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POST OFFICE AUDIT, RISK AND COMPLIANCE COMMITTEE

Prosecutions Policy

1. Purpose

The purpose of this paper is to:

- seek the ARC's views on proposed changes to the prosecutions policy and the way in which POL will prosecute criminal cases in the future; and
- update the ARC with respect to certain aspects of the Business Improvement Project.

2. Background

2.1 At its meeting on 19 November 2013, the Committee considered whether or not there was merit in formally amending the existing approach to prosecutions and if so what the substance of those amendments should be. It was agreed at that meeting that before any firm decision could be taken in this regard:

- (a) further work needed to be done to understand the financial and other consequences of amending the policy such that fewer cases would be referred to the criminal courts;
- (b) the Committee needed a clearer understanding of the work that was being done as part of the Business Improvement Programme (BIP) and the impact this would have on detecting (and preventing) losses at an earlier stage; and
- (c) it would be helpful to understand how banks and other large companies dealt with criminal loss caused by employees.

2.2 In this connection it is probably useful to note that in a report for POL Brian Altman QC observed that, "Post Office Ltd's prosecution role is perhaps anachronistic...", and that we are "the only commercial organisation (albeit Government owned) I have been able to identify (apart from RMG that retains a prosecution function) that has a commercially based, sophisticated private prosecution role, supported by experienced and dedicated teams of investigators and lawyers. To that extent it is exceptional if not unique."

3. Activities/Current Situation

3.1 The way in which prosecutions have historically been brought was set out in some detail in the paper on prosecutions considered by the Committee in November. In that paper it was noted that typically we prosecute subpostmasters for False Accounting combined with Theft, and/or Fraud. The choice of charge is largely dependent on whether we have obtained an admission of guilt, or other compelling evidence that the Defendant has taken money directly from us, or have only secured evidence that the Defendant covered up losses by falsely recording the branch's financial position (e.g. to avoid paying losses back and/or to keep their branch) on the Horizon system. As will be recalled, typically Defendants plead guilty to a charge of False Accounting, with the charge of Theft then being dropped.

3.2 In terms of the volume and cost of cases, over the past few years we have averaged about 250 investigations into possible criminal conduct a year, of which about 50 resulted in criminal prosecutions. The financial losses (to POL) in those cases where a prosecution was

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brought ranged between £1,738 and £175,260 per incident in 2012/2013, and £2,347 and £192,990 in 2013/2014. The average cost of bringing a criminal prosecution the in 2012-2013 financial period was about £7,500 (£3,600 for the costs of our internal security investigators, plus £3,900 for our external solicitors).

3.3 The amount recovered from Defendants in respect of stolen, misappropriated or unaccounted for stock or money in the cases closed so far in the 2013/2014 period was £741,182, or approximately £10,500 per case. Total losses in those cases were £1,603,932, implying a recovery rate of 46%. These figures must, however, be treated with a degree of caution, as any amounts recovered must be seen as coincidental consequence of the current policy on prosecutions. It is well established that the principal purpose of criminal prosecutions is to punish and deter wrongdoing, **not** to recover financial loss.

3.4 POL does however frequently initiate actions in the civil courts for debts it believes are due and owing to it by subpostmasters. In 2012/13, the civil debt team (a team which is entirely separate to the criminal team) recovered approximately £1.9 million, and instructed external lawyers in 100 cases, at an average cost per case in 2012-2013 of about £1,200 (£400 for the costs of Former Agent Accounting Team, plus £800 for our external solicitors). It is not proposed at this stage to review the civil recovery process, as it outside the scope of the work undertaken by Project Sparrow. That said, the way that POL interacts with subpostmasters generally is in scope for the BIP.

4. Options Considered

4.1 As noted in the November paper, broadly the options considered comprised:

- (a) **Preserving the status quo** – i.e. retaining prosecutorial capability and continuing with a prosecutions policy which is substantially the same as that which has been used in the past;
- (b) **Pursuing a prosecutions policy more focussed on more egregious misconduct** - e.g. higher value cases/cases involving vulnerable members of society/cases of involving particularly wilful wrongdoing, and engaging with the police in relation to other matters; and
- (c) **Ceasing all prosecutorial activities** but instead actively involving the police/CPS etc where it is felt that they are likely to take matters forward.

4.2 For a variety of reasons, option (a) did not gain a large degree of support from the Committee at its meeting in November and for that reason is not the focus of this paper. Similarly, given that we have been advised that, due to budgetary constraints, the CPS is unlikely to have an appetite to prosecute all but the most serious cases, option (c) is not discussed in any great detail, though should the Committee decide that it is an option worth exploring further much of the analysis in the following paragraphs, particularly with respect to cost and financial implications will still be of relevance. Instead, the balance of this paper focuses on option (b), and the possible “filters” that could be applied to our prosecution policy in order to ensure that only cases displaying an appropriate “fact pattern” are prosecuted.

