

**POLICY DOCUMENT– Contract Breach****Reference information**

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Approval

Role	Name(s)	Date
Business input	Legal services, Contract Deployment Team, Network Change Operations Manager	04/02/14
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Version 1.0	First draft	12.11.13
Version 2.0	Second draft	13.01.14
Version 3.0	Final version	04.02.14

SUBJECT: Agent Contract Breach**1. Executive summary**

This policy document sets out how decision makers within Post Office Limited (POL) will act in relation to breaches of contract by Subpostmasters operating Traditional Contracts and Operators of the new

Model Agreements. This policy advises the appropriate action to take when dealing with breaches of contract and provides clear criteria by which decisions should be made.

2. Scope

The scope of this policy includes any material (serious) breaches by Subpostmasters and Operators of New Model agreements. However, it should be noted that a succession of non-material breaches may constitute a material breach. There are references throughout this policy to non-material breaches however the Contract Deployment Team should also refer to the established correction action process.

3. Glossary

Word/term	Definition
Agent(s)	Encompasses the terms Operator and Subpostmaster
Assistant	This is an employee of a Post Office Ltd Agent who is registered by the Agent with Post Office Ltd, to deal with Post Office Ltd transactions and information.
Material breach	A serious breach of the Agreement between Post Office Limited and the Operator which could entitle POL to bring contractual action to terminate the contract if there are no attempts to remedy the breach within 14 days or if it is classified within the contract as a breach which is not capable of remedy
Network Transformation	Funding committed by government to transform the Post Office network into new model formats, to include longer opening hours and more accessible branches
New model(s)	Refers to all NT models, including Local and Mains, which are run by an Operator.
NFSP	The National Federation of Subpostmasters is the only organisation recognised by POL as representing Agents
Non- material breach	A less serious breach that does not affect the performance of the contract
Non- remediable	A breach which prevents corrective action from being effective
Operator	Refers to the Legal entity contracted to run either a Main PO or Local PO or Community PO.
POL	Post Office Limited “we”
Remedial	Corrective action that can be taken to resolve an element of the contract that is not satisfied
Subpostmaster	The holder of an SPSO Contract and includes the term Subpostmistress.

4.0 Introduction and purpose

4.1 Introduction

The formal roll out of the Network Transformation Programme (NT) began in 2012. The Government initially committed funding of £1.34 billion to transform 6,000 branches into new model branches, and have subsequently provided funding of £640 million (subject to state aid clearance) to transform the

rest of the network. These branches will operate on the New Model Agreements which contain terms and obligations on Operators that do not appear in the traditional contracts. As such, a policy is required to deal with breaches of contract in the new models and traditional contracts.

4.2 Purpose

The purpose of this policy is to provide clear direction to assist the Contract Deployment Team to deal with breaches of contract by Agents. This is a prescribed approach, which aids the decision making process, by outlining the criteria to be used by the Contract Deployment Team, Agents Contract Deployment Managers and Appeals Managers, before reaching a decision.

5.0 Background

This policy mandates what decisions are to be made, by whom and how. This policy change requires systemic and behavioural change but does not require contractual change.

6.0 Change proposal

In an Agent's lifecycle, many events may occur and it is imperative that the Agents Contract Deployment Teams engage in dialogue with the Agent to understand the whole event and particularly in the context of breaches of contract, why the event occurred. They should then reach appropriate decisions based on that dialogue. The policy and supporting processes set out the following:-

- The primary decision that needs to be made at each stage
- The basis on which these decisions are made
- The person within Post Office Limited who makes the decision

The policy is to be used by the Agents Contract Deployment Teams, Agents Contract Deployment Managers and Appeal Managers and does not require any changes to be made to the contractual agreements, neither new nor traditional.

6.1 Intervention Events

Intervention events are events which are prescribed by the Branch Standards Team or the Audit Team.

- Examples of Intervention Events: indications that the Agent may not be performing their contract properly and/or customer complaints.
- Decision maker: Before any action is taken the Contract Deployment Team must first decide whether an Intervention Event has actually occurred. This should be achieved through discussions with the Branch Standards Team and/or Audit teams.

6.2 Consequences of Intervention Events

When an Intervention Event occurs, it will usually lead to support intervention from POL to the Agent. Any support provided by POL is likely to be in the form of telephone-led training for the Agent, or a visit to the branch to discuss how to improve performance.

The aim is to produce an agreed action plan for the Agent to improve their performance.

If there is no improvement, or a succession (more than three) of minor breaches, this may constitute a material breach and could lead to termination. This would be dependent on circumstances and at the discretion of the Contract Deployment Team and advice should be sought from Legal Services in this instance. A non-material breach will be recorded on the Operator's record for a 24 month period, after this time, any further non-material breaches will not accumulate to a material breach.

