

**REPORT 2**

**FOR THE POST OFFICE HORIZON IT INQUIRY**

REFLECTIONS ON A SELECTION OF EVIDENCE BEFORE THE INQUIRY IN THE LIGHT OF REPORT 1 ON 'EXPECTED AND BEST PRACTICE IN RESPECT OF THE STANDARDS OF GOVERNANCE, MANAGEMENT AND LEADERSHIP IN COMPANIES SUCH AS THE POST OFFICE COMPANIES'

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## **A. Introduction**

1. We have been instructed to use our expertise and experience to review such evidence before the Inquiry as we select, as a basis for comment on the standards of governance, management and leadership we have observed in POL.
2. It is not our intention or instruction to establish matters of fact.
3. In making our observations we have been mindful of the principles of expected and best standards of governance and management in companies such as the Post Office which we set out in our Report No 1 that is already before the Inquiry.<sup>1</sup> The concluding section (8) of Report No 1 (EXPG0000006) complements the commentary on principles and guidance and addresses governance and management from an experiential perspective, covering authority, power and interest, leadership, culture and communication.
4. Annex A of Report 1 (EXPG0000006) provided a chronology of the laws and guidance on governance and management of companies which applied during the relevant period, 1999-2019. The Companies Acts 1985, 2006 lays out expected general duties for company directors, including: to promote the success of the company for the benefit of members as a whole, to exercise independent judgement; to avoid, or declare conflicts of interest. The Combined Code<sup>2</sup> and its subsequent developments lay out the principles of good governance, including drawing attention to the role of directors to promote the interests of shareholders.
5. The combination of the Companies Acts and the corporate governance codes, provide the foundation for considerable consensus, reflected in the large volume of written

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<sup>1</sup> Sandra Dawson & Katy Steward (2024), Report 1: Expected and Best Practice in respect of the standards of governance, management and leadership in companies such as the Post Office Companies, 26 March 2024, Post Office Horizon IT Inquiry (EXPG0000006).

<sup>2</sup> Financial Reporting Council (1998), 'The Combined Code: the Principles of Good Governance and Code of Best Practice' Derived by the Committee on Corporate Governance, May 1998. [https://media.frc.org.uk/documents/Combined\\_Code\\_June\\_1998.pdf](https://media.frc.org.uk/documents/Combined_Code_June_1998.pdf) Financial Reporting Council (2003), 'The Combined Code on Corporate Governance' July 2003. Subsequent revisions in the relevant period published by FRC in 2008, and as the UK Corporate Governance Code in 2010, 2012, 2014, 2016, 2018.

and broadcast advice, on what makes for good board governance and executive management. It is important to note however, that within the framework of good governance and management as laid out; there is room for considerable variation and choice in how individual Boards and Executives decide to operate.

6. In preparing this report we have drawn on our reading of our selection of the evidence before the Inquiry, including excerpts from some witness statements and transcripts of oral evidence.
7. The approach we have adopted is to review our selection of evidence before the Inquiry and to choose three case studies for analysis. The choice of case studies has been entirely ours. Had our time been limitless we would have been pleased to analyse other case studies. Our choice was not governed by judgements about what might be the 'best' or 'worst' examples; it does not imply anything about what would be found in other cases had they been included.
8. Through our selection of evidence and cases we aim to illustrate the way board governance and executive leadership impacts matters with which the Inquiry is engaged. In being selective of themes and evidence, we appreciate there may be additional or alternative constructions based on the body of evidence before the Inquiry which we have not considered.
9. We have also drawn on our own direct experience of governance in various settings.
10. Annex D provides a summary of our expertise and qualifications relevant to undertaking this work.
11. Any matters on which we have expressed an opinion lie within our field of expertise and represent our true and professional opinions on the matters to which they refer. In preparing this report we were assisted by Isha Shakir, a junior barrister instructed by the Inquiry. Isha assisted us by providing references, correcting typographical errors, formatting, re-structuring and identifying additional issues on which we may wish to opine in this report. Isha did not contribute to or otherwise assist in the development of our opinions or conclusions on any matters.

## **A.1 Outline of this Report**

12. This report is in four parts, comprising an overview followed by three case studies.
13. Part 1, the Overview, provides a thematic summary of our observations on POL Board Governance and POL Executive Management and Organisation which are based largely on the description and analysis of the three selected case studies, informed by a wider reading of a selection of evidence before the Inquiry.
14. The themes identified are:
  - a. **Board level governance**
    - i. Strategy and Risk;
    - ii. Accountability and clarity in Executive and Non-executive roles, with special reference to the identification and escalation of serious problems;
    - iii. Effective communications in and around the Board;
    - iv. Expected experience, development and competence of all Board members and the Board as a whole;
    - v. A Board culture supportive of effective discussion and decision making;  
and
    - vi. Policy and practice for handling conflicts of interest.
  - b. **Executive management and organisation**
    - i. Structures and relationships;
    - ii. Performance and capability; and

- iii. Organisation culture.
15. Part 2 considers the three case studies we have chosen to include:
- a. **Case study 1:** Consideration of Mrs Wolstenholme case by POL Executives, 2004 (referred in the text as ‘Wolstenholme Case 2004’);
  - b. **Case study 2:** The Consideration of the Second Sight Interim Report by the POL Board 2013 (referred in the text as ‘Second Sight Case 2013’); and
  - c. **Case study 3:** The Handling of the Simon Clarke Advice by POL Executive 2013 (referred in the text as ‘Simon Clarke Advice Case 2013’).
16. This report also contains the following annexes:
- a. Annex A Glossary
  - b. Annex B Acronyms and Abbreviations
  - c. Annex C List of people mentioned by name in the report showing their positions and organisations
  - d. Annex D Qualifications and Expertise of Dame Sandra Dawson and Dr Katy Steward
  - e. Annex E Statement of Truth

## **B. Overview**

### **B.1 Introduction**

17. This overview provides a thematic summary of observations on POL Board Governance (Section 1) and POL Executive Management and Organisation (Section 2) which are based largely on the description and analysis of the three case studies which feature in this report, informed by a wider reading of a selection of evidence before the Inquiry.
  
18. Board Governance, with its focus on the role of the Chair and NEDs and Executive Management and Organisation, with its focus on the role of the CEO and the executive team are essentially two separate, but intrinsically interdependent, parts in a complex set of relationships. The Board, with its duty to approve the strategy and risk framework, cannot function effectively without the flow of relevant information on performance from the Executive; and yet it must also fulfil its role of challenging, overseeing and ultimately possibly sanctioning or dismissing the Executive if performance is poor. The CEO and the Executive with their duty to run the company, are also in many ways gatekeepers of information to the Board.
  
19. The case studies are:
  - a. Case 1 Consideration of Mrs Wolstenholme case by POL Executives, 2004 (referred in the text as ‘Wolstenholme Case 2004’);
  
  - b. Case 2: The Consideration of the Second Sight Interim Report by the POL Board 2013 (referred in the text as ‘Second Sight Case 2013’); and
  
  - c. Case 3: The Handling of the Simon Clarke Advice by POL Executive 2013 (referred in the text as ‘Simon Clarke Advice Case 2013’).

## B.2 Board Level Governance

### B.2.1 Strategy and Risk<sup>3</sup>

20. Strategy sits at the heart of Board Governance. It provides the framework for determining future direction, evaluating past performance, and determining the scale and nature of business operations. It reflects the purpose of the organisation, whilst taking account of the different circumstances (internal strengths and weaknesses, external threats and opportunities) in which the organisation is located. It directs the gaze of the Board in particular ways.
21. A distinction is made in corporate codes of governance between the Board role in determining the strategy and the Executive role in running the company on the lines established by the strategy. The Chair is expected to maintain a balance between the Board's strategic responsibilities and oversight of operational matters, for which the Executive is responsible. The CEO is expected to provide operational leadership, management and oversight of all functions, departments and delegations; and to ensure good communications with the Board about operational matters, through regular reporting and exceptional follow up.
22. Risk is existentially bound up in strategy. The Board's role in Risk derives from its core duty to approve strategy, in which risks are embedded, and oversee operations wherein risks will be manifest. The Board is responsible for determining the company's risk appetite, that is, the nature and extent of significant risks, which it is willing to take in achieving its strategic objectives. The Board should seek to anticipate, and guard against, major losses by risk reduction and mitigation. The executive role:

*'in the identification, analysis and management of risk lies at the very heart of running a company. It is an Executive responsibility to build an integrated and dynamic understanding of the company's risk profile which is effectively communicated to the Board and to the shareholders (EXPG0000006, Section 4.2.1).*

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<sup>3</sup> Report 1 references to Strategy (Section 2.5); Board accountabilities (Section 2.2); Role of the Chair (Section 2.2.17); Role of CEO (Section 2.2.31); Risk (Sections 4.1, 4.2, 4.3) (EXPG0000006).

*B.2.1.1 Evidence*

23. The Inquiry has heard that throughout the relevant period people in governance and executive leadership positions in POL were guided by a strategic imperative to establish and sustain POL in fulfilling the twin, and sometimes conflicting, purposes of commercial financial viability and government policy for a universal public service. Between 2002 and 2012, POL was a subsidiary of RMG, which was on a path to independent private ownership. It was decided that POL would not become part of that privatisation but would become a private corporation wholly owned by the government; a process which was complete by 2012.
24. Throughout the relevant period, commercial aspects of strategy were seen by successive POL boards to be very important. The Board's strategic priorities were survival, securing sustainable funding through commercial activity supplemented by successively agreed government funding, bolstering brand and improving operational efficiency. The Inquiry has heard that this demanding strategic agenda dominated the Board's programme and left little room for other things, especially if, like Horizon and prosecutions, they were seen to be 'operational'.
25. The Second Sight Case 2013 in this report shows that the Executive saw the reported problems with the Horizon system as being primarily about the technology; as being operational, not strategic, matters. The Board did not challenge this perspective. When faced with sustained and serious allegations from MPs and the Justice for Subpostmaster Alliance ('JFSA') about wrongful convictions and miscarriages of justice in POL prosecutions reliant on data from the Horizon system, the Executive, supported by the Board, appeared to think that if they could show that the technology underpinning the Horizon System was robust, that would be settle the matter.
26. It seems to us that as time went on, the need to test and review the technology in the face of serious challenges to its role in prosecutions, became in the eyes of management the need to prove and confirm what management firmly believed, and to reassure the Board, that as the Horizon system was 'robust', it could not be implicated in wrongful prosecutions. As such the reported problems with prosecutions did not command sustained Board attention. In so far as they came to the attention of the

Board, they were not seen as ‘strategic’ and were crowded out by other issues which were seen to be more important.

27. In so far as risks were identified, even after July 2013 which saw the publication of the Second Sight Interim Report and the receipt of the Simon Clarke Advice, issues to do with Horizon were couched in operational terms of the robustness of the technology.
28. The minutes of ARC of 19 November 2013, record David Mason, Head of Risk Governance giving a report on the key risks to the business. In a list of the top six plus three risks, the number one risk is ‘allegations relating to the integrity of the Horizon system’ (POL00038678). The Risk management Update to the Board, 21 November (POL00027483) prepared by the GC, provides amplification: *‘There is a risk that allegations relating to the integrity of the Horizon system, if not contained, could raise wider questions over the robustness of our core systems and our ability to operate, damaging (amongst other matters) current partnerships, new areas of expansion and public and government confidence’*. With such a construction, we can see the basis of the executive’s eagerness to defend the robustness of the technology.
29. There is no hint of a very significant risk associated with Horizon arising from POL using Horizon data in prosecutions and that it may for years have been wrongfully prosecuting SPMs and perpetuating miscarriages of justice. Such risks were, it seems to us, simply not countenanced even though they were available to be seen in the Second Sight Interim Report (Second Sight Case2013) and in the Simon Clarke Advice (Simon Clarke Advice Case 2013).
30. In our view couching the Horizon risk in terms of the robustness of the technology and its place at the heart of commercial operations increased the inclination of the Executive to defend the robustness of the technology, and thereby not to look at Horizon through the lens of the risk of wrongful prosecutions of SPMs.

#### *B.2.1.2 Conclusions*

31. The Second Sight Case 2013 illustrates that the Board did not see the major problems in prosecutions, investigations and culture that had been included in the Second Sight

Interim Report, graphically described by SPMs and catalogued in the media and Westminster, as a priority for their attention or a major risk.

32. All three cases (Second Sight 2013, Simon Clarke Advice 2013, Wolstenholme 2004) illustrate that the Executive did not systematically identify the key risks in prosecutions or in their approach to SPMs or propose how they should be mitigated. The Board did not challenge the executive approach, even though they had information before them, that suggested serious risks. In 2013, the Board did not take the opportunity to open a window to see the bigger picture which was unfolding about the practice and dire consequences of POL's prosecutions and investigations policy and implementation. In our view, events and discussions during July 2013 reinforced rather than challenged the prevailing view of the nature of the problems.
33. In our view, the approach that all things to do with Horizon were operational and therefore an executive responsibility, regardless of indications of serious risk, particularly in POL prosecutions policies and practices, was a governance failure.

*B.2.2 Accountability and Clarity in Board Roles, with special reference to the identification and escalation of serious problems<sup>4</sup>*

34. Accountability in organisations builds through structures of line management of employees to the CEO who has direct accountability to the Chair and the Board. Accountabilities within the Senior Executive and the Board are both individual and collective. Accountability is exercised through relationships; it involves 'being accountable' and 'holding to account'.
35. The UK governance model is to have a Unitary Board in which there are: a chair who is independent on appointment, a majority of NEDs and at least one Executive Director, normally the CEO. The majority of NEDs is regarded as important in sustaining the twin roles of the Board as one of challenge to, and support of, the CEO and senior executives.

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<sup>4</sup> Report 1 references to Section 2.2 Board accountabilities; Section 2.2.29 Non-Executive Director; Section 2.2.31 Chief Executive Officer; Section 2.2.23 Other Executive Board members (EXPG0000006).

36. The Board's accountabilities to the shareholder include *inter alia*: providing oversight and overarching frameworks for governance, risk and compliance; nominating the Chair and other Board members; hiring and firing the CEO; approving the strategy and corporate risk register; overseeing operational performance and the work of the Executive.
37. The CEO carries ultimate responsibility for running the business and all aspects of operational performance and Executive management. Executive accountabilities, including relations within the Executive team are discussed in the second part of this overview.
38. The Board accountability for oversight of operational performance includes two presumptions. First that the Executive will escalate serious problems with operational performance and not delay, diminish or deny the Board's access to relevant information about problems. Secondly that the Board will take an interest in any information which signals there could be serious problems, even if the Executive has not seen, or communicated them as such. The Board also has an accountability to the parent or shareholders(s) to give them timely and clear information on any significant changes to the accepted risk profile.
39. Prior to it being possible to escalate concerns, escalation at any level (middle management, Executive, Board) requires that relevant information is detected, extracted and understood in the first place. An Executive or Board member's individual capacity and willingness to seek and interrogate information from a variety of sources and to spot clues that particular developments warrant escalation are crucial aspects of accountability and essential characteristics of a well-governed organisation.
40. Clues may be hard and fast, as in written reports and minutes, or found in spoken informal conversations. Clues are not always obvious. They may be registered as uneasy surprises when one stumbles across something one did not expect. The discovery of what looks serious and poses a risk, depends on one's prior view of priorities and risks. One discovers things by looking in unlikely as well as well trodden

places. If problems are arising in places where one's gaze is unlikely to fall, they are likely to pass without note.

41. The CEO sits at the fulcrum of communication between the Executive and the Board. The Chair sits at the fulcrum of communication between the Board and the Shareholder.