4.3 One of the “filters” that could be applied is financial: currently there are no formal financial limits set out in our prosecution policy (though in practice de minis amounts are not pursued), an approach which gives us a run rate of approximately 50 criminal cases a year. If a financial filter were applied then (based on our analysis of historic cases) the number prosecutions would (be likely to) reduce as follows:

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- £15,000 - approx. 25 cases a year
- £20,000 - approx. 20 cases a year
- £30,000 - approx. a dozen a year
- £100,000 - one or two cases a year (and these could possibly be of interest to the CPS)

In order to ensure that an appropriate balance is struck between providing a suitable deterrent, and POL not being viewed as being too heavy handed, it is recommended that a financial limit be introduced into the policy as a matter to “take into account” when deciding whether to initiate proceedings. The significance of this “guide” figure would be that cases involving losses of an amount less than it would not typically be prosecuted **save where** there are highly compelling or special circumstances (e.g. the victims of the conduct are elderly or otherwise vulnerable members). It is proposed that this figure be fixed, initially, at £20,000. However, the guide figure would not be made public at any point.

4.4 It is also suggested that factors other than financial ones should be expressly introduced into any revised prosecutions policy. After discussion with our prosecutions team and taking into account the fact patterns displayed in those cases that are being considered by the mediation scheme, it is proposed that those factors include:

- whether the losses in question have been repaid;
- the nature of the alleged misconduct;
- whether there is evidence that the Defendant took money directly from us/others;
- 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”;
- the degree of sophistication of the alleged wrongdoing;
- the number of incidents;
- the extent to which any members of the public suffered loss, and if so whether they were from vulnerable groups in society;
- the period of the alleged offending;
- the cost of bringing the prosecution; and
- whether there are any alternative, more suitable, remedies available to POL.

4.5 It should be noted that, although POL is still currently able to bring cases where the evidence concerned is extracted from the Horizon system, there is a strong risk that in such cases a defence will be mounted to the effect that the Horizon system cannot be relied upon. We have been advised that in these cases, there is a strong likelihood that such a defence would be successful, at least until such time as a new independent expert is identified and has familiarised himself with the system. This is likely to take at around 12 weeks, and cost up to £200,000. Accordingly, at least until such time as the dimensions of this work are fully understood, as a practical (i.e. evidential) matter court proceedings will not be started in such cases.

4.6 For completeness, and at the request of the Committee, we have also considered how other retailers, financial institutions and quasi-public organisations respond to criminal conduct within their organisations. Although definitive information is hard to obtain, it appears that:

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- Most retailers and financial institutions maintain in-house security/investigative functions, which pass evidence of crime (often CCTV footage) over to the police and then support any actions taken by the external prosecutor (e.g. CPS). Other than Royal Mail Group, we have not identified any commercial organisations that habitually bring private prosecutions.
- Although Virgin Media recently conducted a high profile, high value (c. £144 million) private prosecution of a set-top box fraud, this was conducted with the police and appears to have been an exceptional step rather than a “business as usual” activity.
- Quasi-public organisations (e.g. TfL) and charities (e.g. RSPCA) are also known to bring private prosecutions. However these are typically brought against external persons (e.g. fare dodgers or animal abusers), and not employees or others involved in the organisations’ day-to-day operations.

4.7 In the November paper, a number of other factors were identified as possibly relevant to our approach to prosecutions (e.g. brand inconsistency, engagement with subpostmasters). In addition to these, which remain relevant, the following should be noted:

- Cost of Compliance with Duty of Disclosure: The continuing duty to act properly as a prosecutor required us (through our external solicitors) to review the prosecutions of 325 individuals to ensure that the Second Sight report did not affect the safety of any convictions. The cost of this review was approx. £180,000. We will need to do similar reviews every time new information comes to light which may call into question the safety of a conviction. To seek to minimise the need for this, we have instituted a weekly, cross-business conference call at which branch accounting issues can be raised. The estimated external cost of these calls is approx. £27,000 a year.
- Wasted management time and money: To date, we have spent approximately £5million seeking to address the concerns raised over our Horizon system and the criminal prosecutions. It has also taken up a considerable number of man hours of senior management at a time of significant, strategic and fast change in the company.

5. Commercial Impact/Costs

5.1 The immediate financial impact of the above policy approach, assuming that no other changes are made, would be that the sums of money that are currently recovered via the criminal law system (£741,182 in the 2013/2014 period), would no longer be as readily recoverable. As explained in the November paper, however, it would be open to us to use the civil courts to recover losses, though this is a more time consuming process, and there is greater scope for assets to be hidden from view.

