

**IN THE MATTER OF**

**THE POST OFFICE LIMITED COMPLAINT REVIEW AND MEDIATION SCHEME**

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**INSTRUCTIONS TO BRIAN ALTMAN QC**

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**Introduction**

1. Since at least 2010, Post Office Limited ("POL") has been responding to complaints that the "Horizon" point of sale IT system used in every Post Office branch has been responsible for unexplained shortages in Post Office branch accounts.
2. In a letter dated 10 September 2015, Parliamentary Under Secretary of State Baroness Neville-Rolfe (acting on behalf of the Government as POL's sole shareholder) asked POL's incoming Chairman Tim Parker to determine whether "any further action is necessary" by POL in order to respond to the Horizon complaints.
3. In October 2015, the Chairman instructed Jonathan Swift QC and Christopher Knight from 11 King's Bench Walk ("Counsel") to help him respond to the Baroness's letter. Counsel then reviewed substantial documentation, including legal advice provided to POL by (among others) Brian Altman QC ("BAQC"), and held face to face meetings with POL employees and external parties whom Counsel considered might assist their understanding of the issues.
4. On 11 January 2016, Counsel delivered their report to the Chairman, a copy of which is provided with these instructions (the "Report").

**The Report**

5. The Report focussed on two principal questions:
  - 5.1 what action had already been taken in the 2010-2015 period; and
  - 5.2 if there were gaps in the work done, whether further action can reasonably now be taken?
6. Those questions were then applied to four discrete areas:
  - 6.1 criminal prosecutions;

- 6.2 the Horizon computer system;
  - 6.3 the support provided to SPMRs; and
  - 6.4 the investigations undertaken into the specific cases where a complaint had been raised.
7. Counsel ultimately made eight recommendations, three of which concerned seeking specialist legal advice in connection with criminal law matters (two in connection with criminal prosecutions, and one on the Horizon system).
8. BAQC is therefore instructed to assist POL respond to those three, criminal law-related recommendations.

### **Criminal Prosecutions**

9. Counsel considered there to be three "broad areas of concern" connected to criminal prosecutions:
- 9.1 "whether convictions were consequent on flaws in the Horizon system and/or because of a failure properly to disclose such flaws during the criminal proceedings, and for such reasons are not safe" ("Safety of Convictions and Disclosure of Information");
  - 9.2 "whether POL acted appropriately in cases where it pursued charges both of false accounting and of theft (or whether POL pursued theft charges in cases where there was no proper basis in evidence to do so simply to encourage a guilty plea to the false accounting charge)" ("Sufficiency of Evidence"); and
  - 9.3 "whether it is appropriate for POL to conduct private investigations and prosecutions (rather than leaving matters to the police and the CPS)" ("POL as Prosecutor").
10. Save that POL should continue to co-operate with the Criminal Cases Review Commission's current investigations into certain individual prosecutions (which POL is), Counsel did not recommend any further action in connection with the "Safety of Convictions and Disclosure of Information" or "POL as Prosecutor" areas.
11. However, Counsel made the following recommendations with respect to "Sufficiency of Evidence":
- 11.1 "Legal advice be sought from counsel as to whether the decision to charge an SPMR with theft and false accounting could undermine the safety of any conviction for false accounting where (a) the conviction was on the basis of a guilty plea, following which and/or in return for which the theft charge was

dropped, and (b) there had not been a sufficient evidential basis to bring the theft charge.”

- 11.2 “If such a conviction could be undermined in those circumstances, that counsel review the prosecution file in such cases to establish whether, applying the facts and law applicable at the relevant time, there was a sufficient evidential basis to conclude that a conviction for theft was a realistic prospect such that the charge was properly brought.”

12. BAQC is therefore instructed to advise POL as to whether the safety of a conviction for false accounting could be undermined in the circumstances described in paragraph 11.1 above. Once POL has that advice, it can consider the steps (if any) it should take with respect to the prosecution file review referred to in paragraph 11.2 above.