#### *B.2.2.1 Evidence*

42. The Inquiry has heard that over the relevant period, there were failures to identify, to understand and to escalate problems of operational performance and significant risk within middle management to POL Executive, from POL Executive to the Board, and from the Board to the shareholder.
43. The three cases (Second Sight 2013, Simon Clarke Advice 2013, Wolstenholme 2004) in this report, provide little evidence of such escalation: relevant information which could have been the trigger for a reconsideration of what was believed to be happening in prosecutions and investigations, simply stayed where it had landed. The Inquiry has heard of relevant information (about the operation of the Horizon system, the role of data from Horizon in the investigation and prosecution of SPMs, POL prosecutions policies and practices and POL culture), being ignored, not understood, left unquestioned, available but not accessed, kept as separate pieces and not examined for connections to create a bigger picture, staying in just one part of the organisation, not communicated upwards in the hierarchy to the Board and the shareholder or sideways to colleagues in other functions.
44. In the Wolstenholme Case 2004, there was also an escalation failure between POL and the parent RMG. This was at least in part because of a lack of clarity about where exactly accountability for prosecutions lay. POL prosecutions were structurally part of the RMG central legal function; and yet the RMG board did not receive reports from POL prosecutions in the same way as it received them from other subsidiaries.
45. The Inquiry has heard from the CEO in her oral evidence that in 2013 she was not told of key information or, if she was told, she was not told in ways she could understand (Second Sight Case 2013). The Simon Clarke Advice was not shared with the Board

and was not shared within the executive team in a clear, thorough and timely manner (Simon Clarke Advice Case 2013). The findings of the Coyne Review in the Wolstenholme Case 2004 were not accessed or interrogated by the Board or by those who could have understood their significance and acted on them. The full reasons for the Sift Review were not made explicit to the Board. None of this was communicated to the Shareholder.

46. The Second Sight Interim Report (Second Sight Case 2013) showed that various problems and implied consequent risk were already known in POL and/or were identified by Second Sight and reported to POL. For example:
  - a. Poor support of SPMs and evidence of their problems and suffering in using Horizon;
  - b. POL's approach to investigations of SPMs;
  - c. POL's approach to prosecutions, and the possibility of miscarriages of justice;
  - d. The scale of possible claims for compensation by SPMs;
  - e. Detection of 'bugs' in the Horizon system; and
  - f. Data and evidence problems in evaluating the robustness of the Horizon system.
47. We have found no evidence that the Senior Executive got together before the Board meeting of 16 July 2013 to consider if there was a bigger and different picture suggested by these findings, rather than the one presented to the Board which took reassurance that 'no systemic faults had been found in Horizon' whilst acknowledging that there were 'cultural problems in terms of support and training of SPMs' which would be addressed.
48. There was much in the paperwork for the July 2013 Board meeting to note about these matters, but according to the minutes, they hardly registered in a meeting, which was dominated by criticisms of the management for its handling of the review, whilst being encouraged by the CEO to take comfort that no systemic problems had been found in Horizon.

#### *B.2.2.2 Conclusion*

49. If, as it seems to us, POL executives and non-executives saw that the roll out and operation of the Horizon IT system and the investigation and prosecution of SPMs as ‘operational matters’, then taking a formal interpretation of governance it would have been reasonable to assume they were matters for the Executive to manage, providing their performance met the standards expected by the Board. The Board always retains a strong oversight role and would be expected to know enough about the operations to note if there were deviations from normal expectations. In the three cases we have reviewed there were many indications that whilst the Board should have been better informed by the executive about seriously failing performance the Board should themselves have been more curious to understand the source and scale of the problems which were being created in POL.
50. The assumption that ‘operational matters should be left to the Executive’ is only reasonable under two conditions. First, that information flowing into, and extracted by, the executive team shows that operational performance is within ‘expected bounds’. Secondly that the information flowing into, and extracted by, the Board indicates they have an effective executive team, a well-functioning organisation running the business to an agreed strategy and a clear framework for identifying emergent corporate risks and problems with operational performance.
51. Both the Second Sight Interim Report and the Horizon Update paper for the July 2013 Board meeting, gave the Board reasons to believe that ‘expected bounds of performance’ had been breached, and there were grounds for having doubts about the robustness of the risk framework and the effectiveness of the executive team. In such a situation, the principles of good governance and management would indicate that the Chair should have ensured that the Board engaged much more fully with the material provided in the Second Sight Interim Report and the Horizon Update Paper at its meeting on 16 July 2013.
52. The Board in our view should have been more interested in understanding the meaning and implications of, and connections between, such information as they had been given, for example about the need to review past criminal cases or POL culture in its dealings with SPMs; and much more determined to interrogate and follow up these and other issues raised in the Second Sight Interim Report.

53. The Executive, led by the CEO, should always seek to create an organisation where the habit of escalation of problems is embedded in the lines of accountability and supported by the culture of the organisation. Escalation is expected to a level commensurate with the perceived seriousness of the problem. In our view the issues described in the Second Sight Interim Report (Second Sight Case 2013) and featured in the Simon Clarke Advice Case 2013 and the Wolstenholme Case 2004, should not have been a surprise to the Executive, and should have been given much more thoughtful consideration by the Executive and clearly escalated to the Board.
54. Based on the evidence we have reviewed; it seems to us that none of the issues highlighted in the Second Sight 2013 or Simon Clarke Advice 2013 cases were systematically escalated or considered as parts of a bigger picture within the Executive before or during the July 2013 Board meeting. Nor were they apparently urgently escalated afterwards, although as the case study considering the Simon Clarke Advice shows, some of them were referred to the ARC for consideration in the future. Similar failures in escalation were also found in the Wolstenholme Case 2004.
55. The approach of the CEO and his/her Executive colleagues, and the Chair and the Board, described in the Second Sight 2013, Simon Clarke Advice 2013 and Wolstenholme 2004 cases, did not in our view, adequately support either escalation to the Board when problems became apparent, nor did it encourage the Executive or the Board to see a bigger picture of serious risk. Neither the Executive nor the Board took the opportunity to open a window to see the bigger picture which was unfolding as a result of POL's prosecutions and investigations policy and practice. In our view, events and discussions during July 2013 reinforced rather than challenged the prevailing view of the nature of any problems with Horizon. At each level the Inquiry has heard there were examples of information not being known, not being understood, not being volunteered to others, and a lack of curiosity in inquiring into clues that serious problems existed.
56. The accountabilities of the CEO and the Executive team, and the Chair and the Board, for ensuring information flows appropriately within the management and governance structures are one of the cornerstones of governance. From the evidence we have seen

there were serious problems with the flow and interpretation of information about the Horizon IT system and its place in POL prosecution practices.

### B.2.3 Effective communications in and around the Board<sup>5</sup>

57. Good governance depends on a willingness and capability of the CEO, other Senior Executives, the Chair and NEDs to participate in two-way communications, that is both to give and receive information and opinions which they judge to be relevant to the Board.
58. Executives always hold a great deal more information than that which is relevant to the Board. Part of executive responsibilities is to make judgements about relevance, and appropriate time and manner of presentation of information. Their aim should be to enable the Chair and NEDs to know at a high level, what is going on in the organisation and to provide the basis for effective oversight and sound decision making. Executives need to do this, without crushing the Board with masses of information which does not require the Board's attention, or too much detail on the matters with which the Board should deal.
59. A critically important executive duty is to provide clear messages about unwelcome or bad news which impacts Risk. Paradoxically an executive skill is also to provide reasoned reassurance when the news is bad, but not catastrophically so, in situations where the Executive need more time to work on a problem before its scale can be fully appreciated. To be in a position to make such judgements wisely, Executives need to be as fully briefed and engaged as possible with the available and emerging information. A superficial or distant engagement will not suffice. When faced with the contents of the Second Sight Review, the CEO gave reassuring messages to the Board, but this was not a prelude to gaining more or deeper knowledge. When in the Wolstenholme Case 2004, there was an email headed *Damage to reputation of the PO and potential future financial losses if PO loses court case relating to reliability of*

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<sup>5</sup> Report 1 references to Section 8. 5, Communications (EXPG0000006).

*Horizon accounting data....* (POL00158493) it should not have passed without note or action to seek to understand its significance.

60. To play their parts in a delicate dance which results in the executive deciding what and when is communicated to the Board, the Chair and NEDs need to be clear they really do want no bad surprises, and to demonstrate they will be open to hearing bad news, and that if time allows, they will not necessarily jump to conclusions and actions, without careful consideration with the Executive. At the same time, executives must understand that sometimes urgent action has to be taken, even without better information, because the risks in delay are so great.
  
61. Factors which may be found to influence an executive's individual or team inclination to clearly communicate information on key risks to the Board, include:
  - a. Their own understanding of information they possess;
  - b. Whether they see that information as embodying significant risk, which may, for example, impact:
    - i. the organisation's reputation,
    - ii. the achievement of the organisation's strategic goals;
  - c. Their expectation of the reaction and action which will follow if they inform the Board:
    - i. Is the risk likely to be mitigated? What will this mean?
    - ii. Will they get a 'fair hearing',
    - iii. Will they be sidelined or ignored or blamed or criticised or thanked or given lots more work and stress?
    - iv. Will they feel supported by their CEO and/or colleagues in the Executive team?
  - d. Their courage and conscience, which may reflect factors above and may also be influenced by:
    - i. Their understanding of the risks posed for them as individuals,
    - ii. Their own liability in respect of different courses of action,
    - iii. Their own reputation and prospects.

### *B.2.3.1 Evidence*

62. The Inquiry has heard that there were failings by both the Executive and the Board in their giving and receiving of information, including perceived bad news.
63. The Wolstenholme Case 2004 illustrates an Executive who did not think to brief the board on the discovery of highly relevant information on faults in the Horizon system, nor on its consequences in the civil courts.
64. The Second Sight Case 2013 illustrates that when the Executive put information before the Board, they did not do so in a succinctly summarised way, which highlighted key matters of significant and interactive risk in:
  - a. POL Investigation and prosecution policy and practice;
  - b. POL culture with a deeply embedded distance and distrust of SPMs; and
  - c. POL's defensive approach to criticisms of the Horizon system.
65. The Simon Clarke Advice Case 2013 illustrates an Executive who did not share important information contained in that Advice, in a comprehensive and clear way within the Executive or to the Board.

### *B.2.3.2 Conclusions*

66. The identification of, or change in, a major risk, should quickly lead to a communication to the Board about the risk, ideally accompanied by proposals for Board discussion and decision about how it will be tackled including an outline programme of work which would enable ongoing Board oversight. We have seen no evidence this was done in any of the three cases, as information was surfacing about major risks arising from POL past and current investigations and prosecutions.
67. The Executives did not do this either before or at the Board meeting on 16 July 2013; or on receipt of the Simon Clarke Advice in 2013 or in 2004 when Mrs Wolstenholme

brought a counter-claim against the Post Office for £180,000 and an expert, Jason Coyne, found that Horizon had been defective. The NEDs in 2013 did not detect the clues hidden in plain sight in front of them and kept their attention on criticisms of executive management, their concern to control costs and to control the narrative. They did not ask open and searching questions which might have led them to their own conclusions on major risks.

68. Relevant information, in each of our three cases, was neither offered nor elicited in ways which in our view would have represented effective communication between the Executives and the Board before or at the meeting on 16 July 2013, or on receipt of the Simon Clarke Advice 2013 or receipt of expert opinion about the use of Horizon data in the Wolstenholme Case 2004.

#### B.2.4 Expected experience, development and competence of the Board and its members<sup>6</sup>

69. Good governance is predicated on systems for appointing, supporting, developing and, if necessary, removing members of the Board. Considerations should cover collective as well as individual competence and capability. Individuals may have particular strengths and weaknesses which when taken together mean that the Board as a whole can function effectively, both in steady state and when crises arise.
70. The Role of the NED can be very important in bringing an independent perspective to Board discussions, providing effective challenge to the executive's perspective on risk, and questioning whether the Board's current focus and priorities should be adjusted.
71. In a well-functioning Board, the Chair, often in discussion with the Senior Independent Director will take the lead on Board composition, development and succession.

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<sup>6</sup> Report 1 references to Sections 2.2.4 (o), 2.2.17(d), 2.2.27 in Board accountabilities; Section 2.2.30 Senior Independent Director; Section 8.4.25 Board evaluation (EXPG0000006).

#### *B.2.4.1 Evidence*

72. In 2001, POL ownership passed from the Post Office Authority to the Group which became RMG. Initially the POL Executive was managed as a subsidiary of RMG and had no experience of direct governance by a Board. Allan Leighton, the Chair of RMG, became, coincidentally with his RMG appointment, the first POL Chair in 2002. RMG appointed Sir Michael Hodgkinson as the first independent POL Chair in 2003 and made subsequent NED appointments, gradually increasing the proportion of NEDs on the Board. With separation from RMG in 2012, the POL Board assumed the responsibility for the nomination of NEDs to be approved by ShEx acting for the Government as the sole shareholder.<sup>7</sup>
73. The Inquiry has heard that the NEDs who were successively appointed to the POL Board were selected for their expertise in the management of commercial organisations and governance by corporate boards. The Inquiry has heard that they felt a prime responsibility for enabling POL to become a commercially viable company.
74. The POL Board which emerged to govern the newly independent POL had an Executive whose members had limited or no experience of working at Board level in commercial corporations and NEDs with little or no experience of working in companies wholly owned by the government, with strategic goals in public policy as well as commercial viability.
75. In preparation for separation from RMG, a new POL chair, Alice Perkins, was appointed in 2011. She was highly experienced in Government as a senior civil servant, coaching others in building good Board and executive relations, and as a NED but had little experience of chairing a corporate board.
76. Paula Vennells appointed as POL CEO in 2011 had joined POL as Group Network Director in 2007 from a managerial career in retail. She had very limited experience of working with corporate boards.

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<sup>7</sup> Report 1, Annex B provides a chronology of Ownership and Governance of the Post Office Business 1999-2020 (EXPG0000006).

77. In her oral evidence Alice Perkins said that one of her key tasks was to develop a fully functioning Board with a full complement of NED appointments. The Inquiry has heard that at each transition towards full Board governance, the new incumbent to the Chair commented on the size of the challenge facing them, and the inadequacies of their inherited governance structures for the task in hand.
78. It is not clear to us what steps were taken in Board induction and Board and Executive development to address these circumstances.
79. We have seen little evidence that the NED induction covered the particular circumstances of POL: namely an independent business which was i) wholly owned by the government and expected to be as effective as a commercial company as possible, ii) expected to fulfil policy goals in public service provision, and iii) where the CEO and some members of the executive did not themselves have much commercial or corporate Board experience.
80. We have not heard details of specific development or support programmes for individuals or the Board and its committees. We have heard that individual access was provided to generic development programmes, e.g. for NEDs in any organisation, but we have not heard about programmes designed to develop individual and collective skills and knowledge to support good governance in the Post Office for the CEO, Senior Executives or the NEDs.
81. The Inquiry heard from some NEDs that their induction did not include mention of POL investigations and prosecution policies and practices or problems with the Horizon system.
82. The Second Sight Case 2013 describes strained relations between the Executive and Non-executives over the handling of the Second Sight Interim Report. In our view, these may have contributed to keeping problems which should have had the full attention of the Board beneath the surface. We do not know if there were concerted efforts for training and development to address these tensions.

#### *B.2.4.2 Conclusion*

83. In our view, the extent of the challenge inherent in building a governance structure for an independent business, which was wholly owned by the government, was not always fully appreciated by the Board or the shareholder. Whilst the Inquiry has seen evidence about the building of the Board, it is not clear to us what was actually done to mitigate the risks of operating with nascent governance structures.
84. Looking at Board composition, Boards are encouraged to ensure they have a range of relevant experience and expertise. Given the position of POL as it became independent, it has been suggested that it may have been helpful if, in making NED appointments, they had found someone experienced in the management and oversight of complex technology programmes, and possibly an individual familiar with criminal prosecutions.
85. However, in our view, an appointment of a NED with a general background in technology driven change, or the law, would not have guaranteed specific specialist input of the sort the Board needed from time to time. NEDs necessarily have a broad remit, which should not in our view be constrained by being specifically appointed as ‘our expert on subject X’. Furthermore, expertise in one part of a huge and fast moving knowledge domain does not necessarily translate into conjunct specialist areas, which may be important at other times.
86. It is, in our experience, normal for Boards to consider how they might fill particular gaps in specialist knowledge by commissioning expert specialist help who will report directly to the Board rather than to the business through the Executive.
87. Over the years, POL Executive and Board commissioned considerable expert advice, reviews and assurance from a variety of forensic accountants, IT auditors, consultants and legal experts on matters connected to Horizon. They also had, as in the Wolstenholme Case 2004, access to specialist advice commissioned by others. Each of the three cases featured in this report, illustrate in different ways, problems which did not relate to gaining access to specialist advice or commissioning a review, but rather with knowing what to do with the advice or findings when presented with them.

