



POST OFFICE LIMITED

~~ENFORCEMENT AND~~ PROSECUTION POLICY
FOR ENGLAND AND WALES

2 |

DRAFT

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1. INTRODUCTION

5 | ~~Post Office Ltd (“POL”) is a public body accountable both to the~~
~~Government and to Parliament, and ultimately to the general public.~~

6, 7, 8 | 1.1 ~~As of the date of this policy, Post Office Limited (POL) It provides a wide~~
9, 10, 11 | ~~range of vital services, including postal and banking services, to~~
12, 14 | ~~communities across the United Kingdomn the public through its~~
15, 16 | ~~approximately 11,800 branches, across the UK. Because POL’s activities~~
17 | ~~provide communities nationwide with access to postal, banking and other~~
~~essential services, it serves an important public purpose.~~

18 | ~~An important function of that purpose is to provide affordable and reliable~~
~~services to the public through its retail operation. Criminal offences against~~
~~POL’s business in particular theft, fraud and false accounting inevitably~~
~~result in increased cost to the taxpayer, adverse impact on its customers,~~
~~and they challenge the viability of the services POL provides.~~

19 | 1.2 POL^[A1] is committed to reducing criminal activity offending against its
20 | business whether by individuals or by other legal entities including by in
two ways:

21 | ~~Through the establishment and development of a Business~~
22 | ~~Improvement Programme, and By investigating offences, and by~~
~~taking such enforcement action as POL considers appropriate in the~~
~~circumstances of the case.~~

Page 3 Comments

- A1** We should change this to Post Office Limited throughout
Author, 05/09/2014 06:45 PM

2. SCOPE

23 2.1 POL became a stand alone company Following its separation from Royal
24 Mail Group on 1 April 2012. It, POL has retained its investigative and
25 prosecution function. In England and Wales, POL conducts both
investigative and prosecuting functions.

26, 27, 28 2.2 However, in Scotland and Northern Ireland, POL's Security Team carries
out investigations and decides whether to refer a case^{A2} either
29, 30 representative agents report alleged criminal offending to the Crown
Office and Procurator Fiscal Service in Scotland or the⁴. In Northern
32, 33 Ireland, POL Security Managers report allegations of criminal offending to
the Public Prosecution Service in Northern Ireland. POL does not make
the decision to prosecute in Scotland or Northern Ireland and neither does
it carry out any prosecutions in Scotland or Northern Ireland.

34 2.3 This policy is intended to explain the approach that POL will adopt in
dealing with all allegations of crime committed against its business in
England and Wales.

35 2.4 This policy applies equally to all criminal investigations and prosecutions
by POL in England and Wales (whether of POL employees, agents,
contractors, customers or any other person). is intended to apply equally
to POL employees, sub-contractors, contractors, agents and
customers as well as to those who have no formal relationship with POL.

31 ⁴ The Crown Office and Procurator Fiscal Service recognises POL as a Special Reporting Agency

Page 4 Comments

A2 Should this referral decision be taken in accordance with the criteria set out in this policy?

Author, 28/08/2014 03:39 PM

36 | **3. ~~AIMS AND OBJECTIVES~~**

37 | 3.1 This policy has been formulated having regard to the following objectives:
The general ~~aims~~ of this policy are to:

38, 39, 40 | 3.1.1 To enable ~~Ensure that~~ POL to ~~takes~~ a fair, consistent and
41 | proportionate approach to criminal enforcement; and
41 | 3.1.2 To pProvide POL decision-makers with guidelines enabling
42 | them to reach enforcement decisions, ~~and Inform the public and our~~
~~commercial partners of the general principles POL will use to guide~~
~~its enforcement decisions.~~

43 | ~~The general objectives of this policy are to:~~

44 | 3.1.2 To pPreserve and maintain the viability and integrity of the services
POL provides to the public, which criminal activity compromises

45 | 3.1.3 To dDeter the commission of criminal offending against POL's
business

46 | 3.1.4 To pProtect POL's physical and financial assets, and

47 | 3.1.5 To rRecover monetary losses and assets resulting from criminal
conduct.