For breaches that require 14 day remedial action by the Operator, this can be approached by using the appropriate letter found at the bottom of this document, with a follow up visit or call after 14 days, where necessary. If the breach is not remedied within 14 days, further action will be required, this will be dependent on the facts of each case and guidance should be sought from Legal Services.

The Contract Deployment Team will need to decide the type of support intervention, if any, that is required. This should be achieved through discussions with the Branch Standards Team and/or Audit teams.

6.3 Escalation Events

Escalation Events are circumstances where a serious breach is identified which requires POL to take immediate action.

- Examples of Escalation Events include but are not limited to: adverse audit findings; breach of restrictions clause; accessibility issues for disabled customers; non-registration of Assistants; loss of right to occupy premises; breach of data protection or confidentiality obligations; unauthorised change to opening hours; not complying with regulatory requirements or training; not attending training provided by POL.
- Decision maker: As the action taken by POL is likely to be more significant for serious breaches, it is imperative that the Contract Deployment Team are satisfied that the action they propose to take is commensurate with the breach that has been suspected/confirmed. This should be discussed with the Branch Standards Team and/or Audit Team and legal advice should be sought where appropriate.

6.4 Consequences of an Escalation Event

Once the Contract Deployment Team have identified that an Escalation Event has or may have occurred further investigation of relevant issues and circumstances may be required.

7.0 Investigation and Suspension

The default position when a breach has been identified should not be suspension, and POL will only precautionary suspend where the contract gives rise to an ability to suspend and:

- (i) Further investigation is likely to be difficult or impossible without it; or
- (ii) There is a significant risk to POL brand or POL cash/stock.

In reaching a decision on precautionary suspension POL will take into account all relevant factors, including but not limited to, the following:-

- (a) Risk to POL funds;
- (b) Risk to POL brand or reputation;
- (c) Impact of suspension on customers;
- (d) Any relevant information provided by the Agent as part of a telephone conversation with the Contract Deployment Team.

The Contract Deployment Team should decide whether, on the facts, it is necessary to precautionary suspend the Agent so that they are not involved in the operation of the branch. It should be noted that the New Model Agreement also provides POL the right to suspend all or any of the assistants involved in the operation of the branch.

The Contract Deployment Team will complete the appropriate pro forma and the final decision will be made by the Agents Contract Deployment Manager. A letter should also be sent to the Agent to inform them of their suspension.

It should be noted that there may be circumstances when an Intervention Event is also an Escalation Event, in which case contractual action may be required.

It may not always be necessary for further investigation to be carried out, if it is deemed to be inappropriate or unnecessary, for example, bankruptcy of the Operator. The Contract Deployment Team will need to reach a decision, based on the individual facts of each case if preliminary enquires suggest there will be no further investigation and Legal Services should be involved promptly. The final decision rests with the Agents Contracts Deployment Manager.

The process and decision making criteria will follow a similar route to that of Subpostmasters, but there will be some key differences;

- Unlike Subpostmasters operating Traditional contracts, POL will not support the use of Reasons to Urge Interview with Operators of new model agreements subsequent to their suspension.

- Operators will be invited for an informal discussion not more than 14 days from the date of the suspension to discuss matters arising as a result.
- This should not be used by the Contracts Advisor as a fact finding exercise, but an opportunity for the Operator to discuss the circumstances leading to the breach.
- This informal discussion should not be led by the Contracts Manager and should be an opportunity for the Operator to present an explanation.
- Any representative brought along to any informal discussion as a consequence of a breach of contract must only be from the Federation of Subpostmasters, or an employee of Post Office Limited or an Agent of Post Office Limited.
- POL does not recognise the CWU, lawyers or friends who do not meet the published criteria to attend any meetings or accompany the Operator. Sensitive information pertaining to POL operations may be discussed and our primary concern in this situation is to protect the Brand.
- The representative must also not be the subject of any investigation themselves.

It is for the Contract Advisor to exert their judgement in each individual case to ascertain whether the circumstances and reasons given are pertinent to the reasons for suspension.

7.1 Decision making

In making a decision about what contractual action to take, the Contract Deployment Team will take into account all relevant factors, including but not limited to:

- a) Impact and on-going risk to POL funds
- b) Impact and on-going risk to POL brand and reputation
- c) Effect of termination on customers
- d) Effect of termination on the Agent
- e) Any relevant information provided by the Agent including any mitigation presented
- f) Direct involvement or responsibility of the Agent in the actions which led to the breach
- g) Impact of the breach (as distinct from the proposed termination) on customers, supplier and partners
- h) Agents history i.e. service length and record, previous written directions etc.
- i) Legal advice

The Contracts Team must show their detailed reasoning in relation to the above in the pro forma and explain why points are preferred and others disregarded.