We have seen there were significant problems in being sufficiently clear to everyone involved about the purpose of the external involvement (Simon Clarke Advice Case 2013), how it would be managed (Second Sight Case 2013) and how its results would be discussed and integrated into the executive management of technical, operational and legal matters (Wolstenholme Case 2004). Confusion about, or neglect of, specialist advice arose when the problem which prompted the advice or review to be sought, was not necessarily well defined or well understood by all parties, when the outcomes were not effectively communicated to all parties, when concerted action in light of the findings was not taken, or when apparently contradictory advice was not confronted and discussed.

88. The Inquiry heard from some NEDs that they understood that their role was to support, help to develop and to challenge the Executive.
89. In their oral evidence, NEDs said they were often very challenging to the Executive. The case of handling the Second Sight Interim Report shows the expression of robust critical views. However, to be robust in criticism of management performance, whilst a legitimate NED role, is not the same as NED challenge to secure a deeper examination of the risks facing the organisation (other than those which arise from poor executive performance) or a challenge to test whether the problem or issue as presented by the executive is really the construction of the problem on which Board should focus. In the Second Sight 2013 and Simon Clarke Advice 2013 cases, we saw little evidence of challenge in the latter sense.
90. We have not seen evidence that sufficient thought was given to the development and operation of a unitary board in the circumstances in which POL ownership changed several times and problems with Horizon, prosecutions and culture were surfacing in many places, but not in the Board.

#### B.2.5 A Board culture supportive of effective discussion and decision making<sup>8</sup>

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<sup>8</sup> Report 1 references to Sections 8.4.26 - 8.4.28, the culture of the Boardroom (EXPG0000006).

91. A prevailing culture of attitudes, beliefs and expected behaviours can facilitate or inhibit participants' willingness to share critical information which is necessary to effective discussion and decision.
92. Culture emerges by default if it is not expressly addressed. Even if addressed, then there is no guarantee it can be managed in particular ways if deeply embedded attitudes and beliefs go unchallenged.

#### *B.2.5.1 Evidence*

93. Our analysis of the Board's handling of the Update on Horizon, 16 July 2013, illustrates problems with the conduct and culture of the Board. The lack of executive summaries of relevant papers, the absence of the key executive with responsibility for the areas under scrutiny, the NEDs' irritation with the executive's management of Second Sight apparently diverting them from focussing on the findings of Second Sight's work, the Chair's role in letting the NEDs' criticisms dominate the discussion, all contributed to a situation in which the Board did not focus its gaze on fundamental questions about POL prosecutions, investigations and attitudes to SPMs.
94. The ARC on 19 November 2013 (Simon Clarke Advice Case 2013) provides a further example of an unusual discussion when, according to the minutes, the CEO in mid-discussion of the item, reinterprets or possibly reverses the recommendations of her Executive, as proposed by her General Counsel (GC). She does this, as she hears that the NEDs do not agree with the recommendation to cease all private prosecutions by POL.
95. It is entirely legitimate for NEDs to have a different view to the Executive, but one would expect a considered view of the pros and cons of the recommendation, set in a discussion of the fundamental issues at stake, rather than a quick change of direction. It appears from the minutes that the NEDs were thinking of costs and deterrence, whereas the GC was possibly thinking of the flaws in POL prosecutions practice, of which they, but not the NEDs, was fully aware, not least because he knew the Simon Clarke Advice. This suggests that participants were not making decisions on the basis of a shared understanding of the full and bigger picture. Rather than explaining the

issues more fully (which in this case might have actually led to a discussion of the Simon Clarke Advice) the item is drawn to an end and a critical decision significantly delayed until February 2014.

#### *B.2.5.2 Conclusions*

96. We have seen how POL's governance structures were still developing in 2013. The executives were inexperienced in working with NEDs and running an independent company. At the time of the earlier Wolstenholme Case 2004, POL was still a subsidiary of the parent RMG and had only 1 year of experience of working with a Non-Executive chair. The first NED to join the chair was only appointed in that year. The Inquiry has heard that NEDs appointed at different times were consistent in their views that their main role was to instil commercial disciplines to improve performance.
97. Our analysis of the Second Sight Case 2013 and Simon Clarke Advice Case 2013, illustrates situations where the culture and conduct of the Board did not encourage the Board in effective prioritisation, discussion and decision making about what POL should do with regard to past prosecutions and future prosecutions policy and practice.

#### B.2.6 Policy and practice for handling conflicts of interest<sup>9</sup>

98. It is a normal part of life in and around any organisation that there will be potential conflicts of interest. Interests may be personal to oneself, or to others with whom one has personal relationships (e.g. spouse, siblings, children, close friends), or arise from contractual relationships. They may be connected to career, organisational position, (e.g. as a line manager or subordinate), financial gain or reputation. They may arise in specific circumstances, e.g. making appointment or promotion decisions, or they may be embedded in organisational or contractual arrangements.
99. Good governance and management depend on there being clearly understood policies and customs to ensure declaration, registration, acknowledgement and regular review

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<sup>9</sup> Report 1 references to Sections 8.2.9, 8.2.10 Conflicts of Interest (EXPG0000006).

of potential conflicts, as well as guidance of how they will be handled. The responsibility is always with the person who could be said to be conflicted to declare it. Where conflicts arise in executive and management spheres, the CEO has ultimate responsibility for dealing with them and being alert in spotting them, if they are not declared. Where they arise at Board level, the ultimate responsibility lies with the Chair.

*B.2.6.1 Evidence*

100. The Second Sight 2013 and Simon Clarke Advice 2013 cases each revealed issues of potential conflicts of interest.
101. Two of these conflicts were inherent in the structural arrangement in which the GC in RMG Group, and then after separation in 2012, Susan Crighton as POL Legal and Compliance Director (and from July 2013 as General Counsel), had line responsibility for the legal team, which in turn, had line responsibility for POL prosecutions. When Mike Young, POL COO left in 2012, Susan Crighton was assigned responsibility for the Security Team with responsibility for investigations (WITN00220100 p. 6-8).
102. The discussion of the Second Sight Interim Report and Simon Clarke Advice raised criticisms of POL investigations and prosecutions practices, which implied they could open the business to claims of wrongful prosecution.
103. The GCs' line responsibility for prosecutions was also in potential conflict with their executive responsibility for the management of Second Sight, the continuation of the work of Second Sight through the Working Party, and in the specific request from the chair in the Board meeting of 16 July 2013 that the GC conduct a *'post mortem to report to the ARC, explaining how we awarded and managed the (Second Sight) contract'*.
104. In the Wolstenholme Case 2004 there was the added complication of potential conflicts between the parent RMG and POL about who held the ultimately responsibility for oversight.

105. A third conflict of interest concerns the involvement of Cartwright King, who were instructed to undertake the Sift Review of disclosures in respect of historic prosecutions in some of which they had themselves been key players. It seems to us they were thus inquiring into their own work. The Inquiry has heard that steps were taken to manage this conflict (First Witness Statement of Susan Crichton, WITN00220100) in that the GC instructed Bond Dickinson, another law firm, often retained by POL, to set up a conference with a suitable KC to advise on the adequacy of the process by Cartwright King to ensure the Sift Review process was effective. This resulted in the instruction to Brian Altman KC *'to review, and advise POL in writing... on (a) its strategy and process for reviewing past and current criminal prosecutions in light of second Sight's Interim Report of 8 July 2013 and/or on the role of Dr Gareth Jenkins (sic) and his impact on any possible appeals'* (POL00006581).
106. In the event, notwithstanding Brian Altman KC's knowledge and agreement that Gareth Jenkins was a tainted witness (POL00006581, p 6, paragraph (x)) and his knowledge therefore, that prosecutions had in the past been unsafe, it seems neither he nor the GC brought this matter of the tainted witness to the attention of the Board in a way in which they fully understood its importance.
107. In this case, POL had sought to manage this conflict of interest by bringing in a third party to undertake the Sift Review, but had not managed the process in a way which brought transparency to POL and for the board.

#### *B.2.6.1 Conclusion*

108. In each of these circumstances, it would be appropriate for the CEO and her executive colleagues to consider the acceptability and mitigation of these conflicts. The ones embedded in current executive structural arrangements should in our view have been dealt with by altering the structure. Those which had bearing on the operation of the Board should have been addressed by the Chair. We have seen an attempt was made to handle the third conflict and give comfort to the Board about the Sift Review, but in the event it did not bring transparency for the Board.

### **B.3 Executive management and organisation**

#### **B.3.1 Structures and relationships<sup>10</sup>**

109. The CEO is simultaneously a member of the Board, the head of the Executive team and the person ultimately charged with running the company. To recap on previous sections which have dealt with accountability, the CEO's accountabilities include *inter alia*: bringing forward strategic proposals; providing operational leadership, management and oversight of all functions, departments and delegations; and ensuring an organisation structure in which all employees know to whom they are accountable, and which is fit for purpose in that it reflects strategy, priorities and risks, so that appropriate operational oversight and direct management is secured and maintained.
110. In determining what is an appropriate structure for the circumstances of any company, attention needs to be paid to the way the structure differentiates between functions and levels and the way it ensures integration between functions and levels.
111. The CEO plays a vital part in securing the necessary differentiation and integration by leading an effective Executive team where each member is clear about their individual responsibilities for their part of the company and at the same time shares a sense of collective responsibility covering all aspects of the business. To create this team is both the responsibility of the CEO and in the CEO's best interests of being effective. In the absence of what one might call this team spirit or commitment, it is very difficult for the CEO and through the CEO, the Board, to get a clear view on complex problems which lie in the intersections between executive roles and functions.

##### *B.3.1.1 Evidence*

112. The Inquiry has heard evidence that POL Senior Executives appeared to operate in functional silos (First Witness Statement of Simon Clarke, WITN08130100, p 13, paragraph 34). This seems to us to be particularly apparent in respect of 'technology' and 'legal'. It is as if they are in different 'black boxes' which non experts cannot access. If such a perspective prevails, senior colleagues may be inclined to believe

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<sup>10</sup> Report 1 references to Section 2.4 The role of the executive (EXPG0000006).

that there are aspects of the business which are completely outside their executive responsibility, and thus nothing to do with them.

113. Functional divisions may also inhibit the sharing of expert advice which, whilst highly relevant to the business as a whole, was commissioned by, and stayed within, the function. The Inquiry has heard of several examples, where, like the Simon Clarke Advice, specialist third party legal advisors were commissioned to report to the GC, with whom their advice stayed and was not shared with the CEO or the wider executive team.
114. The situation of functional silos in POL in 2013 had historical as well as cultural roots as the functions of technology and legal (which included prosecutions and investigations) had until 2012 been centrally managed by, and the responsibility of, RMG. Prior to separation they had not ultimately been a POL executive responsibility. Such direct management from RMG was the situation in 2004 (Wolstenholme Case 2004).
115. The case studies suggest there were also hierarchical blocks creating inhibitions in prompt escalation and full disclosure of information upwards in the hierarchy. For example, as the Second Sight interim report revealed, the existence of ‘bugs’ in Horizon appears to have been known in the organisation some considerable time before they became apparent to some senior executives. In the Wolstenholme Case 2004 the independent expert, Jason Coyne, a jointly instructed single expert, produced a report which found that Horizon was defective. His report was not read by all those who could have accessed it and was not escalated by others who had read it. The main features of POL’s investigations and prosecutions policy and practice, which represented a big risk for POL, and could be seen in the Second Sight Interim Report, were not widely known in other parts and levels of the organisation and did not appear to reach into the consciousness of the Board.

#### *B.3.1.2 Conclusions*

116. The case studies featured in this report suggest to us a number of obstacles to effective executive teamworking and collective accountability.

117. It is the CEO's responsibility to make appointments to senior executive positions of individuals who have the experience and skills to enable the CEO to delegate responsibility for particular areas of the business. However, the CEO cannot absolve themselves from responsibility on the basis that they have delegated to others, or, that they are not an expert in any field. They have a responsibility to create relationships with their executive colleagues so that whilst not an expert in every field, they can rely on, and invite, their colleagues to keep them informed of major matters. This is especially important if the colleague is not a Board member or is not regularly in attendance at the Board.
118. In situations where the CEO feels they lack sufficient knowledge or information to grasp the significance of what they are being told, they should ensure they have sufficient specialist advice to hand, either in their own team or by seeking additional expert help, to be able to fulfil their responsibilities to lead the executive in running the business.
119. At the same time as paying regard to the capacity and competence of individual colleagues, the CEO needs to create and sustain an effective team of senior executives. Whilst individually responsible for particular areas, these senior colleagues also need to work as a team: sharing information, engaging in discussion and decision making which is founded not only on their individual expertise and contribution, but also on their willingness and capacity to understand the business as a whole.
120. We found very little evidence that the group of senior executives in POL felt they were working as a team in any of the three cases featured in this report.
121. Structures are made a living reality through relationships. Team members share a responsibility for creating healthy relationships which enable listening and learning from each other, constructive disagreement, well-argued challenges and opposition and collective interrogative enquiry and problem solving in ways which take account of the impact of different personalities and portfolios. The CEO carries particular responsibility for being aware of the dynamics of their senior team, and in seeking to develop a team ethos founded on common interest and commitment to the business.

122. The CEO's responsibility to represent their executive functions at Board level is especially important in areas where the functional head is neither a member of the board nor regularly in attendance as was the case for IT and Legal in POL.
123. The Second Sight 2013 and Simon Clarke Advice 2013 cases suggest a strained relationship between CEO and the GC, as well as between the Chair and the GC.
124. In our view the problems and dysfunctions in the way the CEO operated with some of their Senior Executive colleagues, and the apparent lack of an effective executive team taking collective responsibility, which were revealed in the Second Sight 2013 and Simon Clarke Advice 2013 cases are a reflection of the compound impact of strained relationships, structural silos, a CEO who did not see her role as needing to be closely in touch with all areas of the business and the fact that the GC was not a member of the Board. Neither the structures nor the relationships served POL well.

### B.3.2 Performance and capability<sup>11</sup>

125. In our experience executive teams under stress can get locked into a cycle of 'putting out fires as they spot them', moving from one problem to another, without anyone encouraging themselves to ask if they have the whole picture, or if the picture they have, whether partial or whole, is really the picture they should be examining. It is precisely at this point that great benefit can be derived from an effective Board in which NEDs are asking higher-level questions and challenging the proposals of the executive in a constructive way.

#### *B.3.2.1 Evidence*

126. We saw in the case studies that whilst the NEDs were challenging in their criticisms, they were interacting with the Executive on specific detail rather than the bigger picture.

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<sup>11</sup> Report 1 references to Paragraphs 2.2.17e, 2.2.19 Chair's role in CEO performance appraisal and appointment; Paragraphs 8.4.21-28 The culture of the Boardroom (EXPG0000006).

127. The Inquiry has heard when ShEx conducted its Annual Review of the PO in January 2014 (UKGI00042089) the subject of the suitability of the CEO to continue to lead the Post Office was a significant item. The CEO is appointed by ShEx, on behalf of Government, with close involvement of the Chair and the Board. Concerns included being unable ‘to work with personalities that provide robust challenge to her’ and failure to deliver the plan. It was noted that her performance as CEO ‘had been questioned by the POL Chair and members of the Board’. A confidential report from the Risk and Audit committee (UKGI00042677) followed which considered options in the face of itemised concerns and agreed actions, including to discuss ShEx’s concerns with POL Chair. The CEO remained in her role.