4. AVAILABLE ENFORCEMENT OPTIONS

4.1 Informal action, disciplinary action and civil action are enforcement options open to POL, and they will be carefully considered before any criminal enforcement action is taken. POL's policy relating to other forms of enforcement action are set out in Policy [xxx].

4.2 Any one of more of the following factors may be taken into account by POL, along with all other relevant factors, in deciding whether POL considers that prosecution or another form of enforcement action (as listed above) would be the most appropriate response to an alleged offence:^{A3}

4.2.1 the amount of the losses

4.2.2 whether the losses have been repaid;^{A4}

4.2.3 whether the facts disclose a pattern of deliberate conduct designed to materially benefit him/her, or whether the fact pattern discloses inadvertence/poor book-keeping skills or "muddle-headedness";

4.2.4 the degree of sophistication of the alleged wrongdoing;

4.2.5 the number of incidents;

4.2.6 the extent to which any members of the public suffered loss, and if so whether they were from vulnerable groups in society;

4.2.7 the period of the alleged offending;

4.2.8 the cost of bringing the prosecution relative to the likely penalty on conviction and/or the likely recovery of any shortage or loss (although Post Office Limited will not make a decision to prosecute on this factor alone);

4.2.9 the impact of the alleged offending on the integrity and reputation of POL and the services it provides to the community;

4.2.10 the past history and attitude of the offender;

4.2.11 the likelihood of non-compliance with other enforcement action

4.2.12 the likely effectiveness of other enforcement action; and

4.2.13 the consequences of pursuing other enforcement action.

4.2.14 The nature and extent of any breach of trust by the offender;

4.2.15 the offender's age, physical or mental condition, and his general character and reputation;

Page 6 Comments

- A3** Are there any other factors that would be more applicable to an alleged offender who does not work in a branch? For example, a customer?
Author, 05/09/2014 06:47 PM
- A4** 4.2.2 to 4.2.8 are from the board paper. The other criteria in 4.2 are taken from various other parts of the policy which list factors POL will take into account
Author, 08/08/2014 03:19 PM

- 69 4.2.16 any previous convictions or other evidence of previous offending or
default;
- 70 4.2.17 any voluntary disclosure or confession made by the offender;
- 71, 73, 72b, ... 4.2.18 The deterrent effect of a prosecution on the offender and on others;
and
- 75 4.2.19 any unreasonable delay by POL in reaching an enforcement decision.

76 ~~The choice of enforcement option will depend on the seriousness of the
offending as reflected by (but not limited to) the quantum of the shortage or
losses alleged, the particular vulnerability of the victim, the impact of the
alleged offending on the integrity and reputation of POL and the services it
provides to the community, the past history and attitude of the offender, as
well as the likelihood of non-compliance with, and the likely effectiveness
or consequences of, the non-criminal enforcement options available.~~

77 ~~In particular, therefore, in choosing the right enforcement option, POL will
consider the seriousness of the offence, having regard to: The culpability of the
offender The extent of the harm done The extent of any shortage or losses to
POL The particular vulnerability of the victim (e.g. by age, infirmity or physical or
mental disability etc.) The duration, pattern and sophistication of the offending~~

78 ~~The nature and extent of any breach of trust Other public or social factors~~

79 ~~POL will also have regard to factors such as:~~

80 ~~The offender's age, physical or mental condition, and his general character and
reputation Previous convictions or other evidence of previous offending or
default Any voluntary disclosure or confession made by the offender Any
repayment of losses Any unreasonable delay in reaching an enforcement decision~~

4.3 Provided always, where the nature of the offence is so serious or the
shortage or loss so substantial that enforcement action other than criminal
action is inadequate and might lead to delaying criminal investigation and
enforcement, POL may will move expeditiously to consideration of criminal
enforcement action.

