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FAO: Ms Karen Kneller  
Criminal Cases Review Commission  
5 St Philip's Place  
Birmingham  
B3 2PW

Our Ref NPV/HKL/CKT/PO6388.1

Your Ref

Date 3 August 2021

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**BY EMAIL:**

KnellerK **GRO**

Dear Ms Kneller

**RE: COMPLIANCE WITH S17 NOTICES ISSUED BY THE CCRC TO POST OFFICE LIMITED ("POL")**

1. We write further to the following correspondence regarding POL's historical compliance with notices issued by the CCRC pursuant to s17 of the Criminal Appeal Act 1995 ("**s17 Notices**"), including:
  - a. Our letter dated 26 February 2021 in which we sought to address the CCRC's criticisms of POL's responses to s17 Notices;
  - b. The CCRC's response to that letter dated 12 March 2021; and
  - c. The exchange of correspondence between you and POL's CEO, Nick Read in which Mr Read indicated that POL would conduct a detailed review and analysis of historic compliance with s17 Notices to understand whether there have been any failings.<sup>1</sup>
  
2. We are grateful for the indication in the CCRC's letter of 12 March that, although you raised some concerns about POL's past compliance, your primary focus is on future compliance with s17 Notices to ensure that the CCRC is properly equipped with material from POL to discharge its duties in respect of current and future applicants.

<sup>1</sup> The referenced correspondence is enclosed for ease of reference.

**Partners**

A C Bradshaw	M C Cronin	S L Gabriel*	H K Laming	H J McDowell	J K Nakhwal
M O'Kane	K E Oliver	N T Swift	J Tickner	N P Vamos	J J Woodland

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\* non-member of the LLP

3. Mr Read instructed Peters & Peters to conduct an in-depth review of compliance with all s17 Notices issued since 2015 in accordance with his letter to the CCRC on 1 March 2021. To enable the CCRC to be assured as to the depth of our instruction, our review has involved the examination of over 6 years' worth of correspondence between POL and the CCRC and an analysis of the disclosure of over 50,000 documents to the CCRC in the same period. You will perhaps appreciate that the task has therefore taken some time to complete (alongside the competing demands that are being made of POL in the context of the ongoing appeals, future appeals, the inquiry and related activities), and we are grateful for your patience in awaiting the outcome of this work and apologise for any perceived delay.
4. We have now completed our review and present summary of our findings in this letter. Our findings essentially build upon the points that we identified to the CCRC in our letter of 26 February 2021, and therefore that letter should be read in conjunction with this letter.
5. We have grouped our findings under the following headings:
  - A. Parameters and processes
  - B. Further repositories and the Post-Conviction Disclosure Exercise ('PCDE')

**A. Parameters and processes**

6. POL acknowledges that it has a duty to ensure that all material responsive to any s17 notice is provided to the CCRC and that this duty is not discharged by complying with parameters and processes agreed with the CCRC if those parameters and processes do not identify every responsive document. However, the extent of the interaction and engagement between POL and the CCRC on appropriate parameters in response to the s17 notices bears emphasis.
7. Given the volume of material requested in the first wave of s17 notices in 2015, it was agreed between POL and the CCRC in meetings and correspondence starting in May 2015 that parameters for the provision of hard copy and electronic documents were necessary. Those parameters and accompanying processes (including defining the categories of material to be provided and agreeing search terms) were subsequently agreed, monitored and updated by POL and the CCRC regularly and throughout the following years. POL ensured that the CCRC was aware of and had the opportunity to input into and challenge the search and collation exercise POL was conducting. In addition, the CCRC was aware that POL needed to request documents

from multiple parts of its business and from third parties before being in a position to respond to many s17 Notices.