#### *B.3.2.2 Conclusions*

128. In our experience, it is the role of the Board to challenge and support the executive unless and until there is consensus amongst the NEDs (or a NED subset of at least 2 of the Chair, SID and committee chairs) that there are sufficient concerns about Executive performance to conclude that there should be a change at the top.
129. In our experience, boards and shareholders can find themselves at a pivot point between continued support and time to plan for executive exit. One cannot in our view sustain a long period of ‘half support’ or ‘half exit’. Having got to such a point it would be usual to follow through on the expressed concerns with a view to clearly demonstrated improvement, or to put in place succession plans with discussion about an exit.

#### B.3.3 Organisational culture<sup>12</sup>

130. In Report 1 for the Inquiry (EXPG0000006), we described culture as the attitudes, values and beliefs, which are experienced in the company. In other words, the company ethos which is revealed in the way the company treats all its workforce and stakeholders. It is hard to change. It is by no means unusual for strong damaging

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<sup>12</sup> Report 1 references to Section 8.4, Culture (EXPG0000006).

beliefs and attitudes, a corrosive ethos, to persist unless seriously and systematically challenged. Determination to effect cultural change requires that the culture is seen by the board and one hopes, at least in time following direction from the board, the Executive, as seriously damaging to the company. Only then can culture be systematically addressed through changes in structures, policies and practices as well as in addressing apparent indifference, or even violations of core human values, commonly used language and exhibited behaviour in everyday life in the organisation.

131. In our experience in best practice organisations the Board would understand what the company culture was and if they felt it to be damaging would maintain a focus on what the Executive was actually doing to comprehend and create the changes needed. This would include ensuring they had sight of employee and stakeholder perceptions and experiences and regular reports about what was being done by way of workforce strategy and employee engagement. In the particular case of POL this would extend crucially to understanding the contractual and managerial relationships through which SPMs were engaged.

#### *B.3.3.1 Evidence*

132. The Inquiry has heard general descriptions of POL culture in terms of it being ‘defensive’, certain of its knowledge and arrogant. For example:
- a. *‘our culture, self-absorbed and defensive, stopped us from dealing with Postmasters in a straightforward and acceptable way’* (Oral evidence of Alisdair Cameron, INQ00001149, p 15);
  - b. *‘culture of the Post Office was not good, particularly at the beginning. It was very ‘Head Office is God and everyone else is not good’... It was arrogant. There was a blame and defensive culture.’* (Oral evidence of Neil McCausland, INQ00001183, p 161 - 162); and

- c. *'They (people in POL with whom Second Sight was working to complete spot reviews)<sup>13</sup> 'are still -understandably I suppose-incredibly defensive and nobody-at the levels producing the responses-is ready to give an inch. They probably fear it will be career death to concede any failings whatsoever.'* (JARB0000053)<sup>14</sup>
133. As information about problems of allegations of wrongful prosecutions emerged, it seems to us that it was interpreted in a framework set by four assumptions, which were deeply entrenched in POL culture:
- a. The Horizon technology is robust;
  - b. POL has a well-established practice in conducting investigations and prosecutions, and it usually results in convictions;
  - c. Financial shortfalls are caused by human wrongdoing *'subbies with their hands in the till'*<sup>15</sup> NOT by irregular failures in the system; and
  - d. POL is guardian of the public's money, it must seek to deter potential culprits and recover money from culprits.
134. The only change to this narrative which the CEO took from the Second Sight Interim Report was an acknowledgment that financial shortfalls may also be explained by a lack of support and training to help SPMs understand and use Horizon as intended. It was still a problem with SPMs, but it was a problem of their competence, not their honesty. The CEO promises a major programme to rectify this 'cultural issue'. Whilst there was a programme to address these so-called 'cultural issues'; there was no programme to address the underlying culture.

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<sup>13</sup> The process of spot reviews is explained in the Second Sight Interim Report, which is discussed in detail in the Second Sight Case 2013.

<sup>14</sup> This is an excerpt from an email, 12 June 2013, from Ron Warmington (Second Sight) to James Arbuthnot MP.

<sup>15</sup> POL00158368, email from Alan Cook to Mary Fagan dated 15 October 2009.

135. So strong was the perception that the key problem was the integrity and competence of SPMs and not, the integrity and robustness of the technology, that the Second Sight Interim Report appears to have been judged by the CEO on the basis of whether it found fault with the Horizon system. The Executive took comfort; they felt assured that the technology was sound and became ever stronger in its defence.
136. In our view, the strength of the culture described above, might go some way to explain how it was that the POL Executive consistently appeared to define the wrong problem and/or asked the wrong question, making it easier for the board to do nothing systematically and sustainably to challenge these assumptions and the company's ethos.
137. Our analysis of the Second Sight Interim Report and the Horizon Update paper for the Board of 16 July 2013 suggests they contained enough information and opinion for the Board to challenge all four assumptions, and to countenance that the contrary views of SPMs and their champions in the media and Westminster, may actually be right.

#### *B.3.3.2 Conclusions*

138. Horizon represented a huge investment and a huge change in operations. By its scale and nature, it inevitably posed risks to business continuity, financial performance, employee relations and reputation. In our view, if only from popular public discourse about other large-scale system change in public services, people involved with commissioning and roll-out of Horizon in its various guises would have been likely to countenance that serious problems may arise during its commissioning and operation, and that if problems arose, they would likely impact SPMs.
139. By any normal analysis of major systems change,<sup>16</sup> SPMs were very important end-users of the system. They were in the front line of customer public service. As such, it would have been normal, even before any problems emerged, to create ways to seek,

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<sup>16</sup> Report 1 references to Section 5.3.4 & following paragraphs on culture, leadership and the reality of project management (EXP0000006).

listen, learn from and follow up on SPM's views and experience in order to understand the system's impact on the delivery of the Post Office mission. In our experience, the imperative to seek and listen to SPMs should have been strengthened as reports of problems in the operation of Horizon in sub-post-offices became known.

140. However, it seems to us that the culture of POL did not encourage listening or learning from SPMs. The nature of their contract with POL and their experience of POL investigation and audit teams (both noted as issues in the Second Sight Interim Report) seem to us to be part of the company ethos in which SPMs were taken for granted and seen as insignificant. For example in oral evidence to the Inquiry, Patrick Bourke, Program Director for the Mediation Scheme (Oral evidence of Patrick Bourke, INQ00001147, p 17 - 19) said he had felt that the POL mission and reputation should be protected against *'the tiny minority making allegations, while deserving of respect and due process, cannot be allowed to pollute our public service mission'*.
141. The Second Sight Interim Report was an opportunity for the Board to see that it was important to hear and listen to the SPMs' experiences of working in POL and with Horizon. Their voices remained unheard.
142. Values are at the core of culture. It seems to us that there was a failure in POL's values. People who were proud to work for the Post Office, because it was a public service, oversaw processes that failed to act with any genuine sense of justice, were obstructive in their handling of SPMs' complaints and were disproportionate in their treatment of SPMs. This is the culture which can be glimpsed in the Second Sight Interim Report.
143. The list of accountabilities of the CEO to the Board given in Report 1 includes *'Setting and living the culture and values which guide behaviour in the organisation. In this matter, the CEO's role is crucial but not solo'*.<sup>17</sup>
144. In the case of the Board's handling of the Second Sight Interim Report, it is striking that at that time, no member of the Executive or the Board ask out loud: What is the

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<sup>17</sup> Report 1 Section 2.2.31(l) (EXPG0000006),

right thing to do about the SPMs who are suffering so much and are protesting their innocence?

145. So deep were the assumptions embedded in the culture of the organisation, so corrosive was the company ethos that the Board did not call the Executive to account to face up to POL's role in perpetuating the miscarriages of justice which were increasingly evident to others. Failure to uncover and correct the dark spots in the culture is a failure of management and governance.

## **C. Consideration of Mrs Wolstenholme Case by POL Executives 2004**

A Case study to examine and draw conclusions on POL Governance and Management as illustrated in the consideration of Mrs Wolstenholme's case by POL Executives in 2004.

### **C.1 Introduction**

#### **C.1.1 Our Approach**

146. This short case study provides our description, analysis and conclusions on three issues, which we consider are important in evaluating the way the POL Executive handled the evidence relating to Mrs Wolstenholme in 2004.
- a. Issue 1: What should the CEO have done when he received an email relating to Mrs Wolstenholme?
  - b. Issue 2: Relations between POL as a subsidiary and RMG as a parent holding company.
  - c. Issue 3: Culture of the Board.
147. As described in the Introduction to this report, our analysis and conclusions are written with reference our own direct experience of governance in various settings and our expert understanding of generally expected and best practice of the standards of governance, management and leadership in companies such as the Post Office Companies, as set out in Report 1 for the Post Office Horizon IT Inquiry (EXPG0000006).<sup>18</sup> Where we consider we need to amplify the matters discussed in Report 1 in relation to any of our identified issues, we provide additional commentary in the Introduction to the issue.
148. We appreciate the material on which we draw may be subject to different interpretations, and that there may be additional relevant material before the Inquiry, which we have not read.

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<sup>18</sup> Report 1 for the Post Office Horizon IT Inquiry: Expected and best practice of the standards of governance, management and leadership in companies such as the Post Office Companies (EXPG0000006).

149. It is not our intention or instruction to establish matters of fact.

C.1.2 Context of the Case: Consideration of Mrs Wolstenholme Case by POL Executives, 2004

150. Mrs Julie Wolstenholme was a sub-postmistress who ran a branch in Cleveleys, Lancashire. The Post Office pursued her for a £25,000 shortfall in the civil courts. During her case a report by Jason Coyne into her system found Horizon was defective. Her branch had been closed down but she pursued the Post Office for £180k.

**C.2 Issue 1: What should the CEO have done when he received an email relating to Mrs Wolstenholme?**

C.2.1 Introduction

151. The CEO would normally be kept informed about anything which appeared to be an unexpected risk. The CEO would normally make it clear to ExCo members that he would always want to know about significant risks. Movement in any key risks would normally be discussed in 1:1 meetings and in ExCo meetings.
152. On hearing of a significant risk, the CEO would normally raise it directly with the Functional Head or Director of the relevant department in his Executive. Such a discussion would involve questions which might lead to more information being gathered and shared with the CEO. The discussion would also inform the recommendations of the Functional Heads as to the best way to manage the risk. If the risk was not already on the risk register for the function and/or the business it would be considered for inclusion and if of a high enough level, would become a subject for board level discussion, usually through the risk committee.
153. Just being on the board's risk register is no guarantee of maintaining a focus on risk by management in the business and so the Executive should also assure themselves there are systematic ways to discuss risk with their functional management teams. To focus on an issue which may be of great significance to the business, and to sustain that focus requires clear management processes, clarity of responsibilities and roles in

the Executive and in management, and regular conversations which maintain the focus. This requires a degree of management attention aided by systems and processes.

154. When there have been conversations within the Executive which includes new information with a bearing on risk, the CEO would normally consider its seriousness and may bring it to the attention of the Chair and the Board. A coherent risk system would include conversations at Board about the main issues preventing the business from delivering effectively. It would focus on those areas which could strike at the core of POL's capacity to deliver their strategy, including network change, financial, technological, reputation or 'people' issues. It would also help the Executive to keep a 'wider view' of the business and the risks.

#### C.2.2 Evidence

155. In our view, CEO, David Mills should have known about the case of Mrs Wolstenholme because he had received an email on 19 May 2004, from contract manager, Keith Baines which related to the case. The email is entitled '*Action from your visit to the IT Commercial Team meeting*'. David Mills had asked who is instructing the lawyers in the case referred to on the IT risk register with the compelling name:

*'Damage to reputation of the PO and potential future financial losses if PO loses court case relating to reliability of Horizon accounting data at Cleveleys Branch Office'* (POL00158493).

156. From this, it seems to us that within the business there was an awareness of the risks posed to the business and implicitly there was a link between that risk and the safety of SPM prosecutions, albeit that this was a civil case.
157. The Inquiry has heard David Mills did not question whether this major risk sitting on the IT risk register had been raised to the POL Board risk register (Oral evidence of David Mills, INQ00001130, p 54-55).
158. Nor apparently did David Mills raise the IT risk to the POL board in any other way, for example in his 1:1s with Chair Sir Michael Hodgkinson according to his oral evidence '*I never heard any serious concerns about the Horizon integrity raised when*

*I was there at the Board'* (Oral evidence of Sir Michael Hodgkinson, INQ00001128, p 141).

159. Around the same time in July 2004 Acting COO, David Miller was asked by Rod Ismay, for approval to settle with Mrs Wolstenholme who was seeking (albeit did not ultimately receive) £180k from POL. This was escalated to David Miller for approval because Peter Corbett, Finance Director, was on holiday. David Miller, would have known based on the email on 26 July 2004 (POL00142503) that RMG GC's view was that:

*'In the light of the report,<sup>19</sup> which cannot really be challenged, I do not think that POL will be able to prove, even on the balance of probabilities that the losses were the fault of the spm and our agents are still concerned about the lack of evidence for the losses..'* .

160. The Inquiry has heard that it is likely David Miller signed off the approval (Oral evidence of Sir Michael Hodgkinson, INQ00001128, p 145). Rod Ismay who escalated the approval to David Miller reported to the Finance Director Peter Corbett. Apparently neither Peter Corbett nor David Miller, both of whom were POL board members, raised the issue of a significant settlement to Mrs Wolstenholme, with the Board.

### C.2.3 Conclusions

161. In our view the RMG GC and POL CEO must have understood from the exchange about Mrs Wolstenholme's case that the Horizon system posed a risk to the validity of SPM branch accounts and therefore to the safety of prosecutions on Horizon data; yet they did not act.
162. The CEO should have talked immediately to the COO and IT Director about the concerns brought into sharp focus by the risk for £1m on the risk register. Had he talked to the COO in May about the risk it is likely that when the COO was asked to sign off the significant settlement to Mrs Wolstenholme in July he would have brought this to the attention of the CEO, something which he should have done anyway.

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<sup>19</sup> The report is the Coyne Review (WITN00210101), an independent review of Horizon technology which forms part of the case made by Mrs Wolstenholme against POL. David Miller would have been aware of the report had he asked to see it having seen it referenced in the email.

163. It seems to us that ExCo did not pool their piecemeal knowledge of emergent issues and so opportunities to share and create a collective understanding of the risks were lost.
164. The POL Board depended on the Executive to report on Horizon risk yet the risk on the IT risk register for £1m relating to *'Damage to reputation of Post Office and potential future financial losses if PO loses court case relating to reliability of Horizon accounting data at Cleveleys's Branch Office'* (POL00158493) was not escalated to the POL board (Oral evidence of Sir Michael Hodgkinson, INQ00001128, p145 - 147).
165. The independent expert evidence relating to the civil case against Mrs Wolstenholme, the Coyne Report, should have been brought to the attention of the COO when he was asked to approve the settlement if he had not asked for it. It should have been discussed at the Board Risk Committee.
166. Both the £1m risk and the Coyne Report should have been escalated to the POL Chair.
167. If the POL Chair had known about these matters, he should have escalated to the Group Chair or RMG CEO. It seems to us that none of them were told about the case and its settlement, and it seems surprising that the Mrs Wolstenholme case never came to POL Board.
168. Discussion at the POL Board might have led to questions about 'how are we going to handle cases like this? are there going to be more?' It might have had any of these consequences:
- a. raised a red flag about the level of control POL had over its own business risk in handling its own investigations and prosecutions,
  - b. raised the question of the importance for POL having its own GC and addressing issues of potential conflicts of interest built into the structure in which prosecutions was placed.

