POL00245012

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Post Office Limited ("POL"): CCRC strategy paper

November 2016

1. INTRODUCTION

Issue: The CCRC review has been active since February 2015. Its approach has been thorough but slow. Post Office has been highly cooperative throughout and not sought to influence the course of the CCRC review.

The open CCRC review creates the following difficulties:

- It is difficult for Post Office to commence new prosecutions at a time when the CCRC are conducting a very broad review of Post Office's historic prosecutions.
- Several of the cases under review also arise in the civil Group Litigation. It is unlikely that those civil cases could be closed until the CCRC review is concluded.
- Until the review closes, there is a general sense that there is an unanswered question about the integrity of Post Office's conduct in relation to prosecutions.

The CCRC has given no indication of when its review may come to a close. To date, the CCRC have not indicated that they have found any grounds so far to recommend an appeal in any particular case. However, until the review is closed, this remains a possibility.

Objective: Close down the CCRC review as quickly as possible while (i) maintaining a positive relationship with the commission and (ii) avoiding any appeal recommendations.

Approach:. In order to draw the review to a close more promptly Post Office would need to apply pressure on the CCRC to move more quickly. This can legitimately be done in two ways.

First, the CCRC need to be able to show "exceptional circumstances" in order to have jurisdiction to review Post Office prosecutions since none of the applicants have previously tried but failed to appeal their case. The CCRC have never clearly described the "exceptional circumstances" that they rely on and POL can justifiably press the CCRC on what "exceptional circumstances" exist, given the lack of a common thread between the cases.

Secondly, the CCRC's annual average (for 2015/16) for looking at cases like Post Office prosecutions is 85 weeks. In relation to the Post Office review, this average period expires in mid-November 2016. Presumably the CCRC will be conscious of any delays as they will be recorded in its annual report and this is a key metric against which its performance is judged. Pressing for a prompt conclusion is therefore in line with the CCRC's own performance standards and a legitimate issue to raise now that the CCRC has exceeded its own benchmark.

2. TIMELINE

STEP 1 – CLEAR ALL OUTSTANDING ACTIONS

In the Schedule below is a list of the outstanding action points on Post Office. These should be cleared first so that Post Office cannot be accused of being a source of delay.

STEP 2 – CONFERENCE WITH BRIAN ALTMAN QC

POL to form an initial view, with BAQC's input, on the decision points below.

- *What is POL's general strategy for closing down the investigation with BAQC?*;

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POL to discuss with BAQC/BD and agree how best to raise and leverage the two pressure points for the CCRC on jurisdiction and timing and consider any others that may exist (see "approach" above).

- *Does POL disclose a copy of the Deloitte report to the CCRC*?

  The report could assist the CCRC in closing down lines of questioning. However, the report is not written in plain English and with that lack of clarity comes scope for further questions. There are also pieces of work gestured towards but not completed – for example, Deloitte suggests it ought to be possible to obtain/review the audit logs of super-user access. Having read the report, would the CCRC want to see a full review of super-user access against the 27 cases, for example?

- *Does POL disclose to the CCRC a copy of BAQC's July 2016 report*?

  The report's central findings should provide CCRC with assurances about POL's prosecution practices. The report concludes that, in terms of the cases reviewed, there was no evidence of a deliberate policy by POL to charge theft without an evidential basis – indeed there is positive evidence that each case was approached professionally and case-specifically (see paragraphs 203-206). However, BAQC does highlight some potential criticism beyond the scope of his review regarding the use by POL of the criminal justice system as a means of enforcing repayment of losses (see paragraph 208). Query whether the report would close down one line of questioning while simultaneously opening another.

- Does *POL disclose any of the civil litigation correspondence between BD and Freeths to the CCRC?*

  There are parts of the civil litigation correspondence dealing specifically with POL's approach to criminal prosecutions – see for example, paragraphs 5.64-5.86 of BD's letter of response dated 28 July 2016. As well as dealing with the allegation that POL prosecuted on insufficient evidence, the letter also tackles allegations regarding Jo Hamilton's case which may be of interest to the CCRC given it is on their list of cases. The relevant sections of BD's letters are largely based on BAQC's findings so there is a danger of duplication here. It is also notable that the arguments advanced in correspondence are carefully positioned statements in the context of litigation which may not be appropriate for the more transparent approach POL is seeking to take with the CCRC.

