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DRAFT PARAGRAPHS FOR INSERTION INTO REPLY TO CCRC

"Prior to answering your questions we provide the following background information.

Background to the issue
In answer to your questions we happily provide the following information:
Historically the Post Office was a division of the Royal Mail Group (RMG), however Post Office Ltd. (POL) was separated out of the RMG on the 1st April of 2012 and each became separate and unrelated organisations. Prior to separation it was RMG who conducted the prosecution of criminal offences committed by sub-postmasters and/or their clerks, however post-separation POL assumed the role of prosecutor.

In general only three distinct offences are prosecuted by POL: Theft; False Accounting; and Fraud, either by False Representation (ss.1&2, Fraud Act 2006) or by Abuse of Position (ss.1&4). The detection and successful prosecution of such offences is almost always dependant upon the proper analysis and presentation of Horizon data and accordingly it is imperative that the integrity and operation of the Horizon system is demonstrably robust. In many prosecutions the defence will fall into one or more of the following categories:

a. The defendant will raise issues attacking Horizon, suggesting in general and often ill-defined terms that the shortfalls giving rise to prosecution are inexplicable and thus must rest with Horizon. Here the defendant does not specify the Horizon failing, he or she merely asserts that because they did as they should, the system itself must be at fault;

b. An express assertion that Horizon has failed in some way;

c. In admitting Fraud or False Accounting (but NOT theft), that either a. or b. above is true, their culpability being limited to the covering-up of otherwise inexplicable losses rather than revealing what is a genuine (on their account) problem to POL. Here the issue is that of sentence, Judges being required to consider the quantum of losses when determining the appropriate punishment.

d. In all three of the scenarios noted above a defendant often also complains of a lack of training on Horizon and/or inadequate customer support.

Where a defendant asserts, rightly or wrongly, that Horizon is at fault, it is for the prosecution to demonstrate the integrity of the system and the evidential audit trail derived from Horizon. This is usually accomplished by the serving of expert evidence. For many years both RMG and latterly POL has relied upon a single expert witness provided by Fujitsu Services Ltd., the Horizon manufacturer, maintenance and support contractor. That witness has provided expert evidence in many cases where the defendant has asserted irregularities with Horizon to be the cause of unexplained shortfalls, as to the operation and integrity of the Horizon system. He has done so both to POL and, in expert witness statements and oral evidence, to the court. In particular he has: attested to the presence of defect detection and rectification systems; the robustness of the prosecution audit trail; and stated that, in his expert opinion,

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Horizon accurately records and processes all information submitted into the system. The Second Sight Interim report demonstrates that this was not the case.

Action taken by POL

POL accepts that a number of criminal convictions may be impacted by the matters highlighted in the Second Sight Interim report and has taken early and determined steps to identify those cases where such an impact may fall. Essentially the issue now is one of disclosure, as defined by the Criminal Procedure and Investigations Act 1996; the Code of Practice issued thereunder; the Protocol for the Control and Management of Unused Material in the Crown Court; and A-G's Guidelines on Disclosure, *i.e.* had POL been possessed of the material contained within the Second Sight Interim report during the currency of any particular prosecution, should/would we have been required to disclose some or all of that material to the defence? That question has defined our approach to the issue.

To that end POL has instructed an independent firm of criminal specialist solicitors to identify every criminal case prosecuted by POL and RMG prior to their separation, and in any event in the last three years, so as to determine, in each case, the answer to that question. Once such a case is indentified, Senior Prosecuting Counsel will fully review the case so as to determine our proper approach. The threshold for answering the question has been deliberately set at a very low level so as to ensure that all those who may now be impacted by this issue have the opportunity to see the material. In terms of scope, the independent firm of solicitors has been instructed to:

a). Identify cases where the primary or main evidence against the defendant was Horizon-based. The following are examples of cases which WOULD meet the criteria:

- Where the ONLY evidence against the defendant consists of Horizon data, *e.g.* unexplained transaction reversals; unexplained balance shortages; unexplained accrued losses; repeat or second POCA withdrawals *etc*.

- Where the main evidence is Horizon-based but there is <u>some</u> other supportive evidence, *e.g.* as above but supported by: limited admissions in interview; transfers into personal/non POL business accounts; personal cheques; <u>demonstrable</u> lies in interview; inconsistent responses in interview and/or Defence Statements; (but see b). below)

- Any case in which we have served a statement by the Fujitsu expert witness or any other Horizon expert witness.

<u>NOTE THAT THIS LIST IS NOT DEFINITIVE</u>

b). Identify cases where the defendant had, expressly or impliedly, raised Horizon failings as part or all of the defence case. Obvious examples include *e.g.*:

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- where the defendant says she only did what she was asked to do by POL and/or customers;

- The defendant DOES NOT criticise Horizon but cannot explain the shortage/loss.

- Defendants who also alleged or implied (usually in interview or Defence Statement) that he/she received either no Horizon training or had received some training but that it was insufficient, not detailed enough or not sufficiently topical. And similarly, where a defendant alleged a lack of adequacy or sufficiency of Horizon customer support.

The fact that a defendant has pleaded guilty to an offence is not, for the purposes of this task, determinative; it is well-known that defendants sometimes enter guilty pleas for reasons other than guilt, *e.g.* because they have been advised that the case against them is overwhelming and that they should cut their losses; because a guilty plea attracts a lesser sentence; because often a guilty plea can mean the difference between immediate imprisonment and a suspended or community-based sentence; because a Judge has indicated that such a plea may keep them out of prison.

All such cases identified will then be subjected to a full written Case Review conducted by Senior Counsel with substantial prosecuting experience.

Number of impacted cases

The review process identified above commenced on Monday the 8th July. Thus far solicitors have examined approximately 90 cases, of which approximately 20 have been allocated to senior counsel for full review. Of those full review cases, approximately 10 have been fully reviewed by senior counsel. In two cases counsel has advised that there may be grounds for an appeal by the convicted defendant. Counsel is also reviewing on-going cases; here we have been advised to terminate two prosecutions.

Where counsel has advised the possibility of grounds of appeal, letters have been written to solicitors who defended, informing them of the issues and providing copies of the Second Sight Interim report and such other material as they ought to have received during the currency of the prosecution, had we then been possessed of that material. It would then be for the defendant and his lawyers to determine whether or not they wished to launch an application for leave to appeal out-of-time; we would certainly support grounds to allow the application out-of-time.

Thus far the review has identified no cases where the defendant has sought the leave of the Court of Appeal to appeal against his conviction. One case has been identified where the defendant sought, and was refused, leave to appeal against his sentence. That case was one of the two identified by counsel as being susceptible to appeal against conviction.

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Magistrates Court convictions

All Magistrates' Court prosecutions have been included in the process described above, including full review by senior counsel. Where such a case is identified by counsel as being susceptible to appeal, solicitors who defended will again be contacted in writing, informing them of the issues and providing copies of the Second Sight Interim report and such other material as they ought to have received during the currency of the prosecution, had we then been possessed of that material. Given the very different nature of the appeal process applying to convictions in the Magistrates' Court, we could if you wished, also provide those defendants with details of your interest and invite them to contact the Commission.

We hope that the process we have initiated allays your concerns and those of the Attorney-General. We take the view that it is incumbent upon POL as a major public institution to take every reasonable step to ensure that only the genuinely guilty are convicted and that those who are, or may have been, convicted without good reason, have every opportunity of correcting such a miscarriage of justice.

Yours etc……."