169. We have reviewed POL board minutes and the meetings of the POL Board at this time (September 2002 to December 2005) and observed that there was always a majority of Executives over NEDs. (POL00021480 – POL00021490). Although there was movement to appoint independent NEDs, they were outnumbered by executives throughout this period. There was therefore a relatively weak base for independent challenge to the Executive way of viewing the business.
170. POL Board was extremely focused on ‘survival’ linked to government funding, new products and growth and did not appear to us to pay attention to the bigger operational picture; they did not interrogate the sources of business risk, and left specialist IT to Fujitsu.
171. The Inquiry has heard that POL’s focus was on the very real possibility of insolvency, the need for assurance on future government funding and Horizon’s ability to support new products.<sup>20</sup> Neither Non-Executives in POL nor, apparently in RMG turned their attention to important aspects of POL business outside these areas.
172. In conclusion, if the CEO had acted differently at this point, then a collective understanding within POL Executive could have been developed. In an ideal world, any one of the checks and balances in the POL governance structure might have worked. The risks could have been made explicit in 1:1s, the risks could have been placed on the board risk register, the risks could have been brought to Risk and Compliance Committee or discussed with the Chair and/or at POL Board. It could well have been raised to the RMG CEO as part of regular 1:1s; his role being pivotal in keeping the main RMG board informed of key things happening in the wider business. None of this happened as far as we can tell.
173. On the matter of board challenge, one way to strengthen challenge to POL executive would have been for executives on the RMG main board to attend POL board. Allan Leighton, Chair of RMG, was POL Chair January 2002 – April 2003 and continued

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<sup>20</sup> Oral evidence of Adam Crozier, INQ00001129, p 112, 125, 188; Oral evidence of Allan Leighton, INQ00001131, p 135 and 143; Oral evidence of David Mills, INQ00001130, p 111; Oral evidence of Sir Michael Hodgkinson, INQ00001128, p 113.

as a NED although was not always in attendance as a NED (Oral evidence of Allan Leighton, INQ00001131).

174. Had the Board extended membership to, or sought specialist independent advice from, someone with a legal background or an understanding of complex systemic change programmes, then material on Horizon prosecutions may have been brought together. This may have resulted in a better informed, and wholistic understanding of the issues. Such a development may also have facilitated more systematic follow up on emerging risks.

### **C.3 Issue 2: Relations between POL as a subsidiary and RMG as the parent holding company**

#### C.3.1 Introduction

175. Where there is a corporate structure of a parent with subsidiary companies, one needs clarity on who is accountable to whom for what. The assumption might be that because the ‘parent’ in this case, RMG, was ultimately responsible for prosecutions, because it was part of a central legal function, RMG would be responsible for risk identification and management in relation to prosecutions which were undertaken in POL, the ‘subsidiary’. However, it would be important to clarify expectations about where responsibility for risk identification and management in POL prosecutions actually lay in order to ensure that risk was well managed.

#### C.3.2 Evidence

176. POL was a wholly owned subsidiary of RMG Holdings, with sizeable operations, 11,600 branches, over 60,000 staff and a major complex change program, with the potential for significant risk to performance and reputation. POL prosecutions and investigations including SPM investigation and prosecutions were conducted in POL, even though the legal function which oversaw their activities was in RMG.
177. Group Audit and Risk Committee discussed security reports and reviewed numbers of investigations and the level of prosecutions for RMG personnel and presumably interrogated the reports if any concerns were identified. We have seen no evidence that this happened for POL at the RMG Board.

178. It appears to us that POL prosecutions were not the subject of report to RMG Board directly or via ARC but should have been. We have heard that in Adam Crozier's view there were cultural barriers which would impede the flow of information from POL to RMG (Oral evidence of Adam Crozier, INQ00001129, p 129-133) but in his view failings of governance were failings of process or people not reporting what they knew or providing relevant information at the right time.
179. We have also heard that the barriers to such escalation were not structural because the Chair '*Mike Hodgkinson sat on the Royal Mail Group [Board] and reported to me, and David Mills exactly the same*' and that they had access to group audit through their Board membership (Oral evidence of Allan Leighton, INQ00001131, p 157-158).
180. We have heard different reasons for why POL operations risk would be kept at arm's length. POL was a separate legal entity to the other RMG subsidiaries. It had its own relationships and team within ShEx and government officials, reflecting government's concern with the really big issues of POL's solvency, ownership and subsidies (Oral evidence of Adam Crozier, INQ00001129, p 182, Oral evidence of Allan Leighton, INQ00001131, p 143). The financial viability of the Post Office effected the solvency of the Royal Mail Group as a whole (Oral evidence of Adam Crozier, INQ00001129, p 125) with insolvency a continuous issue throughout Adam Crozier's tenure as CEO (Oral evidence of Adam Crozier, INQ00001129, p 88). The RMG board and Chief Executive's relationship with POL MD was over the cost and value to the taxpayer of Horizon (Oral evidence of Allan Leighton, INQ00001182, p 46), POL solvency, multi-year contracts, new products and questions of value for money given discomfort with the operating costs of Horizon (Oral evidence of Adam Crozier, INQ00001129, p 112; Oral evidence of David Mills, p.161 and p 170; Oral evidence of Allan Leighton, INQ00001131, p 136; Oral evidence of Alan Cook, INQ00001129, p 44). Horizon itself was seen to be performing well, there was no discomfort with the Horizon system except for the costs (Oral evidence of Alan Cook, INQ00001129, p 44) Technological risk was seen to be with Fujitsu who provided IT support to POL IT.
181. It seems to us that from the viewpoint of RMG, Horizon was seen to be performing well and did not pose a risk; POL was a separate legal entity; the RMG CEO's

relationship with the POL MD was around strategic finance and long-term contracts; technological risk was seen to be with Fujitsu.

182. Whatever the reasons, the structure meant accountability for risk oversight in POL prosecutions was weak. RMG GC who had line responsibility for the legal teams and did not sit on the POL Board, so the POL Board had little visibility of prosecutions. Prosecutions being part of the legal function, remained ultimately a central RMG responsibility.

### C.3.3 Conclusion

183. The way POL related to RMGH (notwithstanding common board membership) added to a situation in which matters concerned with prosecutions went without challenge at the POL Board. It seems to us that by the time POL Chair, Sir Michael Hodgkinson, left in 2007, ownership for reporting to POL Board on prosecutions was not established and processes for monitoring (Horizon risks, prosecutions policies and practices, whistleblowing, SPM feedback) do not appear to us to have been in place.
184. The Board of RMG paid little attention to POL business operations, even though their group functions, for example, legal and HR were responsible for functional management in some areas of POL.
185. The POL Chair should have been told of the IT risk facing POL of £1m. This risk, in our view, should also have been escalated to the RMG Board directly or via the Risk and Audit Committee.
186. The link between Horizon risk and prosecutions risk is very clear in the Wolstenholme case (even though not a criminal case in itself) because of the Coyne Review. This link should have been discussed by both the POL Executive and POL Board and should have raised enough concerns about the inherent risks in conducting prosecutions on the basis of Horizon data, to warrant discussion between the POL Chair and the RMG board directly or via the RMG CEO.

## **C.4 Issue 3: Culture of the Board**

### C.4.1 Introduction

187. The Board and Executive should understand their role in creating culture in the business and in the Boardroom. This includes challenge, curiosity and looking for ‘the bigger picture’. Another dimension of culture is the way Executives become fixed in the way they conceptualise problems. The Executive are working all the time with a set of assumptions and the Board have a responsibility to make sure they are framing the right questions which will help them to identify and manage key risks in their business.
188. The Board at the time of Mrs Wolstenholme’s case was not a full board for the reasons described in Issue 2. If there had been a strong Non-Executive presence who had understood the link between the Coyne Review and the risk of prosecutions (again, even though not a criminal case itself) and asked the Executive to think about the wider risks to the business of Horizon risk, then the outcome could have been quite different.
189. A powerful influence on culture is the way new employees and NEDs experience their induction to the company and begin to learn the company culture, values, policies and procedures. Induction should have contained sufficient material to have encouraged newcomers to ask questions about prosecutions in ExCo or on the Board.

### C.4.2 Evidence

190. The Inquiry has heard this was not the first time ExCo had been told of Horizon prosecutions, or bugs and defects in Horizon. On other occasions before the case of Mrs Wolstenholme, matters of significance relating to Horizon were discussed but either the issues were not picked up or their significance for prosecutions not considered. For example, Ernst & Young sent a letter to COO relating to errors in acceptance testing on 23 August 1999 (POL00028439).

191. The lack of connecting various mentions into a coherent understanding of risk suggests to us that the association between Horizon and prosecutions was just not perceived as a problem or serious risk in either POL or RMG.
192. New members on joining POL Board were not told about the failings of the Horizon system, their possible implications for ongoing prosecutions of SPMs, or the way RMG/POL undertook their own prosecutions. Without this contextual knowledge, there was less likelihood that people would have ‘seen’ failings of the Horizon system or prosecutions as major risk factors.

#### C.4.3 Conclusion

193. There was a lack of focus on prosecutions at POL board, which was in our view a reflection of the embedded POL culture.<sup>21</sup>
194. POL executives failed to conceptualise the operational problem of faults in Horizon as a risk factor in prosecutions. They did not join the dots between the various pieces of information which if connected were telling the Executive that there were problems with Horizon and some of these could be related to serious problems in prosecutions.
195. In our view, it was exacerbated by a lack of challenge to the POL Executive. The governance of POL was in embryonic form, and there appears to have been little serious independent challenge to taken for granted assumptions and to ask: ‘What is the real problem beneath this information we are getting about Horizon?’ and ‘Does it have implications outside the civil context, such as for prosecutions?’.
196. RMG acted as a challenge to POL in some areas, but not in the policies or practices of prosecutions. Had there been greater understanding and interest in POL prosecution policies and practices, and more interrogation of the culture in which they were embedded, it would, in our view, have been less likely that the COO would have failed to escalate the settlement in Mrs Wolstenholme’s case to the Board’s attention.

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<sup>21</sup> The general nature and impact of culture on governance and management is discussed in some detail in the Overview in this report.

197. If the IT risk and the settlement for Mrs Wolstenholme had been escalated to a board which had people with backgrounds in implementing complex and large IT systems, and legal (either as members or as advising specialists), then in our view they would have been more likely to have debated the questions around the case more broadly and might have ‘joined dots’ between bugs in Horizon and the risks to SPMs and ultimately to POL.

## **C.5 Overall Conclusions**

198. It seems to us POL prosecution policies and practices did not have priority for either RMG or POL. Furthermore, there was a lack of clarity about who was really responsible for oversight of prosecutions and the risks therein.
199. The POL board was largely made up of the Executives. Although there were independent NEDs, they were outnumbered by executives. This is not unusual for subsidiary boards, but it put greater responsibility on RMG to provide challenge. However, no members of the RMG board routinely attended POL board.
200. Furthermore, we have not seen any evidence there were independent specialists to advise the POL board in the key areas of technology and legal. Without independent challenge or advice, it seems to us there was little encouragement to Executives to think about the underlying issues in the Mrs Wolstenholme case.
201. The risk on the IT risk register to POL were not elevated to the POL Board. *‘I never heard any serious concerns about the Horizon integrity raised when I was there at the board’* (Oral evidence of Sir Michael Hodgkinson, INQ00001128, p 141) and should have been by the Chief Executive. Executive members including COO and FD should have reported risks of which they were aware to the POL Board. There should have been active management of a POL risk register by the Board and POL Risk Committee.
202. There was a lack of focus on prosecutions at the POL board and the whole risk system seems to us to have lacked a coherent framework for risk identification, evaluation and escalation.

203. An opportunity for generating a collective understanding of the risk Horizon posed to the validity of SPM branch accounts and therefore a consideration of the safety of prosecutions on Horizon data was missed in the Executive and in the Board.
204. We have seen no evidence that the risk in POL prosecutions were escalated to the RMG Board. The POL board might have escalated the IT risk of £1m to the RMG board, directly or through the Risk Register considered by the Audit and Risk Committee.
205. It seems to us that those risks were ultimately the responsibility of the Parent RMG, not simply because RMG was the parent holding company, but also because prosecutions reported to the legal function which in 2004 was still a central function managed by RMG.

## **D. Consideration of the Second Sight Interim Report by the POL Board**

### **July 2013**

A case study to examine and draw conclusions on POL Governance and Management as illustrated by the handling of the Second Sight Interim Report July 2013.

#### **D.1 Introduction**

##### **D.1.1 Our Approach**

206. This case study provides our description, analysis and conclusions about the way POL Board and Executive handled the publication of the Second Sight Interim Report in July 2013.
207. As described in the introduction to this report, our analysis and conclusions are written with reference to our own direct experience of governance in various settings and our expert understanding of generally expected and best practice of the standards of governance, management and leadership in companies such as the Post Office Companies, as set out in Report 1 for the Post Office Horizon IT Inquiry. Where we consider we need to amplify the matters discussed in Report 1 in relation to any of our identified issues, we provide additional commentary in the introduction to the issue.
208. The material for our analysis and conclusions is drawn from our reading of a selection of evidence before the Inquiry, including the Second Sight Interim Report, the Agenda, Board Paper, Minutes, and emails associated with the Board call on 1 July and the Board Meeting on 16 July 2013, and excerpts from some witness statements and transcripts of oral evidence.
209. We appreciate the material on which we draw may be subject to different interpretations, and that there may be additional relevant material before the Inquiry, which we have not read.
210. It is not our intention or instruction to establish matters of fact.
211. Following a brief introduction to the context of the case, we have conducted our analysis in terms of nine issues grouped into four groups.

- a. Priorities and Perceptions of the Board in 2013
  - Issue 1: The priorities of the Board in July 2013
  - Issue 2: Perceptions of the Horizon system, Second Sight, POL prosecution policy and practices and SPMs
- b. Roles played in the weeks before the Board meeting on 16 July 2013
  - Issue 3: The roles of the CEO and her Executive Colleagues
  - Issue 4: The role of the Chair
  - Issue 5: The role of the NEDs
- c. The Contents of the Second Sight Interim Report
  - Issue 6: What could the Board have taken from the contents of the Second Sight Interim Report published on 8 July 2013?
- d. The Board Meeting on 16 July 2013
  - Issue 7: The Board Paper 4: Horizon Update
  - Issue 8: The Quality of the Discussion and Decisions
  - Issue 9: Behaviour on the Board

D.1.2 The context of the case: POL and the work of Second Sight up to publication of the Second Sight Interim Report

212. Second Sight Support Services Ltd ('Second Sight') was appointed by POL in mid-2012 to carry out a review into alleged problems with POL's Horizon IT System. The Inquiry has heard that the appointment was in part a response to increasing pressure from James Arbuthnot MP (now Lord Arbuthnot) and other MPs, persistent critical questions from investigative journalists<sup>22</sup> and ministerial interest. The appointment of Second Sight was handled by the POL Executive with very little board involvement, apart from that of the Chair. The Inquiry has heard that the terms of reference were

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<sup>22</sup> Computer Weekly had been running articles on the story of SPMs and Horizon since May 2009, Private Eye had been running stories since at least 2011. Increasing numbers of MPs were reporting issues with Horizon affecting constituents who were SPMs.

subject to several iterations between the parties and ‘no formal letter of engagement’ was ever signed.

213. Second Sight summarised their appointment in the Second Sight Interim Report (POL00130412) as follows:

*1.1 ...Second Sight Support Services Ltd ('Second Sight') was appointed to carry out a review into alleged problems with POL's 'Horizon' System.*

*1.2. The remit of the Investigation/Inquiry was later defined as: "to consider and to advise on whether there are any systemic issues and/or concerns with the "Horizon" system, including training and support processes, giving evidence and reasons for the conclusions reached".*

*1.3. It was also agreed that Second Sight's report would: "report on the remit and if necessary, will contain recommendations and/or alternative recommendations to Post Office Limited relating to the issues and concerns investigated during the Inquiry."*

214. The Board met via conference call on 1 July 2013 and received their first, very brief account of the work from the POL CEO. They were told of the imminent publication of the Second Sight Interim Report. The Second Sight Interim Report was published on 8 July when it was made available to the Board. The Board received a Horizon Update paper, in light of the Second Sight Interim Report, at their meeting on 16 July 2013.

