached paper and broadly endorsed Option B - ***Pursuing a prosecutions policy more focussed on more egregious misconduct*** - e.g. *higher value cases/cases involving vulnerable members of society/cases of involving particularly wilful wrongdoing, and engaging with the police in relation to other matters* - as set in that paper but on the clear understanding that the policy would be regularly reviewed (at least once a year) with a view to considering whether, in light of the experience that had then been gained, any further changes would be appropriate.
- 2.3 The ARC also commissioned a paper from the Communications Director setting out the potential narrative that could be used to communicate the change in policy on a reactive basis. A copy of his paper is set out in **Appendix B**.

3. Activities/Current Situation

- 3.1 The ARC's discussion was wide ranging and challenged the paper in a number of areas. Although it was felt that Option C represented a simpler and "cleaner" end state than Option B, on balance, it was agreed pro tem to endorse Option B, with the discussion turning on a few key points, including:

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- The need to adopt a new prosecution policy which allows the optionality to take account of the other planned developments in the business. In this regard it was noted that through the Branch Support Programme, the Post Office is changing its approach to contract breach, suspension and the training and support it provides to SPMRs but that these changes had not yet had time to work their way through the system. The full effect of the Branch Support Programme was unclear, and ideally it would be helpful to have a clearer understanding of how these changes interact with the factors set out in the paper before making any decision which limits optionality and allows, should it prove necessary, the potential to reverse the decision. This issue was also discussed at the ExCo meeting held immediately after the ARC meeting, and it was felt there that these changes introduced by the Branch Support Programme would need very careful monitoring. This programme is the subject of a separate paper included with this Item.
- The fact that there are a number of factors which distinguish Post Office from other financial institutions, all of which are content not to pursue their own prosecutions. These include scale, our unique relationship with sub-postmasters, the amount of cash that is handled by our branches (and in many cases by individuals who are not employees), our large number of vulnerable customers who are more easily defrauded, and the fact that public money is at stake.
- The interaction between any change in policy and the current heightened stakeholder interest in the mediation scheme (which is the subject of a separate paper within this Item) and related matters. It was noted that any change of policy may be closely scrutinised, with the possibility of an erroneous inference being drawn that the Post Office had been wrong to pursue prosecutions in the past (leading counsel had in any event reviewed the paper and confirmed that such an inference would, as a matter of law, be entirely incorrect). This was compounded by the fact that the Post Office will shortly be launching the procurement process for the replacement to the Horizon system – something which was due to happen now in any case; again this factor pointed in the direction of a more gradualist approach.
- The need to maintain an effective deterrent against wrong doing, given the public trust placed in the Post Office. In this context it was noted the CPS were currently very resourced constrained, and were unlikely to have the appetite to pursue other than the most serious cases of theft or fraud committed by SPMRs.

3.2 At both the ExCo meeting and the ARC meeting a discussion was had about the civil recovery process and it was noted that the option of using the civil courts to recover debts remained open to the Post Office in cases where, under the current policy a prosecution would have been brought, but where under the revised policy, it would not. It was noted that, in terms of recovery rates, past performance was not necessarily a good guide to predict future performance, given the often radically different circumstances in which these cases were brought. The volume of other changes taking place in the

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network also meant that this type of extrapolation would, in any event, be difficult. ExCo in particular felt that careful regular monitoring of recoveries going forward was required.

3.3 The ARC requested information about the composition of the applicants in the mediation scheme and the following statistics were (in advance of the meeting) provided:

- Of the 147 applicants to the scheme, **49 applicants** were subject to criminal prosecution.
- Of those, no prosecutions happened within the last 2 years, but one applicant was subject to criminal prosecution in 2011, 6 applicants were subject to criminal prosecution in 2010 and 4 applicants were subject to criminal prosecution in 2009.
- We believe (but are trying to verify) that **31 applicants** were subject to some form of recovery processes. This includes recovery via Post Office Ltd's "normal" debt recovery processes (e.g. by issuing a letter of demand) and recovery through the use of full civil court proceedings.
- We are currently aware that, of those 31 cases, civil court proceedings were issued against at least **16 applicants**, of which 8 were dealt with in the last 2 years.
- External solicitors also recovered debts from at least 5 applicants (without initiating court proceedings), of which 2 were dealt with in the last 2 years.

3.4 ExCo also discussed the impact that any change in prosecution policy would have on the so called "stacked cases". (These cases are ones where an investigation into a loss or alleged loss, and the SPMR is waiting hear of the outcome of those investigations). In accordance with the existing policy we are already in the process of notifying around 10 SPMRs that no further action will be taken in relation to their case. Of the remaining 30 cases, it was noted that should the Board adopt Option B then each case will need to be individually re-assessed against the policy, with the likely result that a number of the stacked cases will not be taken forward; with the individual being notified of this fact as soon as possible. This may generate further media interest in the Post Office's approach to prosecution either via the individuals themselves or JFSA.

3.5 Finally the ARC discussed whether any policy change should not at this stage be made available on Post Office's website. The feeling was that the policy should not be published, but that Post Office should prepare appropriate reactive lines in case it was necessary to discuss the changes – for example if directly questioned at the forthcoming meeting with James Arbuthnot and other interested MPs. To support this, the Communications Director has prepared the attached draft communications briefing paper (**Appendix B**) which will be revised following feedback from the Board.

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4 Recommendations

The Board is asked to:

- 4.1 Note the summary of the discussions that took place at that the ARC and ExCo meetings;
- 4.2 Approve the implementation of a new Prosecution Policy, "Option B", as detailed in Appendix A ; and
- 4.3 Agree that the policy should be reviewed at least once a year.

**Chris Aujard
18 February 2014**