

# Group Executive New Prosecutions Policy Proposal

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## Executive Summary

### Context

Prior to separation, RMG prosecuted suspected criminal activity in the Post Office network in England and Wales. Since separation, Post Office has assumed this function, adopting essentially the same policy as previously applied by RMG. Prosecuting suspected criminal activity in the Post Office network assists the protection of Post Office assets by deterring criminal activity.

As good housekeeping following separation from Royal Mail, and in light of public criticisms of Post Office which arose in relation to 'Project Sparrow', we have reviewed the Post Office prosecutions policy to ensure that the policy is robust and meets best practice.

### Questions addressed in this paper

1. What are the key points to note about the new policy?
2. What are the implications for the board and the business?
3. What happens to cases that are not approved for prosecution?

### Conclusion

1. The new policy replaces the previous policy which was inherited from Royal Mail. It sets out the requirements which must be met before Post Office can launch a prosecution including in particular, the Code for Crown Prosecutors (issued by the Director of Public Prosecutions) which require the prosecution to be in the public interest, and for there to be evidence sufficient to provide a realistic prospect of conviction
2. The fact of adoption of the new policy will not materially change the approach adopted in practice by Post Office. Set out in the Appendix is a summary of the approach being taken by Post Office where losses are suspected in branch.
3. Where a case is not approved for prosecution in accordance with the Policy, it is likely that civil proceedings would be brought for recovery of debts as well as other steps as described in the Appendix.

**Input Sought:** The Group Executive is requested to approve the Policy.

**Input Received:** The draft policy has been reviewed by Post Office legal, Cartwright King (Post Office Limited's legal advisers on criminal matters to) and Brian Altman QC

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## The Report

Why do we need to create this policy?

1. On 26 February 2014, the Post Office Board formally approved "pursuing a prosecutions policy focussed only on high value cases/cases involving vulnerable members of society, and engaging with the police in relation to other matters". Adopting the updated Prosecution Policy Post Office will enable continue to be able to bring private prosecutions focussing on high value cases and/or those involving vulnerable members of society..
2. The proposed policy sets out the approach that Post Office will take when considering whether to commence a prosecution. The final decision as to whether Post Office Limited should commence prosecution will be taken by the General Counsel.

What are the key points to note about our new policy?

3. The draft Policy:
  - explains Post Office's approach to suspected criminal activity against Post Office business in England and Wales;
  - expressly states that a prosecution can only be brought where the evidence in the case passes the same two-stage test used by the CPS;
  - lists a number of public interest factors which might support bringing a prosecution; and
  - empowers Post Office's General Counsel to authorise prosecutions.

What are the implications for the board and the business?

4. No particular steps are required to roll out and embed the policy as this will be the responsibility of Post Office Legal and its external advisers on criminal law.
5. However we have been advised that the policy should be available on the Post Office Limited website, and that this is consistent with the practice of other organisations which conduct their own prosecutions.
6. Where an investigation is conducted and there is deemed to be sufficient prima facie evidence to support a charge and meet the public interest test, the investigation case papers are referred to Post Office's external lawyers who review the case against the same criteria and provide formal advice/opinion and a recommendation on whether to prosecute or not. The General Counsel is the business decision maker on the final decision of prosecution.
7. Where a prosecution is commenced, the case is kept under constant review to ensure that it continues to meet the evidential and public purpose tests; if not, the case is withdrawn.

*How will we monitor compliance with this policy?*

POST OFFICE

PAGE 3 OF 6

8. It will be the responsibility of the General Counsel to ensure compliance with the Policy. A report will be provided to the Risk & Compliance Committee and the Board Audit & Risk Committee annually detailing the number of cases that have been referred to prosecution and confirming that in each case the requirements of the Policy have been complied with.

*What will the impact be on our wider business?*

9. We do not expect there to be any adverse impact on Post Office business, however the existence of the Policy may assist in discouraging criminal activities within Post Office.



**APPENDIX**

What happens to cases that are not approved for prosecution?