## **D.2 Priorities and Perceptions of the Board in July 2013**

### D.2.1 Issue 1: The Priorities of the Board in July 2013

#### *D.2.1.1 Introduction*

215. A board's priorities will normally derive from the company's strategy and identified major risks, which will be framed by proposals which are made by the Executive. The Board is not expected simply to adopt Executive proposals. Various responses would be to challenge them, to request further information, to approve or change them. Board members' responsibility is to ensure that the Board is paying attention to a set of priorities which they believe represent the best interests of the company. The priorities are not necessarily listed in any document. They will be reflected in Board discussions

and in the way the Board divides its time and attention, giving greater focus to some issues rather than others.

#### *D.2.1.2 Evidence*

216. The Inquiry has heard from members of the POL Board and Executive that in 2013 their priorities focussed on:
- a. Preserving and bolstering the brand and reputation of the PO;
  - b. Securing government agreement for ongoing funding;
  - c. Securing government support for POL's strategic plan;
  - d. Playing their part in helping RMG prepare for privatisation; and
  - e. Continuing to create POL as an independent business, separate from RMG, in which they had to build standalone Board governance structures and central functions, including the legal and HR functions.

These were the business issues which had the Board's attention. Whereas it seems to us that the Inquiry has heard that issues concerning the Horizon system's role in POL investigations and prosecutions policy and practice and POL's treatment of SPMs did not feature as a priority.

#### *D.2.1.3 Conclusion*

217. In our view the findings of the Second Sight Interim Report contained sufficient information to warrant the Board giving priority to getting a stronger grip on POL's investigations and prosecutions policy and practice, particularly, but not solely, when Horizon data was used. In our view the Board should also have been paying attention to what they were being told by Second Sight about POL's attitudes and approach to SPMs, particularly as it had resonance with what was becoming a familiar refrain from investigative journalists and MPs. We have not seen evidence that either the Executive or the Board saw these issues as priorities.

D.2.2 Issue 2: Perceptions of the Horizon System, Second Sight, POL Prosecution Policy and Practices, and SPMs

*D.2.2.1 Introduction*

218. Governance of particular issues is influenced by prevailing perceptions which reflect, and, over time become built into, taken for granted assumptions. The perceptions and assumptions of the Executive will frame the way information, issues and priorities are presented to the Board. However just as with the Board's view on priorities discussed above, there should be no automatic read across from the Executive to the Board. The Board should be prepared to question what the Executive may not be questioning, especially in the face of contrary evidence. In this section we consider the Executive's prevailing perceptions of the Horizon System, Second Sight, POL prosecution policy and practices and SPMs, and ask if they were challenged by the Board.

*D.2.2.2 Evidence*

219. **Perceptions of The Horizon system.** Investigative journalists in print had raised serious questions about the integrity of the Horizon system<sup>23</sup> and increasing numbers of MPs were joining James Arbuthnot MP in reporting issues with Horizon affecting their constituents.

220. The Inquiry heard that over time, the Executive had instituted various reviews of the system, up to, including and beyond the work of Second Sight. On most occasions the conclusions that people in POL heard were similar: a consistent assertion that the Horizon system was robust, and that the overwhelming majority of transactions were not subject to any problems.

221. In his witness statement (First Witness Statement of David Smith, WITN05460100, p 28), David Smith POL Managing Director, said in 2010 he asked Rod Ismay, Head of Product and Branch Accounting, to conduct a review, prompted by the Board feeling *'uncomfortable that we were saying the Horizon IT system was robust in light of complaints raised and that we wanted him to provide a paper on whether the system was robust or whether there were any issues that should concern us'*. The report

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<sup>23</sup> Computer Weekly had been running articles on the story of SPMs and Horizon since May 2009, Private Eye had been running stories since at least 2011 (POL00338401). Increasing numbers of MPs were reporting issues with Horizon affecting constituents who were SPMs.

concluded *'Horizon is robust, but like any system depends on the quality of entries by the users'*.<sup>24</sup> Such assertions became part of an accepted narrative within POL. Evidence which could have called this narrative into question, for example, the EY audit opinion for the year ending 25 March 2012 (WITN00740124), which identified IT as the second of eight 'Significant Audit and Accounting Issues'<sup>25</sup> and as one of three 'Control Themes and Observations'<sup>26</sup> did not, it seems to us, dent or query the prevailing view.

222. In her introductory briefings on the Second Sight Interim Report to the Board, the POL CEO was reassuring about the integrity and robustness of Horizon. In an email from Mark Davies to Susan Crichton and Hugh Flemington, the draft of the media release is discussed (POL00191274). The draft statement gives one conclusion: *'The report confirms that no systemic problems have been found in relation to the Horizon system but suggests about the post office should examine its support and training processes for sub postmasters'*. There follows a quotation from the CEO which includes: *'The review underlines our cause for confidence in the system'*.
223. The NEDs had earlier been reassured. At the board meeting on 12 January 2012, Les Owen (NED) had asked for assurance that there was no substance to the claims brought by subpostmasters which had featured in Private Eye. In response the minutes report: *'Susan Crichton explained that the subpostmasters were challenging the integrity of the Horizon system. However the system had been audited by RMG internal audit with the reports reviewed by Deloitte [sic]. The audit report was very*

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<sup>24</sup> See for example, POL00026572, the report from Rod Ismay, Head of Product and Branch Accounting, 2010, who conducted *'an objective, internal review of POL's processes and controls around branch accounting.'* which concluded *'Horizon is robust, but like any system depends on the quality of entries by the users...(there are) several improvement opportunities for POL ... They do not undermine POL's assertion regarding the integrity of Horizon..'* In WITN04630100, p 10, Ismay clarifies *'It was a summary of existing conclusions, not a fresh investigation. The conclusions come from internal discussions... including IT....At that time, the belief was that the overwhelming evidence pointed to human error with respect to shortfalls, that there was no independent expert evidence suggesting a serious problem with Horizon and that POL had invested considerably in mitigations including training and support.'*

<sup>25</sup> *'In conjunction with our IT specialists, we have assessed the manage change and logical access IT controls to be ineffective, which was the same conclusion we reached in the prior year.'* (WITN00740124 p 6).

<sup>26</sup> *'Our audit continued to identify continuing IT control weaknesses which, in our view, reflects the continued need for control improvements...'* (WITN00740124, p 8).

*positive. The business has also won every criminal prosecution in which it has used evidence based on the Horizon systems integrity.’ (POL00021503, p 6).*

224. The NEDs accepted the Executive view that Horizon was robust, and largely left it to the Executive to manage what they saw as operational matters.
225. **Perceptions of Second Sight and their work.** It was agreed that Second Sight would proceed on a case review approach which prompted much internal and external discussion and disagreement about the selection of the cases. The main issue was the inclusion of past cases of criminal prosecution which had already been decided in the Courts. In 2012 POL Chair, Alice Perkins considered she was pushing POL to be as inclusive as possible and include all cases, whereas she felt that the ‘business’ wanted to be more restrictive, especially about cases which had been concluded in the courts. Alwen Lyons (CoSec) in an email to Paula Vennells (POL CEO) reported that *‘Alice feels this is the business pushing back unnecessarily and she feels this has happened throughout the process and she is having to keep pushing us!’* (POL00096606).
226. Second Sight’s proposed work promised three important characteristics. It was to be independent of any interested party; it was to be ‘collaborative’ in design between the parties, in particular with close involvement of the SPMs whose cases were being reviewed, as well as with the JFSA, and it was to be paid for and managed by POL. Inevitably these three characteristics created tensions in which Second Sight seems to have been somewhat caught in the middle. It appears to us that the reaction of people in POL was to be irritated and frustrated about the time taken to review a very small number of cases, whereas SPMs felt their concerns and experiences with Horizon were not really being taken seriously. An alternative hypothetical approach would have been for POL to engage fully with the opportunity provided by the three characteristics outlined above to understand the ‘alleged problems with Horizon’ from the SPM’s perspective rooted in their experiences when they discovered unexplained shortfalls. This would have required a suspension of the prevailing perceptions of Horizon (described above) and SPMs (described below), and a strong and collective determination in POL to see the problems through a different, less defensive lens. This could have been the foundation of a fundamental re-evaluation of the approach POL had adopted thus far in the face of the alleged problems.

227. The Inquiry has heard that as publication of the Second Sight Interim Report was approaching, there were concerns within the POL Executive that Second Sight was being overly influenced by the SPMs and their lobby. The POL Executive appeared to fear that the ‘reality’ as POL saw it, would not be fully represented in the report. The draft media statement in response to the publication of the interim report, includes the CEO’s observation that ‘*while we do not accept all of its contents or conclusions, we welcome its publication.*’ (POL00191274).
228. The Inquiry has heard that there was a belief amongst some POL Executives that they must take greater control of the narrative. They engaged the Board in this theme. The only action recorded in the Minutes of the 1 July Board call (POL00021515) was that:
- a. ‘*the Business to challenge Second Sight to ensure changes were made to the report where possible*’; and
  - b. ‘*the Business to prepare their communication to combat any inaccuracies*’.
229. By the time Second Sight produced the Second Sight Interim Report, there was a view in POL that Second Sight were partisan and somewhat inefficient. The Inquiry has heard there was some discussion about the possibility of ceasing to work with Second Sight or close down its work as soon as possible (POL00407582, p 1; INQ00001156, p 118).
230. There was relief and pleasure that one of Second Sight’s preliminary conclusions was that they had discovered ‘*no systemic faults in Horizon*’. Other findings, apart from the need for POL to increase the training and support of SPMs, seem to us to have attracted little attention amongst the Executive. In our view POL Executive should have paid much greater attention to all the information included in the Second Sight Interim Report, and made sure the Board appreciated its potential significance.
231. **Perceptions of POL prosecutions policy and practices.** In the days before the publication of the Second Sight Interim Report the CEO shared some concerns with

senior colleagues and the Board in an email (POL00099121) giving an ‘update on yesterday’s developments with the SS review’. After reporting very constructive telephone conversations with Alan Bates and with James Arbuthnot MP she returned to a previous discussion with James Arbuthnot MP about past criminal cases, an issue which had been a contentious issue from the start of the Second Sight work. She wrote:

*‘One of the main reputational and potentially financial risks arising from the review relates to the possible attempts to reopen past prosecutions based on the findings... We had a stronger exchange on this point. It is not clear that any new evidence has emerged. If it does, then as I pointed out to James, legal routes to appeal already exist. Susan and the legal team are working with our external lawyers to consider whether there are any implications arising from the report for past cases, and we can provide a further update on this work next week’.*

232. On Monday 8 July in a further email with the subject ‘Update on SS review –7 July’ (POL00099121) to the same people the CEO, having mentioned further (positive) conversations with Alan Bates and James Arbuthnot, sounded a note of caution and returned to what she called in her 6 July email ‘*one of the main reputational and potentially financial risks arising from the review*’:

*‘The most significant remaining concern relates to his (JA) continued determination for us to review past prosecutions in light of the findings of the report, which he wants to be explicitly part of the scope of the next stage of the review process. As noted in my update on Saturday, we are already planning to conduct review with our external lawyers of the implications of the report for past prosecutions - something we have a duty to do in any case - but this significantly adds to the pressure and expectations around that process.’*

233. However, neither the minutes of the 1 July Board call nor the 16 July Board meeting includes any mention by the CEO that the Second Sight Interim Report could be read as implying there may be serious consequences which would require a re-evaluation of past and present POL prosecutions policies and practices.

234. The Inquiry has heard that Executives in POL believed it was important to fight to defend their systems. For example, in an email to colleagues (POL00055590), Jarnail Singh, senior lawyer, POL criminal law division gives information about a case which had resulted in a conviction for theft. He relates that the case had seen ‘an

*unprecedented attack on the Horizon system*’ and that *‘through the hard work of everyone... we were able to destroy to the criminal standard of proof (beyond all reasonable doubt) every single suggestion made by the Defence.’* He concludes with the hope this will *‘dissuade other Defendants from jumping on the Horizon bashing bandwagon’*. The defence of Horizon was seen as important to the defence of POL’s reputation to maintain public confidence in the institution, to safeguard public money and to deter potential miscreants from misappropriating public money. Prosecutions were seen as an important part of that defence.

235. It seems to us that NEDs were broadly in agreement with this approach, but their agreement was based on little knowledge of how prosecutions were conducted. The Inquiry has heard that some NEDs were unaware that POL conducted its own prosecutions. It had not been included in their induction and had not been mentioned to them as anything notable or unusual. It seems to us the NEDs thought prosecutions were a normal part of Post Office operations, which need not unduly concern them (Oral evidence of Neil McCausland, INQ00001183, p122, 123; First Witness Statement of Ken McCall, WITN10020100)
236. Two successive GCs, Susan Crichton and Chris Aujard each indicated to the Inquiry and to others contemporaneously that they thought that the POL practice to conduct its own prosecutions, which they had inherited from RMG, should cease and prosecutions should be handed over to the courts through normal CPS channels. But when this was proposed to ARC in November 2013 and February 2014 it did not get support from the Board or the CEO.<sup>27</sup>
237. **Perceptions of SPMs.** The Inquiry has heard evidence that within POL there were perceptions that historically a very small minority of SPMs had each year been found guilty of wrongdoing, and that now the Horizon system was catching them out. The belief in POL that most of those charged, were pleading guilty or were being found guilty, reinforced these perceptions. It seems to us there was nothing in the culture which encouraged anyone in the hierarchy to listen to the concerns and experiences

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<sup>27</sup>

This is further discussed in the Simon Clarke Advice Case 2013.

of SPMs. As far as we know the Board did not enquire into the processes by which SPMs' complaints or views were handled or the outcome of any such review.

#### *D.2.2.3 Conclusions*

238. The dependence of POL prosecutions of SPMs on Horizon data was not articulated as a concern by the Executive or the Board as they approached the Board discussions of the Second Sight Interim Report on 16 July. In our view, so taken were the POL Executive with their sense of mission, and their distrust of Second Sight, that they did not take advantage of having an 'independent' reviewer in their midst who was offering various bits of evidence which could have shaken their firmly held perceptions. Not surprisingly then, they did nothing to alert the Board that serious issues were being raised in the Second Sight Interim Report.
239. In our view POL's defence of its own investigations and prosecutions as a route to safeguarding public money and the timely deterrence of potential wrongdoing as well as punishment of wrong doers, became instantiated into defensiveness in what was becoming perceived as a battle with SPMs. A battle in which they feared that SPMs were becoming increasingly well organised, had the ear of highly influential people, and now, probably in the minds of many in POL, have 'captured' the 'independent reviewers'.
240. In July 2013 there seems to us to be no challenge to the accepted view that any problems with the operations of Horizon lay with people (the training and support for SPMs to work with Horizon effectively, and in a very small number of cases the wrongdoing of SPMs), and did not lay with the technology or the way the Post Office was pursuing SPMs through the criminal and civil courts.
241. It seems to us that the Board accepted the Executive perceptions: Horizon was robust, Second Sight's independence was questionable, POL investigations and prosecutions policies and practices did not warrant urgent investigation and a tiny minority of SPMs were, as before the introduction of Horizon, guilty of misappropriating public funds. The Board did nothing to provide a corrective challenge to the Executive's defensive position.

242. Furthermore, the Horizon system and POL prosecutions were seen as operational matters which should be left to the Executive as part of their responsibility to run the business. The irony is that what the NEDs saw as operational matters contained within them the basis of existential risk. More curiosity and challenge within the Executive team and from the NEDs may have dislodged the blindfold created by perceptions built into taken for granted assumptions.

### **D.3 The Roles played in the weeks before the Board meeting on 16 July 2013**

243. Standards of governance are enacted through the activities of the CEO and Executive and the Chair and NEDs. The following 4 issues deal with the roles played by these key players in the weeks before the Board meeting on 16 July.