8. Our assessment is that POL was broadly compliant with the s17 Notices within these agreed parameters and processes, subject to the following specific points to note:
  - a. There were five instances in which there was a notable delay in providing the Green Security File, by virtue of the eDiscovery provider not having transferred these files to the CCRC's dataroom, despite POL's instructions to do so. As a result, these documents were only provided in February 2020. The CCRC was on notice that the files were missing as POL had indicated on its tracker that these files had been transferred. The files were eventually transferred prior to referrals being made in those cases. POL/Peters & Peters and the eDiscovery provider now have a protocol in place to ensure that if transfers to the CCRC dataroom are requested, these are confirmed as actioned in writing via email.
  - b. In 15 instances, POL did not identify physical CDs/tapes of interviews which were not disclosed until after referrals/provisional decisions were made by the CCRC. These items were only discovered following a wholesale collection of the relevant Security Team archive under the PCDE. Following a lengthy digitalisation and transcription process, they only became available around July/August 2020, and were disclosed to the CCRC shortly thereafter.<sup>2</sup> Peters & Peters has now digitalised all cases which relate to potential future appellants ("PFAs"), these digitised versions are disclosed to the CCRC upon receipt of a s17 Notice and are transcribed as soon as those individuals seek to appeal/make an application to the CCRC, and the transcript is disclosed upon receipt.
  - c. In three instances, POL did not identify RMG Buff Files, which were only discovered following a wholesale collection of the relevant archive in the PCDE. However, in one of those cases, the review of the RMG Buff File identified only two disclosable documents and in another, the file was eventually provided to the CCRC (as it relates to a case which is still being considered) but there was a delay in its provision. There has now been a wholesale collection of the archive which holds prosecution and investigation

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<sup>2</sup> The CCRC was on notice that these transcripts were awaited in relation to all outstanding s17 Notices – see 12 May 2020 email to the CCRC from Rod Williams at 23:55.

papers, therefore there should not be any future delay or failure to identify such papers when complying with s17 Notices in the future.

- d. In one case, POL did not identify a bundle of loose documents in its archive, which it was later discovered were investigation/prosecution documents. This was an unforeseen event and it would not have been possible for POL to identify the documents as relevant prior to the collection, scanning and review of the entire archive in the PCDE.
- e. In six instances the Green Security File was not identified until after the wholesale collection and review of the relevant archive in the PCDE. In four of those instances, the documents were largely duplicative of material already provided to the CCRC and only resulted in a few additional documents being disclosed. In the remaining two instances, the File (or parts of the File) was only identified in boxes of documents that were marked as to be destroyed in accordance with standard file retention procedures (prior to litigation holds being put in place for the purpose of the group litigation). These files had to be searched for and reconstituted page by page, and it was therefore unforeseen by POL that these files would be found in such boxes.
- f. Some documents were not initially identified because of the unforeseen issue outlined in the appendix to our letter dated 26 February 2021, where the date detailed in the metadata of a document was different to the actual date of the document (which meant that search terms with specific date parameters did not pick up certain documents).<sup>3</sup> On review, most of the documents that were affected by this issue were duplicative of other documents that had already been disclosed to the CCRC. In particular, the CCRC was concerned at the apparent non-disclosure of the two ROTIs in the case of Adedayo but our review identified that these were disclosed to the CCRC in 2016 (DocIDs 108124391 and 108124392), albeit they were not in the eponymous file in the dataroom as they should have been.
- g. Whilst most of the s17 Notices had deadlines of either 20 working days or 28 days, in relation to the s17 Notice that was provided to POL by hand on 29 January 2021 for 21 individuals, there was no deadline to respond to this notice, and the requirement was only to preserve materials. However, on 28 February 2021, the CCRC indicated that it required the provision of

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<sup>3</sup> It appears that a number of documents were moved across to the POL Security shared drive in October 2009 which resulted in those documents being dated as October 2009 rather than the date on which they were originally created.

documents for these 21 individuals before 24 March 2020.<sup>4</sup> Whilst a significant amount of material was provided in response to this updated position by the CCRC, POL did not have sufficient time to collate all of the preserved material in the short time afforded to it by the CCRC, which resulted in the CCRC referring a number of cases where disclosure to the CCRC had not been completed.