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ENFORCEMENT ACTION OTHER THAN CRIMINAL ENFORCEMENT

^[A5]**Action** ~~Informal Action~~ will, in the case of a minor offence, usually take the form of a letter or a report sent to the offender but it may also include a verbal warning. The individual or business will be expected to act upon such informal action and, in the event they fail to do so, this may result in criminal enforcement action being taken. Examples of when informal action might be appropriate include circumstances where: The offence is not deemed serious enough to justify criminal enforcement action An early admission of guilt is made Action has been taken by the offender to repay the shortage or loss or otherwise to make amends The past history of the individual or the business suggests that informal action will act as a deterrent against future offending **Disciplinary Action** may be deemed necessary by POL in accordance with POL policies and employment contracts and considered alongside criminal or civil enforcement action. **Civil Action** will be considered where the seriousness of the offence or the attitude of the offender means that POL does not consider formal action is required. Civil proceedings may be taken in parallel with, or in place of, criminal enforcement action and may be used to vary or terminate a contract, recover monies stolen from POL or seek financial compensation for other wrongdoing. Where civil proceedings are undertaken in addition to formal criminal action, POL will not seek to recover twice.

Page 9 Comments

- A5** This has been deleted because other policies will deal with other enforcement action
Author, 08/08/2014 03:19 PM

83 | **5. GENERAL PRINCIPLES OF CRIMINAL ENFORCEMENT**

84 | **5.1** Where the decision is made to pursue criminal enforcement, POL will apply the Code for Crown Prosecutors issued by the Director of Public Prosecutions,² as well as the further considerations set out in this policy document. The decision whether to prosecute in any individual case will be taken with due diligence and expedition.

85 | **5.2** POL will have regard to the Human Rights Act 1998 and the European Convention on Human Rights.

86 | **5.3** POL will comply with:

- Its disclosure obligations under the Criminal Procedure and Investigations Act 1996 (and the Code of Practice issued thereunder)
- The Protocol for the Control and Management of Unused Material in the Crown Court
- The Attorney General's guidelines on Disclosure and on the Disclosure of Digitally-Stored Material
- The Criminal Procedure Rules and the Criminal Practice Directions
- The Attorney General's guidelines on the Acceptance of Pleas

87 | **5.4** Each case will be approached according to general principles of **fairness, consistency and proportionality**.

88 | **5.5** **Fairness and consistency** does not mean a uniformity of approach but adopting a similar approach in similar circumstances to achieve similar ends, but taking into account the particular circumstances of each case.

² Currently the 7th Edition, issued January 2013. Go to www.cps.gov.uk

5.6 Proportionality means relating enforcement to the offence alleged so that POL enforcement action will be proportionate to the seriousness of the offence, the culpability of the offender, the harm caused by the offending, the impact of the offending on the community and on the services POL provides, and the costs of investigation and prosecution as weighed against the likely outcome.

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6. CRIMINAL ENFORCEMENT ACTION

6.1 Prosecution may will be brought where:

6.1.1 The alternative enforcement options are considered to be inadequate – see section 4 of this policy – and the circumstances justify a prosecution – see section 6.3 below.

6.1.2 The evidence passes the two-stage test for prosecution set out in the Code for Crown Prosecutors, and

~~The circumstances of the offending are such that prosecution is justified.~~^{A6}

6.2 To pass the two-stage test for prosecution set out in the Code for Crown Prosecutors (“**the Full Code test**”) there must be:

6.2.1 Evidence sufficient to provide a realistic prospect of conviction (“**the evidential stage**”), and

6.2.2 The prosecution must be in the public interest (“**the public interest stage**”).

6.3 Where there is a realistic prospect of conviction and prosecution is in the public interest, the circumstances that justify a prosecution as being in the public interest^{A7} may include any one or more of the following:

- Where the offence is particularly egregious, for instance where the conduct has resulted in a significant or substantial financial shortage or loss
- Where the offence has or is likely to have an adverse impact on POL’s business, brand, image or reputation
- Where the victim of the offence was particularly vulnerable (e.g. by age, infirmity or physical or mental disability etc.)
- Where the offence involves a serious breach of trust
- Where the offending (or the concealment of the offending) is sophisticated, involves multiple transactions or was committed over a lengthy period of time

Page 12 Comments

- A6** Is this already covered in 7.1.1?
Author, 08/08/2014 03:19 PM
- A7** How is this list of factors intended to interact with those in section 4?
Author, 08/08/2014 03:19 PM

- Where there is a history of similar past offences or misconduct
- Where an innocent party has been falsely blamed or accused

~~POL will also consider the following circumstances when deciding whether or not to prosecute:~~

- ~~• The particular circumstances of the offender The quantum of the shortage or loss to POL Whether or not some or all of the shortage or loss has been (or will realistically ever be) repaid to POL The deterrent effect of a prosecution on the offender and on others Other factors that may militate against prosecution The cost of prosecution relative to the likely penalty on conviction and/or the likely recovery of any shortage or loss~~

6.4 Once the decision to prosecute is taken, POL will keep the case under continuous review. Where it appears to POL that the case no longer meets the evidential stage of the Full Code test, or concludes that prosecution no longer meets the public interest stage of the Full Code test, then it ~~may?~~[will] discontinue the case without undue delay.

111 | **7. DECISION MAKING**

112 | **7.1** The decision to authorise prosecution will be taken by the senior criminal
113 | lawyer in the Post Office Legal and Compliance Team (“**POLCT**”) [acting on
114 | advice from external lawyers^{A8}, subject to approval by POL’s Head of Security].

115, 116 | **7.2** In the event that POL’s Head of Security ~~Operations~~ disagrees with the
POLCT senior criminal lawyer’s decision, POL’s General Counsel will make
the final decision whether or not to authorise prosecution.

117, 118 | ~~**7.3** Prosecutions in the Magistrates’ Court and the Crown Court will be
conducted by POL’s external lawyers or appointed agents.~~^{A9}

119 | **7.4** Criminal investigations will be conducted by POL’s Security Operations
Team in accordance with the Conduct of Criminal Investigations Policy.³

120 | **7.5** The decision to prosecute will be taken openly and transparently.^{A10} The
decision and the underlying reasons for it will be recorded in writing and
retained by POL until the expiry of a period of 6 years following the conclusion
of the case.

³ Effective from 29 August 2013

Page 14 Comments

- A8** Do we need to state that we will always “act on advice from external lawyers”? This will require us to always get external advice before prosecuting and to act on that advice.
Author, 28/08/2014 03:32 PM
- A9** Do we need to say this? It limits our ability to conduct prosecutions ourselves (unlikely I know but is a remote possibility)
Author, 28/08/2014 03:36 PM
- A10** Is it helpful to say this? – if the decision is taken in accordance with the policy then isn’t that all that is required?
Author, 28/08/2014 03:37 PM

121 | **8. RECOVERY: CONFISCATION, COMPENSATION AND COSTS**

122 | **8.1** POL will in every case seek to recover any shortage or loss resulting from the offender's criminal conduct, as well as the costs of prosecution, subject to the general principles of **fairness**, **consistency** and **proportionality**.

123 | **8.2** In appropriate cases, POL will seek to obtain orders for:

- Restraint against assets owned or controlled by suspects,
- Confiscation under the provisions of the Proceeds of Crime Act 2002,
- Compensation, and
- Costs covering the investigation and prosecution, or
- Any combination of such orders

124 | **9. REVIEW**

125 | **9.1** This policy supersedes any previous POL criminal enforcement action or prosecution policy.

126 | **9.2** This policy will be reviewed annually.

Date of policy implementation:

Date for review of this policy:

Formal approval of policy by:

Signed:

Name:

Track Changes

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