#### D.3.1 Issue 3: The Roles of the CEO and her Executive Colleagues<sup>28</sup>

##### *D.3.1.1 Introduction*

244. In 2012 the CEO, in discussion with her executive colleagues and the Chair, had agreed that Second Sight would be commissioned to undertake a review of the Horizon system. In this introduction we set our view of what would normally be expected of a CEO as the executive ultimately responsible for a piece of work like this.
245. A CEO would normally be kept informed of progress by members of her executive team who were more directly responsible for the management of the work. They would normally get such relevant information through a variety of means, including informal conversations, email, text or voice messages and exchanges; in 1:1 meetings; at group ExCo meetings. It would not necessarily feature in any 'formal' paperwork.

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<sup>28</sup> Report 1 paragraphs 2.2.31 and 2.2.32 cover some relevant aspects of the role of the CEO and Executive colleagues (EXPG0000006); supplementary information for this Report is provided in the introduction to this section.

246. A CEO would not normally be surprised by last minute revelations of which they had no knowledge; but if that happened, they would seek urgently to understand the nature and impact of such revelations.
247. The executive member responsible for the work and the CEO would normally each make ‘judgements’ about the content of their communications with each other, depending on perceived risks to the business, their own areas of expertise and/or the extent to which ‘new information’ was presenting surprises in comparison to what the CEO (and other colleagues on whom she depended) expected. The word ‘judgements’ is put in inverted commas as they may be implicit in behaviour and communication, not necessarily explicitly stated. They may simply be seen as a normal part of executive life, in which judgements are being made all the time about what is urgent, important, serious and surprising.
248. Depending on its perceived seriousness and the extent to which it touched other areas of executive responsibility, a CEO would normally ensure that the work was discussed at an ExCo meeting or at least with executives responsible for associated areas. Members of ExCo would normally share their individual views with each other, each giving views based on their experiences and responsibilities. This may be done formally as part of an ExCo meeting or informally in the normal course of ‘executive life’.
249. Developing a sense of individual and collective responsibility, coherence and balance within an executive team is usually seen as crucial to effective and efficient management. Everyone in a Senior Leadership Team needs confidence and competence in their own individual functional and business areas, whilst at the same time being supportive, collaborative and constructively challenging to each other.
250. A CEO plays a vital part in sustaining a sense of collective responsibility which arguably is founded on the CEO’s sense of their own personal responsibility for everything which goes on in their organisation. This sense of ultimate responsibility should extend to all areas even those where the CEO is not personally expert. CEOs cannot distance themselves from their ultimate responsibility for running the business.

251. A CEO would usually become aware of any serious issues in the business through her own insights and those of her team. If there were indications of a major problem, a CEO would normally want to get to a place where she felt confident in the knowledge, she needed to discharge her overall responsibility for running the business.
252. A CEO would make judgements (based on her evaluation of seriousness for the business) about the extent she kept the Chair informed of any developments. Some 'problems' on the CEO's desk, seen as routine aspects of operational management, would never get mentioned. Routine aspects would be at one end of a spectrum which extended to the other end, where things would always be on the Chair/ CEO's agenda (until resolved) because they were seen to be so serious for the Business.
253. If a CEO or Chair decided things were emerging which they wished the Board to know, they would normally discuss whether there needed to be a special communication, whether it became part of the CEO regular updates to the Board and whether it went as an item on the Board agenda.
254. When a Chair decides that a specific item would go onto the Board Agenda, the CEO would normally decide with her executive colleagues, who would write, review and present the report. In some executive teams, but not all, ExCo as a group with the CEO will review all the papers which are to go into the board pack.
255. It would, in our experience, be unusual for a CEO to be unaware or unsupportive or unhappy with the contents of a paper written by one of her colleagues by the time it was presented to the Board.

#### *D.3.1.2 Evidence*

256. We have seen no evidence that the POL CEO discussed the significance and interconnectedness of all the issues raised by the Second Sight Interim Report and their implications for POL investigations and prosecutions, with her executive team as a whole. The evidence we have seen suggests an executive focus on communications and PR.

257. The Inquiry has heard that the CEO and Chair were in frequent contact in the weeks before the publication of the Second Sight Interim Report. Their communications appear to relate largely to the meetings and other exchanges they were each having with external parties, notably MPs. Their focus appears to us to be on communications and PR rather than a discussion of the Second Sight Interim Report's findings as a whole, beyond the much rehearsed headline that no systemic faults were found in Horizon although there were areas for improvement, notably in support and training.
258. The Inquiry has heard that NEDs were unimpressed that the CEO did not arrange to provide the Board with any written or advance information about the Second Sight work before the Board call on 1 July. There was nothing written to accompany the Board call (Oral evidence of Neil McCausland, INQ00001183, p 34; Oral evidence of Susannah Storey, INQ00001184, p 67 - 68).
259. The CEO's introductory remarks on 1 and 16 July about the Second Sight Interim Report are reassuring and partial, selecting those matters which reinforce the 'good news of no systemic faults in Horizon' whilst being largely silent on other matters. The 16 July minutes (POL00021516) record the CEO reporting:
- '...the Second Sight Report had been challenging it had highlighted some positive things as well as improvement opportunities.... praised in Parliament... the proportionality of the tiny number of cases... no systemic issues had been found with the Horizon computer system'.*
260. The 1 July minutes (POL00021515) record the CEO reporting that the Second Sight Interim Report would identify '*areas for improvement*', notably in '*support areas such as training*', and on 16 July (POL00021516) she referred to '*cultural issues which had to be addressed to improve the support we gave to sub-postmasters.*'
261. Neither the Horizon system nor POL prosecutions are reported to the Board as being a problem for POL; and the problems with SPMs are with their need for training and support; not a failure in how POL had historically sought their views or had treated them.

### D.3.1.3 Conclusions

262. How CEOs lead their teams and discharge their responsibilities for running the company is not an exact science. Effective CEOs lead in a variety of ways and styles. With that caveat, our conclusions are based on what we described in Report 1 and the introduction to this section as generally accepted good practice.
263. We would have expected POL's CEO to be well aware of all issues which were covered in the Second Sight Interim Report, in so far as they significantly impact POL. We would expect her to be leading her executive team so that, whilst she delegated key areas of responsibility, she would be nonetheless well aware of the significant views and actions of each of her executive directors, so that she could bring all significant relevant information into her decisions.
264. In dealing with the Second Sight Interim Report, the POL CEO and some of her executive colleagues appear to be disproportionately focussed on communications and PR. Whilst messaging and communication are vital parts of executive responsibility, executive responsibilities in matters covered by the Second Sight Interim Report, extend to many areas; especially Technology, Business Operations, Prosecutions and the Law.
265. We have not seen evidence that the CEO ensured broad collective executive discussions about the findings of the Second Sight Interim Report which included contributions from, or challenges to, all functions and aspects of the business. They are not referenced in the CEO's introduction on 16 July or the email exchanges we have seen. It is as if specialist functions are each in different 'black boxes' which non-experts cannot access and do not feature as part of their shared executive responsibility. The CEO was clear in her oral evidence when she said: *'I was not a legal expert... or an IT expert for that matter'* (Oral evidence of Paula Vennells, INQ00001152, p 146) and *'I can't really comment on the criminal legal side of things. I am not a lawyer'* (Oral evidence of Paula Vennells, INQ00001152, p 128), and *'I am operating in an area of business ie the legal sphere, that I, at the time especially, was very naïve about and didn't understand'* (Oral evidence of Paula Vennells, INQ00001152, p 58).

266. The CEO appears to have left the preparation of the Horizon Update paper to the GC. The Inquiry heard that the GC discussed a draft with the CoSec and made amendments, in the light of that discussion, for example to refer to ‘defects’ rather than ‘bugs’ in the Horizon system (Oral evidence of Susan Crichton, INQ00001134, p 97 - 99). We do not know if the CEO and GC discussed the contents of the paper prior to its inclusion in the Board pack. The Inquiry heard that the CEO felt uncomfortable and ill-equipped when she was suddenly required to present the paper at the Board meeting.
267. This suggests to us an executive team which is fragmented, where a sense of shared collective team responsibility for all aspects of the business is feint; a mindset which has grown within an organisation where functional silos, certainly in Legal and IT, extend from the top to the bottom. This makes it more difficult for material which is held in specialist functions to be brought into general discussions where it may challenge dominant perceptions and assumptions such as those described above about Horizon, prosecutions, and Subpostmasters.
268. We would expect the CEO to keep the Chair and the Board informed of any major emerging problems. In our view the CEO did not ensure that the Board, before the meeting, was fully briefed on important matters, particularly those relating to POL policy and practice on prosecutions, which were flagged by the Second Sight Interim Report: as discussed in Issue 6.<sup>29</sup> It was reasonable that she should flag her immediate concerns about communications. But they were concerning how the story was being told, not about the nature of the story itself.
269. Communications to the NEDs between the Board call on 1 July and their 16 July pre-meet remained focussed on the messaging and PR aspects of the report; and on the Executive’s ‘attempts’ to correct ‘inaccuracies’ in the text. When the NEDs were informed that the Second Sight Interim Report had been published and how they could access it, they were sent an accompanying memo (POL00029651) detailing *‘the remaining aspects of the report which we* (presumably the CEO and other POL

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<sup>29</sup> Issue 6: What could the Board have taken from the contents of the Second Sight Interim Report published on 8 July 2013?

executives) *believe are misleading or factually inaccurate*'. This memo showed that the Executive had done their best to do what the Board had requested a few days previously.

270. It seems to us it would have been far more appropriate to accompany notification to NEDs of the publication of the Second Sight Interim Report with an executive summary of the key points raised in it, rather than list the minute detail of particular inaccuracies which, in our view, did nothing to dent the important messages which could be discerned from the report.
271. In the minutes of 16 July board meeting and elsewhere we have found reference to actions being required or having been taken by 'the business' instead of using names or positions of relevant senior executives. We found this unusual. We understand that in governance terms it is important to keep a distinction between the Executives running the business and the Board's governance responsibilities. In our view such a reference to 'the business' may imply a lack of emphasis on individual and collective responsibilities of the Executive, and the ultimate responsibility of the CEO.

### D.3.2. Issue 4: The Role of the Chair<sup>30</sup>

#### *D.3.2.1 Introduction*

272. A Chair would normally be kept informed by the CEO about anything the CEO knew which appeared to pose unexpected risk to the business, and/or was 'new information' and a surprise compared to what the Chair expected. Depending on her level of expressed interest, a Chair would also have told the CEO how much she wanted to hear about routine progress. A Chair would get information from the CEO through a variety of means, including informal conversations, email, text or voice messages and exchanges and in 1:1 regular meetings. It would not necessarily feature in any 'formal' paperwork.
273. Descriptions of the role of the Chair emphasise the importance of building an open relationship with the CEO which, in facilitating effective communication, will enable

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<sup>30</sup> Report 1 paragraphs 2.2.17 - 2.2.22 (EXPG0000006) covers some relevant aspects of the role of the Chair; supplementary information for this Report is provided in the introduction to this section.

the Chair to make decisions about when, what and how, to share relevant information with the Board. In developing their relationship, both Chairs and CEOs would be aware of the overall governance principle that the CEO runs the business, dealing with operational matters, and the Chair runs the Board with its overarching responsibility for strategy, risk and oversight. In this relationship, Chairs have a special responsibility to encourage CEOs to be knowledgeable and open about major issues and risks, and for CEOs to communicate with Chairs in an open way.

274. A Chair would not normally be surprised by last minute revelations of which she had no knowledge; but if that happened, she would seek urgently to understand the nature and impact of such revelations.
275. A Chair, in discussion with the CoSec, and usually in discussion with the CEO would decide if anything was emerging from new sources of information, as for example, the findings in the Second Sight Interim Report, which should be communicated to the Board. If she believed this to be the case she would consider how best to do it.
276. If a Chair (often through the CEO) wanted to alert the Board to particular developments outside the programme of normal Board meetings and communications, she would normally ask the CEO to brief the Board and to do this either through a routine update to the Board, or if considered sufficiently serious, notify the Board that she wanted the Board to be updated on the particular issue and request a call be set up.
277. A Chair would decide, usually in discussion with the CEO, if any matter should be brought to a board meeting, and if so, the Chair would normally have a view on:
- a. the purpose and expected outcome of the Board discussion which would be expected in the Board;
  - b. who would prepare and present the Paper; and

- c. if the responsible executive/author was not a member of the Board, whether they would be invited to attend, and if so if they would be involved in the presentation and discussion.

278. A Chair's relationship with the GC is an important pillar of governance. For the GC to be able to fulfil their responsibility to provide objective legal advice to the Business and to the Board they need the opportunity, if they consider it necessary, to report to the Board independently of the CEO. And the Board, normally through the Chair, should be able to seek the GC's advice directly. This is arguably more difficult to achieve in situations where the GC does not sit on the Board and is not normally in attendance. Effective governance in this respect depends on a strong relationship between the Chair and the GC, based on mutual trust, respect and capability.

#### *D.3.2.2 Evidence*

279. The Inquiry has heard that in preparation for the publication of the Second Sight Interim Report and the Board meeting of 16 July, the Chair was in regular contact with the CEO. The CEO shared the headline news that Second Sight had found '*no systemic faults in Horizon*', although there was the matter, now dealt with, of a few 'anomalies' or bugs, and the knowledge that there would need to be more support/training of SPMs in using the Horizon system. Subsequent interaction seems to us to have concentrated on the messages and PR which POL would use, in the media and with James Arbuthnot MP and his fellow MPs who were requesting answers to their concerns about potential wrongful prosecutions of SPMs.
280. The Chair was herself involved in meetings and telephone calls with the MPs. The Chair also heard the CEO's fears that Second Sight may perpetuate damaging '*inaccuracies*'.
281. We have seen no evidence of the Chair asking about, or being informed of, any deeper issues concerning the nature of POL prosecution policy and practice or POL approach to SPMs. From the evidence we have seen, the Chair did not request that she or the Board be briefed on these deeper issues, either on the Board call on 1 July or in the Board meeting of 16 July.

282. According to the minutes, the Chair listened as the CEO opened the Board call on 1 July, which had been scheduled to discuss another matter, with a spoken update on the imminent publication of the Second Sight Interim Report. The Inquiry has heard that there was no prior indication to the Board that this matter was to be raised and no brief email giving the headlines to summarise its significance.
283. The Inquiry has heard there were strains in the relationship between the Chair and the GC. Structurally the GC was kept separate from the Board; she was not a member of the Board, and she was not regularly in attendance.

#### *D.3.2.3 Conclusion*

284. How Chairs discharge their governance responsibilities is not an exact science. Effective chairs operate in a variety of ways and styles. With that caveat, our conclusions are based on what we would regard as generally accepted good practice as described in Report 1 and the introduction to this section.
285. In our view the issues of POL policy and practice in investigations and prosecutions; POL attitude to SPMs, and the dents made in the established narrative that ‘Horizon was robust’, were sufficiently flagged in the Second Sight Interim Report for the Chair to see they warranted discussion by the Board.<sup>31</sup> We have seen no evidence that this is what happened.
286. We would have expected the Chair to have interrogated the Second Sight Interim Report to see for herself if there were any issues or problems flagged in the findings beyond those identified by the CEO. Having established, either with or without the CEO’s participation, that there were major issues to be discussed, we would have expected her to give careful consideration to: how she wished the Board to engage with all the findings of the Second Sight Interim Report; and the purpose and expected outcome of the Board discussion.

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<sup>31</sup> What could the Board have taken from the contents of the Second Sight Interim Report published on 8 July 2013? Is discussed under Issue 6. The quality of the discussion at the Board meeting 16 July is discussed under Issue 8.

287. We would have expected the Chair on an administrative level to agree with the CEO and CoSec who would prepare and present the Paper, and if the responsible executive/author was not a member of the Board, whether they would be invited to attend, and if so if they would be involved in the presentation and discussion. Having made those decisions, we would have expected the Chair to ensure they were followed.
288. Knowing that the GC was to be the author and presenter of the Horizon Update Paper, and the source of objective legal advice, we would have expected the Chair to make it a priority that the GC was present at the meeting and that she (the Chair) had been fully briefed by the GC, notwithstanding the apparent strains in their relationship.
289. We have found no evidence that the Chair prepared in this way. Once in the Board meeting, we have found no evidence that she chaired the meeting in such a way as to ensure that the full import of the findings of the Second Sight Interim Report were appreciated and discussed, with decisions on follow up actions agreed.