1. As a result of lessons learned through Project Sparrow, Post Office has sought to identify potential issues earlier, provide more training and support to postmasters, and seek other responses to irregularities before considering prosecutions.
2. Two key objectives have been to (a) improve the way that we identify and monitor high risk branches, and (b) adapt the way that we deal with any subsequent interviews and recoveries. This is to ensure that the current resource and systems are utilised as effectively as possible to target intervention at high risk branches. There has also been more collaborative working within various teams in the business to drive this approach forward. This has been achieved through a Quarterly Governance Forum consisting of representatives from Security, Audits, Contracts and Cash Management and is responsible for ensuring that the risk of loss in branch is monitored, managed and mitigated in a consistent and effective manner, whilst maintaining an audit trail of investigation and decision making. This also provides a supportive forum to ensure a joined up approach in dealing with high risk branches.
3. In addition, the following have also been introduced or improved:
  - HORice (a Fujitsu development) is a tool which facilitates the earlier identification of losses, and although it hasn't proved to be fit for purpose in identifying risk branches across the network, it does give further depth to individual branch analysis / problem solving and allows access to 6 months of data rather than the 3 months of data available on Credence.
  - FAT reports / processes – review and re-engineering of identification and analysis processes, improved management information and measurement of results.
  - Security / Agent Debt Team - Security Financial Investigator is supporting the Agent Debt Team in respect of debt recovery by sharing access to Land Registry, Equifax and Companies House. Agent Debt Team has shared access to 192.com.
  - Branch Technology Transformation Programme – input into requirements and attendance at workshops to try and simplify some of the transactional and process issues and to reduce areas where losses can occur or be hidden.
4. Where losses are identified in branch as a result of risk profiling, there are a series of options available to Contract Advisors including further training, inclusion on a watch list, audit and (precautionary) suspension. In all cases the objective is to minimise losses and where possible, recover actual losses from the Sub-Postmaster.
5. Depending on the outcome of an investigation, and depending on whether the sub-postmaster is on a New Model or Traditional Contract, there are further options, the ultimate contractual sanction being termination.

## Impact of Sparrow on Prosecutions

6. Up until 2013, Post Office averaged c.250 investigations into possible criminal conduct each year, of which c.50 resulted in prosecutions.
7. Post Office supported many of these prosecutions with expert evidence provided by a Fujitsu employee. Following the publication of Second Sight's first report in July 2013, Post Office was advised that in order to successfully prosecute cases that relied on Horizon data, it would need to identify and instruct a new, independent expert who could provide evidence confirming the reliability, integrity and robust nature of the Horizon system.
8. Post Office was also advised that the new expert should produce a report collating all known information about Horizon (including defects and their resolution). Without such a report, Post Office would be unlikely to satisfy the "evidential stage" of the CPS two stage test (such that the prosecution should not be started) and would be unable to comply with its duties of disclosure as a prosecutor which include recording and retaining information relating to the integrity and robustness of equipment.
9. Obtaining this expert evidence has proved difficult given Horizon's age and complexity. Without it, Post Office's ability to bring prosecutions is severely proscribed. For example, only two prosecutions were brought in 2015, neither of which required evidence from Horizon.
10. Accordingly, Post Office increasingly relies on civil remedies (e.g. contract termination and debt recovery action) to address wrongdoing and recover losses. Debt recovery procedures are relatively successful for amounts under £10,000, however their effectiveness decreases the larger the amount sought to be recovered.
11. Investigations and prosecutions have significantly dropped since the publication of the Second Sight report. The investigation resource has also reduced accordingly, from 30 FTEs down to 15 FTEs (Wave 1). These roles are multi-skilled with the primary focus on situation crime prevention for physical attacks and post incident management, with limited capacity for investigations.

## Risks

12. There are a number of resource constraints on Post Office's ability to detect, monitor, and investigate potentially criminal activity:
  - the Financial Crime Team (within the Security team) have responsibility for monitoring and investigating potential branches losses and are also responsible for monitoring money laundering activity. Competing resource requirements mean that the number of branches reviewed has reduced from an average of 230-250 per month during [????] to 150-170 branches per month currently.
  - The team currently responsible for conducting branch audits have Transformation activity as their primary responsibility. Accordingly, the number and timing of risk based audits is constrained. For example, during 2015 the number of scheduled (non-emergency) audits (110 audits) has been reduced from 50 to 30 per month, and in each of the last 2 years no scheduled audits have been conducted between December and March. This

is likely to increase the level of unrecoverable losses arising during those periods.

- While the overall losses identified through audits decreased from c£4.3m in 2012/13 to c£2.5m in 2014/15, at current projections it is estimated they will increase to c£3.1m for 2015 and the average net loss has increased from £1,182 in 2012/13 to £5,161 in 2015/16.
- While HORice provides improved functionality over the under-lying Horizon system, it does not provide sufficient analytical functionality or the ability to identify which branches represent highest risk, and therefore there are multiple manual processes applied in detecting trends (such as increased cash holdings in branch over time).