

# Decision Paper

Author: JANE MACLEOD

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## Context

1. In January 2016 the Post Office Board approved the new prosecutions policy. However the Board challenged whether the policy should be published on the Group website.
2. This paper summarises the views and recommends that the policy should be published.

## Questions addressed in this report

4. What are the arguments for and against publication of the policy?
5. What is market practice??

## Conclusion

6. There is no direct requirement for POL to publish a prosecution policy if it chooses to bring private prosecutions, and therefore there is no direct sanction against Post Office for failing to publish its policy.
7. Nevertheless in the interest of transparency and consistent with Post Office's values, I recommend that the policy should be published, although I suggest that we rename the policy as the 'Enforcement Policy' as it does anticipate outcomes in addition to formal prosecution.

## What are the arguments for publication?

8. Publication is consistent with:
  - The principles of fairness, consistency and transparency in approaching the serious matter of criminal prosecutions; and
  - the terms of the policy itself, whose objectives include that it "inform the public and our commercial partners of the general principles Post Office Limited will use to guide its criminal enforcement decisions" (para.3.1.3).
9. Even if there is no direct sanction for failing to publish, the potential adverse impacts of not publishing include:
  - public criticism that POL is not being transparent. As a central purpose of prosecutions is to deter wrongdoing, then an election not to disclose the prosecutions policy, as a minimum, does not support that objective, and may raise questions as to why we would not disclose the fact or the underlying principles, of the policy.

- increased risk of judicial review over any decision to prosecute. The fact that we have developed a policy, made it publically available via the website, and make prosecution decisions in accordance with that policy, will support POL being able to demonstrate that any specific decision to prosecute is rational and properly taken when benchmarked against a freely available policy.

### What are the arguments against publication?

10. The main risk of publication is that it draws attention to Post Office's practices and as a result encourages further adverse publicity from those who are monitoring developments in relation to Sparrow and the alleged failings of the Horizon system.
11. This may be compounded if relatively few prosecutions eventuate due to concerns over Post Office's ability to rely on evidence obtained from Horizon.
12. Reactive communications plans have been drawn up should questions be raised as to the purpose of the policy.

### What is market practice?

13. The recommendation from Brian Altman QC, former First Senior Treasury Counsel (the country's most senior practising prosecuting barrister) was that the policy should be published on the website. Mr Altman is aware of the 'Sparrow' cases and has advised in relation to a number of issues connected with 'Sparrow'.
14. In addition to the CPS (the Director of Public Prosecutions is required by statute to publish a Code for Crown Prosecutors), there are a number of other organisations (public and private) which conduct prosecutions. As a sample, the following publish their policies on their websites:
  - Transport for London
  - RSPCA
  - Train companies, which are required by their franchise agreements to protect revenue from ticket sales (e.g. Northern, Cross Country, Thameslink)
  - Local authorities (e.g. London Borough of Hammersmith and Fulham, Manchester City Council, Lambeth Trading Standards), and
  - BIS Criminal Enforcement team (which "work[s] to deter fraud in companies and by bankrupts").

### Input Sought

The Board is requested to note the options and endorse that on balance, publication of the policy on Post Office's website is consistent with Post Office's values and the objectives of the policy.