13. BAQC will note that the Report refers at paragraph 103 to the advice he gave to POL on 8 March 2015 concerning the (so-called) “equality” of offences of theft and false accounting, and also to “POL’s position” at paragraphs 105 and 108. BAQC should note that Counsel derived “POL’s position” from an email from POL solicitor Rodric Williams to Counsel on 24 December 2015 which (among other things) sought to make clear that Leading Counsel had not provided advice to POL on the specific “Sufficiency of Evidence” issue. A copy of that email (with attachments) is provided with these instructions.

### **The Horizon System**

14. Counsel also made the following criminal law-related recommendation in connection with the Horizon system:

- 14.1 “POL seek specialist legal advice from external lawyers as to whether the Deloitte reports, or the information within them concerning Balancing Transactions and Fujitsu’s ability to delete and amend data in the audit store, should be disclosed to defendants of criminal prosecutions brought by POL. This advice should also address whether disclosure should be made, if it has not been, to the CCRC.”

15. In Spring 2014, POL instructed Deloitte LLP to carry out a desktop review of Horizon’s control environment, which culminated in the production of a detailed report in May 2014 and a more succinct briefing note for the POL Board in June 2014 (collectively, the “Deloitte Reports”).

16. The Deloitte Reports were subsequently provided to POL’s external criminal law solicitors Cartwright King to review and advise POL as to whether they engaged POL’s duties of

disclosure in criminal prosecutions. From their review, Cartwright King identified material relating to "Balancing Transactions" as being potentially disclosable, but required further information before they could provide definitive advice as to whether disclosure was necessary, and if so, of what material and in what form.

17. A time line (with supporting documents) of the steps POL then took through its external civil law solicitors Bond Dickinson LLP to obtain the further information sought by Cartwright King is provided with these instructions. Those steps culminated in an email from BAQC on 28 August 2015, responding to an email from Bond Dickinson sent on 27 August 2015, confirming that Bond Dickinson's email "reflects, as I recall it, the effect of our discussions" held on 21 July 2015 about Balancing Transactions.
18. Counsel was not aware that these steps had been taken when they prepared the Report, as it had not been the subject of any specific discussion between them and POL during the course of their review. POL has therefore now provided to Counsel the time line (with supporting documents) referred to in para. 17 above.
19. POL is also conscious that BAQC's advice was provided in the particular circumstances in which it was sought in 2015, and without BAQC having had the benefit of reviewing (or even having sight of) the Deloitte Reports.
20. POL therefore considers it now prudent to instruct BAQC to provide to POL the advice referred to in the first sentence of paragraph 14.1 above. The Deloitte Reports are provided with these instructions for that purpose. BAQC should note that the Deloitte Reports can only be used for the purpose of providing his advice, that the Deloitte Reports cannot be disclosed other than to POL directors and officers for any purpose except as required by a court order or by applicable law or regulation, and that Deloitte will require POL to hold it harmless in relation to any reliance BAQC may put on the Deloitte Reports in the context of his advice.
21. POL does not require BAQC to provide to POL the advice referred to in the second sentence of paragraph 14.1 above, i.e. as to whether the Deloitte Reports should be disclosed to the CCRC. POL had independently taken the decision to notify the CCRC of the Deloitte Reports and did so on 13 January 2015, and will be supplying them to the CCRC in accordance with the provisions of the Criminal Appeal Act 1995.

### **Instructions**

22. BAQC is asked to provide to POL the advice referred to above.

23. POL asks that once BAQC has considered these instructions and supporting material, a conference (either telephone or in person) be arranged to discuss any questions he may have about the instructions and agree the process for delivering his advice.
24. BAQC is also invited to contact POL's Rodric Williams at any time should he require further material or wish to discuss any issue arising from these instructions generally.

**Rodric Williams, Solicitor**

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**18 February 2016**

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**THE POST OFFICE LIMITED COMPLAINT  
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QC**

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