5.2 However, if POL can deal with problems that arise in subpostmasters’ offices before they turn in to significant financial losses, the financial impact of any change in the prosecutions policy should be greatly reduced. This in part is the aim of the BIP, the key elements of which include:

- gathering better MI from the network systems;
- providing better training and support to subpostmasters and branch staff;
- identifying problem losses earlier;
- liaising with the relevant persons sooner; and

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- reviewing how we respond when a subpostmaster has materially breached his obligations to us.

5.3 Appendix A provides an overview of the BIP and the actions that have and will be taken.

5.4 It should also be noted that any decision made now with respect to the future conduct of criminal prosecutions will have an immediate impact on the so-called “stacked cases” cases. These cases, which are the subject of the separate paper due to be considered at the next meeting of the ARC/Board, are ones where no decision to prosecute has been made, but where the subpostmaster concerned has been interviewed under caution, and is waiting to hear whether or not a charge will be brought. Given that a number of cases now date back to summer last year, when a decision was made to suspend all prosecutorial activity, POL should communicate its decision in this regard as soon as possible. The working assumption is that there could be some adverse publicity as and when the decision is communicated to subpostmasters, i.e. if the communication is delayed too long, our management of the cases could be called into question. It is anticipated that the number of “stacked” cases will materially reduce if we were to apply the filters referred to in this paper.

6. Proposal

6.1 It is proposed that:

- a) A revised prosecution policy be implemented and applied against more stringent financial and conduct criteria set out in paragraphs 4.3 and 4.4, with the over-rider set out in paragraph 4.5.
- b) The policy be published on our website in accordance with best practice and so as to inform our business and the public of the principles which guide our enforcement decisions.
- c) The new policy, its interpretation and application be reviewed by a committee of ExCo every six months.
- d) An individual within Post Office Limited be appointed to take responsibility for deciding whether or not an individual case should be prosecuted against that policy (currently this accountability is shared across a number of individuals).
- e) Any prosecutions be conducted through an external law firm.
- f) The Communications team maintain a living strategy for dealing with all PR issues arising from any and all prosecutions.
- g) In conjunction with the BIP, we work to improve our civil recovery operation to maximise the losses it can recover.

7. Key Risks/Mitigation

These pertain mainly to the potential increased risk of fraud, and being seen to be “soft” with public money, but should be capable of being addressed by enhanced MI and improvements to the control framework etc.

8. Long term considerations – horizon scan

8.1 Not taking action now in relation to the prosecutions policy could lead to, or exacerbate, the impact of further adverse publicity regarding Post Office’s treatment of sub-postmasters.

8.2 Taking this action may assist in developing better stakeholder engagement.

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9. Communications Impact

- 9.1 The Communications team is already heavily involved in Project Sparrow, and they have seen this paper.

10. Recommendations

The ExCo/ARC is asked to approve the proposals set out in paragraph 6 above.

Chris Aujard
4 February 2014

Strictly Confidential – Subject to Legal Privilege – DO NOT FORWARD**Appendix A****Business Improvement Programme**

To ensure proper focus on both the Mediation Scheme and the Business Improvement Programme (BIP), the BIP has been separated into an individual programme under separate governance reporting to Kevin Gilliland.

Purpose & scope

The purpose of the BIP is to improve the effectiveness and efficiency of the support we provide to our subpostmasters in the running of their Post Offices from an operational and engagement perspective by:

- Reviewing the life cycle of the subpostmaster and all touch points with the business.
- Taking input from owners, users and recipients of Post Office policies and processes.
- Designing policies and processes that deliver improved ways of working with our subpostmaster network in a cost effective and engaging way.
- Reviewing all our interactions with Subpostmasters and making recommendations on structure design for the network and admin support function touch points.
- Developing an implementation plan to move from existing to future state.