- h. There were a few other instances of non-compliance with the CCRC's agreed parameters, but these totalled under 35 documents.<sup>5</sup>
9. Whilst POL was broadly in compliance within the parameters agreed between POL and the CCRC outlined above, our review has identified some categories and repositories of material that, arguably, could have been included within these agreed parameters but were not, and were only searched after the commencement of the PCDE in January 2020, namely:
  - a. The email accounts of some key custodians. Whilst many emails were already present in the investigation and prosecution files already disclosed to the CCRC, and others were caught by agreed search terms being applied to a central server, the specific email accounts of key individuals in the investigation and legal teams were only separately identified and searched within the PCDE.
  - b. Searches of local drives and laptops. Most documents in these repositories were replicated on the central servers to which search terms were applied and disclosure made to the CCRC under the agreed parameters. However, a more comprehensive search of local drives and individual laptops was undertaken in the PCDE.
  - c. Some NBSC and HSD call logs. These were originally collected for applicants to the mediation scheme, and so were available for disclosure to the CCRC. However, it is clear that call logs ought to have been collected

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<sup>4</sup> See email dated 28 February 2020 at 17:50.

<sup>5</sup> Failure to disclose some electronic documents despite instructions by POL/its legal representatives to do so; failure to disclose some mediation scheme documents that were appended to the mediation scheme investigation report, albeit the content of these appendices was contained in that investigation report and the appendices were listed in the same, and therefore any missing appendices would be readily apparent to the CCRC; failure to disclose some electronic data provided by Cartwright King; one instance of a CK Sift Review not being provided.

for all individuals subject to s17 Notices, which was not done prior to the PCDE.

- d. Some mediation scheme documents. Only some of the documents deriving from the mediation scheme, primarily the results of the reviews, were provided to the CCRC within the agreed parameters. However, documents and correspondence that were connected to the eventual outcome of the mediation scheme reviews were not provided prior to the PCDE.

10. In our view the material summarised above could have been included within the agreed parameters between POL and the CCRC and should not have waited for the PCDE before being identified, reviewed and disclosed. The CCRC should have been given the opportunity to comment as to whether the CCRC was content for these repositories to have been excluded from POL's response to the s17 Notices.

11. We do note, however, that whilst we have identified the above issues, all of these have been rectified and had no detrimental effect on any individual, as disclosable documents were provided to those individuals to enable them to prepare their appeals.

## **B. Further repositories and the PCDE**

12. As you are aware, POL commenced a post-conviction disclosure exercise in January 2020 following the High Court's findings in the Horizon Issues judgment. We set out the reasons why an exercise of the scope of the PCDE was not commenced prior to that date at paragraphs 6-8 of our letter of 26 February 2021.

13. The scope of the PCDE was governed by POL's disclosure duties under *Nunn*<sup>6</sup> in the context of the High Court's findings in the Common Issues and Horizon Issues judgments<sup>7</sup>. In particular, the PCDE looked not just for case-specific material of the kind covered by the CCRC's s17 Notices, but for generic material capable of supporting an abuse of process argument based on POL's use of Horizon data in prosecutions generally.

14. In addition, the PCDE looked at documents relating to confiscation proceedings, all of which were outside the date parameters agreed with the CCRC for those cases (as these took place after the date of conviction), and documents that did not contain the surname of the individual but, for example, only referenced the individual's branch.

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<sup>6</sup> *R (on the application of Nunn) v Chief Constable of Suffolk Constabulary and Another* [2014] UKSC 37.

<sup>7</sup> *Bates & Ors v Post Office Ltd (No.3: Common Issues)* [2019] EWHC 606; *Bates & Ors v the Post Office Ltd (No 6: Horizon Issues)* [2019] EWHC 3408

Some of these documents were only picked up following a wider application of search terms by Peters & Peters<sup>8</sup> and after an even wider application of search terms without date parameters once the metadata defect was identified in July 2020. This issue was unforeseen by both POL, Peters & Peters and the CCRC, and at all times POL was transparent to the CCRC regarding the approach that was being taken.

15. Accordingly, the PCDE identified and examined material in categories and repositories beyond the scope of the parameters previously agreed with the CCRC in response to the s17 Notices. However, although POL disclosed the results of the PCDE with the CCRC in good time, inevitably this was after the majority of referrals had been made in March 2020.

