

Bond Dickinson

Personal attendance

Client: Post Office Limited

Matter:

Matter no: 364065.0

Attending: See below

Name: Amy Eames

Location: 148 Old Street, London

Date: 22 October 2014

Start time: 9.30 - 10.45am

Units:

In attendance:

Brian Altman QC (BA)	:	2 Bedford Row
Chris Aujard (CA)	:	Post Office Limited
Jessica Madron (JM)	:	Post Office Limited
Jarnail Singh (JS)	:	Post Office Limited
Gavin Matthews (GM)	:	Bond Dickinson
Amy Eames (AE)	:	Bond Dickinson

Background

BA started with a brief background into the matter and that BA had attended an initial meeting with Post Office Limited (**POL**) in February/April 2014 in relation to the redrafting of the Prosecution and Enforcement Policy (the **Policy**). BA stated that he had 2 objectives, firstly to make the policy less mechanistic and "real world" (as instructed by CA) and secondly to reflect the public purpose of POL (which had been another concern of CA).

CA confirmed that the Board was keen not to be seen to pursue trivial cases. BA agreed and that his purpose was to work into the Policy what would and would not be prosecuted by POL.

BA had been sent by POL, Cartwright King's (**CK**) prosecution policy and Beachcroft's enforcement policy, as a basis for the first draft. The first draft was to be more user friendly, particularly if it was to be published.

Version 1 of the draft Policy was produced by BA which was then sent to POL, Bond Dickinson (**BD**) and CK for comments. CK's comments were then included in version 2 which was produced in July 2014. BA then received further revisions in tracked changes and comments from POL in September and these are the changes to be discussed at today's meeting.

Section 1 of the Policy

CA explained that the changes had been driven by a number of factors. One of them was to ensure that there was no public law expectation or right in respect of POL. CA was concerned that the statements in section 1 about POL being a public body would highlight POL's amenability to judicial review. CA explained that judicial review may not be relevant to this Policy, but to other activities carried out by POL.

BA explained that the information had been in previous POL policies and therefore was not a novel approach. Its purpose was to explain why POL has such a policy. Most people know what POL is and understand how it works and therefore BA did not understand how it created a public law right. GM explained that in relation to judicial review the public function which is carried out by POL is why they are susceptible to judicial review and therefore GM was not sure section 1 required the rewrite. BA further explained that POL might only ever be challenged by way of judicial review if POL decided not to prosecute. CA further reiterated that he did not think judicial review would be relevant in the context of this Policy but it could be relevant as to other POL activities.

Action agreed: GM and BA to work together to produce a rewrite of section 1 taking into account POL's concerns.

Section 2 of the Policy

BA said that the tracked changes in section 2 were manageable and BA will tidy this section up.

Action agreed: BA to review changes in section 2 and tidy up.

Section 3 of the Policy

BA explained that the main change was the removal of section 3.1.3 and that he did not understand why this section had been removed. BA had recommended to POL that the draft Policy should be subject to Board approval and then the final version to be available on POL's website for the public to view.

CA said that it would be acceptable to have 1 list for the aims and objectives as there was little between "aims" and "objectives". CA also agreed to the reinstatement of 3.1.3. BA to consider whether 3.1 and 3.2 should be combined.

Actions agreed:

- 1. Section 3.1.3 to be reinstated.**
- 2. BA to consider whether sections 3.1 and 3.2 should be combined into one list.**

Section 4 of the Policy

BA explained that if POL was going to have enforcement options which allowed POL the discretion as to what they would and would not prosecute then the Policy needed to set out the criteria. BA had 2 issues with the redraft; firstly the additional sentence in 4.1 referred to another Policy which BA had not seen and therefore did not know whether this was consistent with the Policy or was still current. Secondly, the new 4.2 criteria list was too prescriptive.

JS confirmed that 4.1 reflected what was in that policy and JS will send that policy to BA.

JM said that in relation to the changes that JM made to 4.2, JM was trying to make it more easy to use rather than prescriptive as it was hard to tell in the past what the criteria was. BA was unsure what "along with other relevant factors" covered and that he would include "such as" to the end of his section 4.3 so to provide flexibility.

BA explained that in relation to section 4.3, POL had a choice of enforcement options which would depend on the seriousness of the offence which was not limited to the quantum, vulnerability of the victim, the impact of the alleged offence on the integrity and reputation of POL etc. Then 4.4 provided further factors to consider in relation to the seriousness of the offence which POL would consider in choosing the right enforcement option. BA explained that in relation to the nature and extent of any breach of trust factor that this was always important and that other public and social factors highlighted the public purpose of POL.

JM said that it was hard to see how BA's 4.2, 4.3 and 4.4 would work in practice and there was some duplication. BA explained that taking the example of £15,000 of inflated costs, POL would firstly look at other enforcement options, for example civil or disciplinary action. Then POL would look at BA's 4.2 and 4.3 in relation to the seriousness of the offence, looking at the quantum, vulnerability of the victim, impact on the other party and the reputation of POL etc. In relation to the seriousness of the offence,

POL would then have in 4.4 other factors that POL would have regard to in making their enforcement decision.