There should be no 'starting point' in that consideration that begins with one particular outcome as opposed to others, and where one or more criteria had been 'weighted' the reasoning for that needs to be made clear. Contract Deployment Teams faced with situations that require a more complex assessment of the circumstances should always seek the advice of legal services.

Unlike Subpostmasters operating Traditional contracts, Operators of the new Agreements who disagree with decisions made by the Contract Deployment Team, will not be privy to automatic appeals when a decision has been made to terminate their agreement.

There have been attempts by Subpostmasters following the final decision of an appeals manager to further escalate individual cases. The correct route for Subpostmasters to take if they are dissatisfied with a decision is via civil court action, to do anything else creates a further level of appeal which is not described or supported within this policy. The contract is quite clear on this subject in that the Appeal Manager decision is final.

8.0 Types of Action New Models/Traditional Contracts

Operators of new models may be subject to the following actions for breach of contract:

- (i) Written direction with request for 14 day remedy
- (ii) Written direction (this may be subject to conditions; e.g. Repayment of any missing POL cash/stock and/or the Operator being willing to accept support intervention)
- (iii) Suspended termination
- (v) Termination

Subpostmasters operating Traditional Contracts may be subject to the following actions for breach of contract:

- (i) Written warning
- (ii) Final Written warning
- (iii) Suspended termination – this may be offered subject to conditions
- (iv) Three months' notice to terminate
- (v) Summary termination

Operators of New Model Agreements do not have the same terms and obligations as the Subpostmasters' contract and there are key differences in the types of contractual action that should be taken.

The Contract Deployment Team should be aware that it is no longer correct to use the term 'warning' in letters to Operators. It is imperative that we digress from phrases commonly associated with contracts of employment. Operators should instead receive a letter detailing a 'written direction' of the appropriate course of action they are expected to take in order to remedy the breach.

The New Model Agreements do not provide Operators the ability to resign to avoid termination; however either POL or the Operator can give 12 months written notice to terminate. The 12 months' notice cannot be given so as to expire before 12 months from the start date. But, if POL and the Operator agree, less than 12 months' notice of termination can be given.

9.0 Proportionate outcomes and suspended termination

Any decision made by the Contract Deployment Team must be commensurate with the severity of the breach. The Contract Deployment Team should assess and investigate the full implications of taking contractual action and give due consideration to the other, often less severe, options available to them.

Whilst termination may be necessary in circumstances where there is a substantial risk to POL cash and stock, the use of suspended termination may be appropriate in some circumstances. This decision should be taken by the Contract Deployment Team, ratified by the Agents Contracts Deployment Manager. Suspended termination would allow the Agent to continue running the branch.

This approach may be considered appropriate where there is a clear breach of contract, and an action or omission by the Agent does warrant termination but evidence is presented that suggests there is low impact of the breach (as distinct from the proposed termination) on customers, suppliers, partners and low culpability (e.g. absent Subpostmaster/Operator and Assistant theft). In this instance, the Contracts Advisor should consider termination of the contract but suspend that termination for a period of 12 months.

If further material breaches are committed in the 12 month period the Contract Deployment Team may decide to consider terminating the Agents contract with immediate effect.

Furthermore, the Agent must comply with whatever conditions the Contracts Advisor determines, be that attendance for re-training, exclusion from a branch of named Assistants/managers and/or improvements to internal monitoring processes. These would not be designed as a punishment but as a means of rectifying weaknesses without which risk to Post Office cash, stock or reputation could continue.

10.0 Recording Database

It is essential that the Contract Deployment Team ensure that an accurate record of the breaches is maintained as they occur, with a clear audit trail to show the decision making process, including ratification by the Agents Contracts Deployment Manager in addition to any evidence that was presented by the Agent. This should be recorded in the format of a database that is currently being

developed. This will greatly assist if any challenge were to be brought against POL, legal or otherwise.

5.5. Process

Process maps to assist the Contract Deployment Team with their decision making are embedded in this document [to be embedded] and should be consulted for every case.

7. Applicability

This Policy applies to Subpostmasters, and Operators of New Model Agreements and to communications and actions via the Contract Deployment Team in response to breaches of contract by Subpostmasters and Operators.

8.0 Related policies

Burglary and Robbery
Changes to Opening Hours
Appointment of Temporary Agents
Underperformance
Corrective action

PART 2

10.0 Standard letters and documents

Suspension Template Letter
14 day remedial Template Letter
Reinstatement Template Letter
Termination Template Letter
Suspended termination letter
No further action letter

Decision making matrix
Process maps
Decision making pro forma

For further advice regarding this policy please contact Sarah Ryan, contact details as follows:
[Insert contact details here]