### **Current and Future Compliance**

16. The PCDE has now been completed in accordance with the Disclosure Management Document and Addendum which have been provided to the CCRC. POL has a centralised repository for case related information and is now in a position to respond to all s17 Notices promptly and within the deadlines set by the CCRC. Consequently, POL is compliant with all s17 Notices that have been issued to date (or, in the case of s17 Notices only recently issued, is on track to comply with those Notices within their requisite time limits).
17. In light of the judgment of the Court of Appeal in *Hamilton & Others v. Post Office Limited*<sup>9</sup>, POL considers that the provision to the CCRC of material that it has collected to date in accordance with the Disclosure Management Document and Addendum would comply with its duties in respect of s17 Notices in relation to any potential future appellants.
18. However, given that the CCRC was not previously afforded the opportunity to comment on document repositories that have been excluded from the PCDE (and therefore have not been interrogated for the purpose of s17 Notice responses), we would like to now draw the CCRC's attention to the following repositories that do not relate to the investigation/prosecution of any individual, but maybe relevant to an individual's branch:
  - a. **Receipts:** We have already notified the CCRC regarding receipts that have been identified for a number of individuals who have extant s17 Notices. To

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<sup>8</sup> Notified to the CCRC on 11 March 2020 at 14:23.

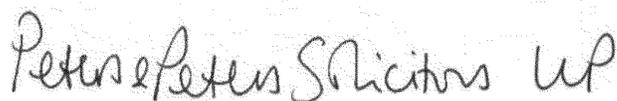
<sup>9</sup> [2021] EWCA Crim 577

- date the CCRC has not indicated that it requires this material. Receipts have not generally been reviewed/collected for any potential future appellant;
- b. **Documents from the Financial Services Centre:** We understand this repository to include transaction corrections/branch accounts etc. and other financial related documents;
  - c. **Hard copy branch documents in two archives:** We understand these contain branch accounts and other day to day documents deriving from branches;
  - d. **Documents from the contracts department.**
19. Given the scale of the exercise that would be required to interrogate the above repositories (which could potentially be as extensive as the PCDE that has already been conducted in terms of resourcing, time and cost) and given the judgment in *Hamilton & Others*, we do not think it necessary to interrogate the above repositories to enable the CCRC to discharge its statutory duties. However, should the CCRC take a different view or wish to discuss these repositories, please let us know.
20. We also wish to highlight the fact that in the context of the 2012/13 mediation scheme, POL conducted extensive investigations into branches which generated a significant number of documents which were designed to establish whether Horizon was the cause of a particular shortfall. This material was therefore available for all of the individuals who applied to the CCRC between 2015 and 2020 and who were mediation scheme applicants, but this material is not available (as a similar exercise has not been conducted) for PFAs who were not part of the mediation scheme.
21. In light of the judgment in *Hamilton & Others*, however, POL does not intend to replicate the exercise it conducted for mediation scheme applicants for non-mediation scheme PFAs. It is important that the CCRC notes this distinction, so that POL is transparent as to why the composition/categories of documents being provided in response to s17 Notices now is different to that which was provided for most historical s17 Notices (as most of the individuals who applied to the CCRC between 2015 to March 2020 had been mediation scheme applicants and participated in the *Hamilton & Others* appeal, whereas very few that have applied since then participated in the mediation scheme and/or the group litigation).
22. Of course, should any other new repositories come to light that contain case related information that should be disclosed to any potential future appellants, they will also be disclosed to the CCRC if a s17 Notice is in existence for such documents.

**Conclusion**

23. We hope that this assurance exercise and the findings outlined above have addressed the concerns previously identified by the CCRC in respect of historical compliance with s17 Notices by POL. This work seeks to underpin and reinforce the confidence the CCRC now has in current and future compliance and ensures that both POL and the CCRC can now move beyond these historical issues and continue the good level of cooperation that the CCRC has received from POL to date, as noted in your letter dated 23 February 2021.
24. As set out above, whilst the responsibility for compliance remains with POL, an exercise of this complexity and scope inevitably relies on active and constructive engagement with the CCRC to ensure POL provides it with all the material the CCRC needs to discharge its statutory duties, and we are very grateful for the CCRC's ongoing assistance with the task of identifying the categories and parameters of material it requires in response to current and future s17 Notices.
25. Should the CCRC wish to discuss anything raised in this letter, please do not hesitate to contact either Nick Vamos, Charlotte Tregunna or William Green of this office, using the details provided above.

Yours sincerely

A handwritten signature in black ink that reads "Peters & Peters Solicitors LLP". The signature is written in a cursive, flowing style.

**PETERS & PETERS SOLICITORS LLP**

CC: Nick Read  
Miles Trent and Anona Bisping, CCRC