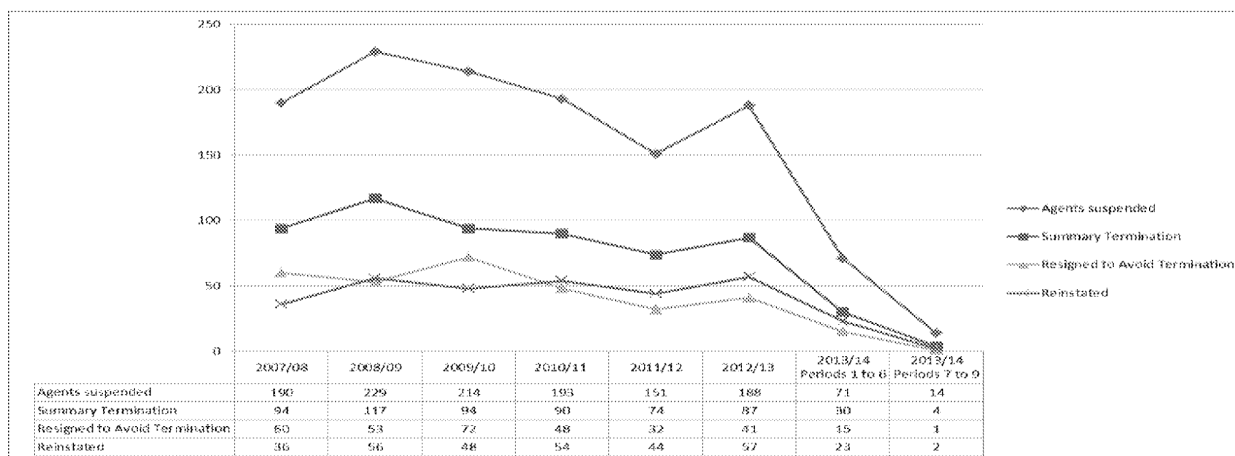
Quick Wins

In the process of mapping the “As is” and “To be” processes. Quick wins have already been implemented with more planned for implementation in Q4. The key areas of change that are pertinent to the prosecutions policy are our approach to Subpostmaster contract breaches and a pilot called HORice that we are soon to run on testing the effectiveness of a real-time data tool from Fujitsu to support earlier identification and intervention of accounting and transactional anomalies

- **Precautionary Suspension** approach – we have reviewed our approach in how we respond to material contract breaches by Subpostmasters and made the following improvements:
 - Our default position is to keep the Subpostmaster in post and the branch operational, unless in the usually low number of cases where not to precautionary suspend the Subpostmaster would carry a high risk of damage to POL’s reputation and / or a high risk to POL’s assets, or where a customer has been directly involved in a potential fraud by the Subpostmaster. The effect of this approach has resulted in a significant reduction in the number of precautionary suspensions in 2012/13 and especially in the second half of the year. See graph below.
 - We are introducing in Q4 a new category of action in dealing with material breaches of contract i.e. Suspended termination. This is where the Subpostmaster has materially breached the contract and would have previously had their contract terminated. The new Suspended Termination category is where mitigating circumstances are such that the decision is to award a suspended termination is made; the Subpostmaster remains in post on the condition that if a further breach of contract occurs in an agreed period (set by the nature of the first breach and typically a year) then the contract termination is triggered.
 - Where a potential breach of contract has occurred our approach is to work with the Subpostmaster to establish the facts and then to take the appropriate action. Any

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investigation is carried out in a totally objective way treating the Subpostmaster at all times with dignity and respect regardless of whether there is evidence to suggest any wrong doing.

**HORice**

This is a real-time data tool from Fujitsu to support earlier identification and intervention of accounting and transactional anomalies which could be an indicator of non-conformance or fraud. The real-time element will enable analysis to be undertaken at the point it happens rather than waiting for historical data to be gathered. We are piloting this in March and if the results are as we expect this tool could nip problems and losses in the bud - there have been specific historical cases of significant losses (i.e. £185k) where having this data would have identified a pattern or behaviour within one to two months rather than after 1 year.

Longer Term Changes

The Business Improvement Programme has 9 work streams that capture all the touch points the Subpostmaster has with Post Office in running their branch. These are: pre-appointment process; operational support; physical support; performance management; training; communication; IT; early warning/intervention approach; leavers process.

The milestone plan for each of the workstreams is currently being scoped and will be completed by the end of February 2014. Some of the workstreams will have longer timelines than others due in part to the interdependency on other workstreams to complete or other business considerations – the IT workstream is a good example of where delivery will depend on the requirements of the other programme workstreams.

Review Mechanism

The proposed ways of working for each workstream will include an ongoing review mechanism that ensures that continuous improvement is embedded into business as usual.

Measuring Success

The Programme has two main key performance indicators (KPIs) – Agent Engagement and Operational Cost Reduction.

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- **Agent Engagement** - the formal measure is the Subpostmaster annual engagement and in particular the support category of the survey. This will be supplemented with Pulse surveys undertaken by Comms at quarterly intervals throughout the year. Reviewing the life cycle of the subpostmaster and all touch points with the business
- **Operational Cost Reduction** - the cost of support to the network will be baselined as part of this Programme. Headline numbers suggest that 40% of the current support to the network is spent on recovery support ie correcting things that haven't been done right first time

Each of the nine workstreams will have performance measurements that feed into the two main KPIs.

Branch User Forum

The purpose of the Branch User Forum is to provide a way for Subpostmasters and others to raise issues and insights around business processes, training and support directly feeding into the organisation's thinking at the highest level. The forum is a forward looking mechanism to ensure the business processes and approaches are fit for purpose for users and are in keeping with Post Office behaviours and values. The Forum consists of 6 Subpostmasters, 2 Crown members and 4 PO Senior Managers. The second meeting took place on 16 January and covered the communication approach that the forum would take and a review of the initial inputs to the forum.