STEP 3 – SEEK INTERNAL INSTRUCTIONS

There is a risk that pressuring the CCRC could be seen as trying to fetter the CCRC review and could (though may not) cause a degradation in the currently very good working relationship between the CCRC and Post Office.

Having formed provisional views on the decision points above, internal stakeholders should be consulted on the steps for pressing the CCRC given the above risks.

STEP 4 – MEET WITH CCRC

Set up an in-person meeting with the CCRC. At this meeting, Post Office can explain its position, raise the points mentioned in the "approach" section above, and start the process outlined at step 5.

STEP 5 – CRYSTALISE QUESTIONS FROM CCRC

Post Office needs to understand what questions the CCRC feels it must answer before it can close its investigation. These questions should be framed around understanding whether there are "exceptional circumstances" to continue the investigation.

POL should aim to agree a list of such questions with the CCRC and an agreed timescale for answering them.

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If possible, POL should seek some assurance from the CCRC that once their list of questions is answered (or reasonable enquiries have been undertaken with no answer possible) then the investigation will be at an end.

STEP 6 – ANSWER QUESTIONS FROM CCRC

Undertake any necessary work to answer the CCRC's questions within the agreed timeframe.

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<u>**SCHEDULE**</u>

<u>A. Release of Documents</u>

The latest position on release of documents is contained in an email from Paul Loraine to RW dated 17 October 2016.

There are 27 cases. We have completed disclosure on 14. There are 8 cases where we have completed the trawl but still need to release documents. There are 5 cases where the document trawl is ongoing.

<u>**ACTION FOR POL: RW to reply to PL's email of 17 October 2016 confirming if he is happy for BD to release the documents Millnet have ready to go on Barang, Holmes, Ishaq, Misra, Prince, Robinson, Trousdale and Williams.**</u>

<u>**ACTION FOR BD: continue to liaise with CK and Millnet to manage the process of uploading documents for the remaining 5 cases and releasing those documents to the CCRC.**</u>

<u>B. Correspondence</u>

The last communication from the CCRC to POL was an email from Amanda Pearce (**AP**) sent to Rodric Williams (**RW**) on 1 August 2016. She raised the following issues which involved action points for POL:

MacDonald case

- The CCRC have heard nothing from Mr Patel. Could POL encourage him to contact CCRC?

Document requests

The CCRC requested: (a) documents linked to the entries from 23/7/09-1/9/09 on the Broughton 'electronic filing cabinet' document (on MacDonald); (b) the thematic spreadsheet which Second Sight created identifying the alleged faults/problems; (c) a June 2014 report which Ron Warmington prepared on POL's investigations department and prosecution process; and (d) transaction logs for Misra case.

Questions for POL

- CCRC asked for an explanation of the "Dalmellington Error" reported in Computer Weekly in November 2015 (whereby payments had been allegedly duplicated on Horizon).

- CCRC asked for confirmation that the "Receipts and Payments Mismatch Problem" is the same thing as the Callendar Square/Falkirk problem and that the issue concerns only transfers to remote stock units (i.e. those run from a laptop in remote areas). They asked if the issue affect transfers between stock units within a branch.

- CCRC has seen a reference to a "fault log" produced by Fujitsu. Is it the same thing as the 'peak incident reports', 'pinnacle', and the 'known error log'. Do these refer to the same thing? Is it one document or is a series of documents?

To our knowledge, POL has not yet responded to the 1 August email.

Gavin Matthews sent a draft response to RW by email on 19 August 2016. GM suggested that RW use the email as a discussion document with Amanda for a phone call. Since GM sent this email, BD have received further information relating to the points in square brackets in GM's email (for example, Andrew Pheasant received transaction logs on the Misra case from Kath Alexander).

BD will send an updated draft of this email, incorporating the new information, to RW for review.

<u>**ACTION FOR POL: RW to comment on GM's draft email and BD/POL to finalise response to send to Amanda. This email could be an opportunity to propose a meeting (see step 4 of the plan above).**</u>