JS explained that historically POL always considered the informal enforcement action. It was discussed that section 4 could still remain in the Policy as this was needed in relation to POL's discretion.

BA explained that the decision not to investigate was not amenable to judicial review and that POL was in a unique position as they have a commercial relationship with the sub-postmasters.

Actions agreed:

1. **JS to send a copy of the referred enforcement policy in 4.1 to BA.**
2. **POL to reply to BA's outstanding queries in relation to the changes to section 4 set out in his email dated 23 May 2014 14:52 to JS.**
3. **The end of 4.3 to be amended to include "such as".**
4. **BA to blend BA's 4.2-4.5 together and to check for duplication.**
5. **BA to check JM's list in the new 4.2 and that this is reflected in BA's 4.2-4.5.**

Section 5 of the Policy

JM felt that it was important to keep the two policies separate to stop any inconsistencies between the two.

CA highlighted that if POL changed the enforcement policy, POL would also have to change this Policy, if together in the same document. This was more of an administrative rather than a legal point.

BA explained that section 5 could be removed if it was later going to become inconsistent.

It was confirmed that Paul Inwood was the owner of the enforcement policy.

JS also confirmed that the enforcement policy had new wording which referenced that it was subject to the prosecution policy.

CA suggested that in relation to section 5 that this was removed and incorporated by reference or make reference in the Policy that there is another policy which exists and it is called X.

Actions agreed:

1. **JS to send enforcement policy with the new wording making reference to the Policy to BA.**
2. **BA to remove section 5 and to look at incorporating by reference the other enforcement policy to be sent over by JS.**

Section 6 of the Policy

Not discussed.

Section 7 of the Policy

BA explained that in relation to 7.1.3 which had been deleted in the current version, that this was added as a further criterion as to what POL would do when making a decision about whether to prosecute or not. BA to check why he had included this in the Policy.

In relation to 7.3 BA explained that once it was in the public interest, then POL did not need to look for further facts. BA agreed to consider adding wording such as "other public interest factors may include".

JM raised a query in relation to 7.1 and her suggested amendment from "will" to "may". BA said that POL could change "will" to "may", and that "will" is not a compulsion. BA was fairly certain that the CPS Code says "will". JM raised a query that if POL decided not to prosecute whether this could then be challenged if POL kept "will"? BA confirmed that POL could be challenged based on "may" or "will" if any decision not to prosecute was adjudged to be Wednesbury unreasonable. BA to look at whether to keep as "may" or amend to "Post Office's policy is to prosecute where".

In relation to 7.4 JM said that this had been removed as JM thought it was covered elsewhere, i.e. section 4. BA said that 7.4 needs to remain as decision-takers need to be reminded at each stage of the process the criteria they should be applying. Also it contains important factors such as the cost of the prosecution relative to the likely penalty. But BA agreed to consider whether there was duplication and whether it could be simplified.

BA would also consider blending 7.4 into 7.3 and would see that it was consistent with the factors in section 4.

Actions agreed:

1. **BA to check the reason behind inclusion of BA's 7.1.3.**
2. **BA to consider amending 7.3 (6.3 new) to include such wording as "other public interest factors may include".**
3. **BA to address comment A7 (interaction between section 4 and old 7 criteria).**
4. **BA to consider amending BA's 7.1 (6.1 new) to "may" or "Post Office's policy is to prosecute where..."**
5. **BA's 7.4 to remain and BA to look at combining with 7.3, and check for duplication and consistency with section 4.**

Section 8 of the Policy

CA explained that this section referred to Post Office Legal and Compliance team and Head of Security. These positions may not exist in the future and therefore CA would like them changed to more generic descriptions. JS to provide generic descriptions to BA.

In relation to JM's amendment to exclude seeking advice from external lawyers in 8.1, BA explained that he did not think that this needed to be included but that the old wording did not restrict POL's discretion in using external lawyers. It was agreed that this sentence was to be amended to "act on advice from external lawyers periodically" or "from time to time".

BA was happy to remove 8.3 as this was only a clarification, or to change it to "will be" to "are". If it is to remain JS suggested that the word "in-house" be inserted before "lawyers or..."

In relation to 8.5, JM was concerned that the sentence "The decision to prosecute will be taken openly and transparently" would open POL up to judicial review. BA said that he did not think it would and that it is simply a bit of fluff that one sees in such documents.

It was further discussed that the criteria for prosecuting came from the Board. JS to find what the Board required and send to BA. BA will then check that this is covered generally in section 4.

Actions agreed:

1. **JS to provide generic description of roles to BA.**
2. **Post Office Legal and Compliance team to be amended to Post Office Legal Team.**
3. **JS to provide Board Paper dealing with the prosecution criteria.**
4. **BA to check that the prosecution criteria in the Board Paper are generally reflected in section 4.**
5. **BA to amend 8.1 to "act on advice from external lawyers periodically" or "from time to time".**
6. **BA to look at the possible removal of 8.3 or to change "will be" to "are". If the section remains, BA to insert the word "in-house" before "lawyers or..."**