### D.3.3 Issue 5: The role of the NEDs

#### *D.3.3.1 Introduction*

290. How NEDs discharge their governance responsibilities is not an exact science. Effective NEDs operate in a variety of ways and styles. With that caveat, our conclusions are based on what we would regard as generally accepted good practice as described in Report 1 and the introduction to this section.
291. NEDs have very important roles to bring an independent perspective, relevant experience of other organisations, and specialist knowledge, to the Board. They are heavily, but not wholly, dependent on the CEO and the Executive team being effective in their own areas of executive responsibility and in flagging any concerns to the Chair, and the Chair making their own decisions about matters which pose serious risks to the business, so that they can alert NEDs to emerging risks. However, the NEDs' dependence on others for information is not total as they also have a responsibility to use their own experience, knowledge and skills to ask questions and challenge the Executive on their approach to, and recommendations for, the business.

292. Given that the Chair is in a sense a gatekeeper of information to the NEDs, just as the CEO makes judgements about the information she will share with the Chair, so the Chair makes judgements about the information which will be shared with the NEDs, either directly by herself, or by a request to the CEO. In making these judgements, Chairs are normally mindful of avoiding the twin hazards of overinforming and underinforming NEDs.
293. In our experience NEDs are usually eager to hear any information about changing patterns of risk, whether reputational, financial, operational or strategic. There is also often discussion within boards about NEDs' wishes to have 'no surprises' and to be informed of any matters before they become common knowledge in the organisation, with key stakeholders or in the media. NEDs normally trust the Chair to make the right decisions on information flow, and if there is a misalignment of expectations for them to be the subject of an open conversation, for example through the process of board effectiveness evaluations.
294. A foundational NED responsibility is to read and consider any written or spoken pieces of information which they receive in their capacity as directors, and to raise and interrogate any matters where:
- a. they are uncertain of the presented facts or opinions;
  - b. they wish to challenge the Executive's interpretation of the issues;
  - c. they wish to challenge the Executive's proposed way forward;
  - d. they think the information raises risks to the business which had not been previously on the Board's radar;
  - e. they think the information impacts the agreed strategic plan in ways which had not been previously on the Board's radar;
  - f. they believe the Executive are not handling the matter in the best interests of the company;

- g. they believe the Executive is not providing them with enough information; or
  - h. they have particular requests for a different roster of follow up actions to those proposed by the Executive.
295. Sometimes NEDs will have no comment or challenge on information given to them, because they are entirely happy that they are being given a clear summary of the issues, the Board decisions required, and the follow up proposed.

#### *D.3.3.2 Evidence*

296. The Inquiry has heard from NEDs that before 1 July 2013 they received very little information about the work being undertaken by Second Sight. They were not apparently involved in the decision to commission the work, or its terms of reference. In their January 2013 meeting the Board were given a brief update by the Chair under Any Other Business (POL00021510). In their meeting on 21 May, the Board asked for a note to update them on the Second Sight review (POL00021513).
297. The Inquiry has heard from NEDs that the first they heard about the substance of the report and the imminent publication of the Second Sight Interim Report was on the Board call on 1 July (Oral evidence of Neil McCausland, INQ00001183 p 33; Oral evidence of Susannah Storey, INQ00001184, p 66). They had understood that the purpose of the call was to consider the Strategic Plan 2013-2020. The minutes (POL00021515) of the call record that the CEO began her remarks saying she wished to update the Board on the Horizon Review. She reports that Second Sight had found *'no systemic issues with the Horizon computer system',... Horizon, like any large computer system, would occasionally have anomalies*<sup>32</sup>, and *'The investigation...had highlighted areas for improvement in support areas such as training'*.
298. The CEO also records her concerns about *'that the report...was not as factual as expected and could lead to loose language at the MP meeting.'*

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<sup>32</sup> The CEO reports 'anomalies' rather than using the term 'bugs'. The Inquiry has heard that she engaged her executive team to suggest a term which was less strong than bugs (POL00380985).

299. The Inquiry has heard that the NEDs were unimpressed with what they heard on that call. They were irritated they had heard nothing in advance of the call; that they had no explanatory paper; that they had no idea of the findings. On the call, they heard that the report may not be factually accurate; and that POL knew about a ‘few anomalies’ which would be reported by Second Sight. They did not like what they were hearing about the way POL had managed the work of Second Sight (Oral evidence of Susannah Storey, INQ00001184 p 66 - 67; Oral evidence of Neil McCausland, INQ00001183 p 34; INQ00001152, p 91).
300. They received the Second Sight Interim Report on 8 July.
301. The Inquiry has heard that by the time the NEDs arrived at the pre-meet before the board meeting on 16 July they were strongly critical about what they saw as the poor management of the Second Sight review process for which they held the GC responsible. With a focus on these criticisms, their attention was apparently not on the findings of Second Sight on POL prosecutions policy and practice, nor about the way POL was said to treat SPMs.

#### *D.3.3.3 Conclusions*

302. Given the amount of external interest in the Horizon system, its role in the prosecution of SPMs and the fact that Second Sight would be reporting on ‘*Alleged problems with the Horizon System*’, we would have expected the CEO to keep the NEDs sufficiently apprised, at a high summary level, of any emerging issues from the work. The minutes of the Board meeting of 23 January 2013 (POL00021510) record the Chair, not the CEO, giving a brief update on the work being undertaken by Second Sight, including to note ‘*to date there was no evidence to suggest fault*’. Had the NEDs had a hint of any major issues, they may have been alerted to questions they may wish to raise. However, they received no such information until the Board call on 1 July (Oral evidence of Susannah Storey, INQ00001184, p 66 - 67; Oral evidence of Neil McCausland, INQ00001183, p 34).
303. The information the NEDs received on 1 July was partial. The limited time for the call; the facts that the Second Sight Interim Report was not listed on an agenda or

flagged in an advance email and that they had received no briefing paper before the call, created circumstances in which NEDs could not begin to exercise their NED role in scrutiny or challenge. The Board call alerted them to expect to see a copy of the report imminently and that they would have an update and the opportunity for a full discussion on 16 July.

304. The NEDs were in our view inadequately briefed. However, their role is not simply to accept what they receive from the Executive. A situation like this is exactly the time when the NEDs are expected to exert their independence; to take note of what they were hearing in the media and from MPs, and to go to the report which had come into their inboxes and to look for themselves at what it said. As we shall see in Issue 6, its contents were replete with references which should have alerted them when they read it that, beyond their irritation with management of the review process, there were big issues concerning prosecutions and investigations policy and practices and POL approach to SPMs which should have had their full attention and prompted a different scale of questioning and challenge to the Executive.

D.3.4. Issue 6: What could the Board have taken from the contents of the Second Sight Interim Report published on 8 July 2013?

*D.3.4.1 Introduction*

305. Second Sight was commissioned by the POL Executive to undertake a review into the alleged problems with the Horizon system in the context of serious public concern about the use of Horizon data in the prosecution of SPMs. The Second Sight Interim Report was the first independent review of these problems to be available to the POL Board in its post 2012 status as independent from RMG. In the normal course of board governance, particularly given the amount of media and political attention prosecutions of SPMs was receiving, we would have expected the contents of such a report to be of great interest to the Board.

*D.3.4.2 Evidence*

306. The Second Sight Interim Report is eight pages long with four Appendices which summarise the details of the four completed Spot Reviews and two appendices on communications with SPMs about the approach of Second Sight (24 pages in all).

307. There is no executive summary.
308. Second Sight's preliminary conclusions (paragraph 8) are as follows:
- a) We have so far found no evidence of system wide (systemic) problems with the Horizon software;*
  - b) We are aware of 2 incidents where defects or 'bugs' in the Horizon software gave rise to 76 branches being affected by incorrect balances or transactions, which took some time to identify and correct;*
  - c) Occasionally an unusual combination of events, such as a power or communications failure during the processing of a transaction, can give rise a situation where timely, accurate and complete information about the status of a transaction is not immediately available to a SPMR;*
  - d) When individual SPMRs experience or report problems, POL's response can appear to be unhelpful, unsympathetic or simply fail to solve the underlying problem. The lack of a 'user forum' or similar facility, means that SPMRs have little opportunity to raise issues of concern at an appropriate level within POL;*
  - e) The lack of an effective 'outreach' investigations function within POL, results in POL failing to identify the root cause of problems and missing opportunities for process improvements;*
  - f) The end of Trading Period processes can be problematic for individual SPMRs, particularly if they are dealing with unresolved Transaction Corrections ('TCs'). The lack of a 'suspense account' option means that it is difficult for disputed TCs to be dealt with in a neutral manner.'*
309. In our view the value of the work of Second Sight to the Executive and the Board was not only in the preliminary conclusions. The Second Sight Interim Report contained information scattered in various sections, which throws light on the nature of the Horizon system and POL's approach to investigations and, at least to some extent, prosecutions which hitherto the Board had understood to be without fault. There is information in the Second Sight Interim Report about: Serious data problems encountered in accessing POL data (paragraphs 2.4, 2.6).

- a. Conflicting approaches to what constitutes valid evidence and failure to find common ground with SPMs in seeking to establish what had happened (paragraphs 3.5, 5.3, 5.5).
- b. Prevailing views of SPMs about POL's attitude to them and their problems with *'Many of the SPMRs... remain aggrieved and dissatisfied with what they see as POL's defensive and unsympathetic response'* (paragraph 5.7).
- c. SPMs' particular concerns including lack of training, unusually complex and demanding aspects of the system, multiple transaction interfaces, unreliable hardware, inadequate onsite help and helpdesk support, receipt of changes or 'corrections' allegedly not input by SPMRs (paragraph 7.2).
- d. A contract between SPMRs and POL that transfers almost all of the commercial risk to the SPMRs, but with decreasing support being provided (paragraph 7.2).
- e. The terms of reference for the POL Investigations Division in which *"The Investigation Division does NOT enquire into matters where crime is not suspected"*, and when they do investigate, Second Sight found *'there is often a focus on 'asset recovery solutions' without first establishing the underlying root cause of the problem'* (paragraphs 7.4, 7.5).
- f. The *'allegation that the only time they (SPMs) were provided a copy of the full contract between POL and SPMRs, was when POL commenced litigation or recovery actions'* (paragraph 7.7).

#### D.3.4.1 Conclusions

310. In our view the Second Sight Interim Report contained much information which should have attracted the attention of NEDs and warranted serious discussion by the Board. It raised issues about POL investigations and prosecutions policy and practice, the attitudes of POL to SPMs, the impact of the SPMs' contract and contested evidence about the robustness of Horizon. Much of this information does not feature in the conclusions or in some other easily accessible summary form in the Second Sight Interim Report.

311. It would have been good practice for POL to require Second Sight to write an executive summary; and for the POL Executive to have written their own executive summary for the Board.
312. In the absence of these summaries, it was even more important that the NEDs interrogate the Second Sight Interim Report for themselves. In our view the messages identified above are evident and are likely to be seen to be highly significant to a careful reader. Without executive signposts, they needed to be drawn out from a reading of the report and fully interrogated. In our view this is what the NEDs should have done.

#### **D.4 The Board meeting on 16 July 2013**

313. The Board meeting on 16 July was an opportunity to begin a fundamental re-appraisal of POL policies and practices in all the areas which were implicated in journalists' accounts of SPMs protesting their innocence when charged with false accounting and theft on the basis of Horizon evidence. We examine what happened at this board meeting through the analysis of three issues: the content of the board paper, the quality of the discussion and decisions, and elements of behaviour on the Board.

##### D.4.1 Issue 7: What were the contents of the Board paper: Update following the publication of the Second Sight Interim Report on Horizon (POL00099218) prepared for the Board meeting on 16 July, and how was the paper received by the Board?

###### *D.4.1.1 Introduction*

314. The normal expectations for a board paper prepared by the Executive for a board agenda item for information, discussion and decision would be that it:
- a. Contained a clear executive summary of the key points which the Board needed to: know and understand; discuss; decide;
  - b. Summarised the material/events which had prompted the paper (in this case, the Second Sight Interim Report);

- c. Summarised what the Executive have already done;
- d. Summarised what the Executive proposes to do;
- e. Summarised impact, if any, on current strategic plans;
- f. Summarised impact, if any, on current risk profile;
- g. Summarised proposed follow up measures so they may be tracked for subsequent report to the relevant part of the Executive or Board; and
- h. Set out any Board decisions which need to be taken.

#### *D.4.1.2 Evidence*

315. The 4-page paper (POL00099218), written by the GC updated the Board following publication of the Second Sight Interim Report and sought input on the way forward. It does not have an executive summary, nor does it summarise the Second Sight Interim report. It includes an Annex, which is half a page and is entitled: Annex 1: Details of the Criminal Cases Review.
316. Six ‘main concerns’ are listed on page 1. These are concerns that Second Sight identified from their meetings about the Second Sight Interim Report with MPs and JFSA, and following a statement in the House of Commons by Minister Jo Swinson (POL00099218, paragraph 2.2):
- *The fact that people have gone to prison.*
  - *The fact that there have been some defects in the Horizon system (albeit that SS have found no systemic problems).*
  - *The possibility that some criminal convictions may be unsafe.*<sup>33</sup>

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<sup>33</sup> The GC had been alerted in her meeting with Cartwright King on Wednesday 3 July 2013 that the Simon Clarke Advice would say that Gareth Jenkins was an unsafe witness. She did not make written reference to the Simon Clarke Advice in her Board paper, and she was not in attendance at the Board meeting when the Horizon Update paper was discussed. (INQ00001134, p 9 - 12). See Simon Clarke Advice Case 2013 in this report.

- *The possibility that some people may have compensation claims against the Post Office.*
  - *The attitude of the Post Office in its dealings with sub postmasters.*
  - *The degree of training and support the Post Office gives sub postmasters.'*
317. Three initiatives reflecting '*multiple exchanges between the various interested parties*' and already featuring as commitments in POL media release on 8 July are listed for consideration by POL:
- a. *The Working Party (& the conclusion of the SS investigation and report) with continuing involvement of JFSA (paragraph 4.1);*
  - b. *An independent review to consider a 'safety net option' to adjudicate in disputed cases in the future (paragraph 4.2); and*
  - c. *The Branch (sometimes called 'Business') User Forum... involving sub-postmasters and other... stakeholders to provide feedback on training and support processes. (paragraph 4.3).*
318. Within Section 3: 'Current Activities already underway' there are two activities concerning criminal prosecutions:
- On-going / new prosecutions:*** *...a case by case basis as to whether or not they need to be adjourned or other action taken... (paragraph 3.6)*
- Criminal case review:*** *On the advice of our external criminal lawyers we have immediately begun a review of our criminal cases conducted since Separation on 1<sup>st</sup> April 2012. More detail on this is set out in Annex 1. (paragraph 3.7).*
319. The paper later notes (paragraph 4.4) that whilst proposed actions have broad agreement from James Arbuthnot MP and JFSA they are pushing for more *specific undertaking especially with regard to cases where Post Office had brought a criminal prosecution....*
320. In setting out 'Next steps' (paragraph 4.6), the paper proposes

*'A **Pro-active approach** — there are a number of areas where the Post Office wishes to take a pro-active approach, for instance looking at processes for managing our relationship with our sub postmasters. Further details will be shared at the meeting.*

*'A **Reactive approach** — in respect of the criminal cases the Post Office should wait for those to be overturned via the Court of Appeal and for claims for compensation to be made. We then s thdecide whether to settle or fight these on a case by case basis.'*

321. In conclusion the Board is asked to consider **Recommendations** (paragraph 5):
- *note the update and actions set out;*
  - *decide whether the Audit and Risk Committee should consider the position of the Post Office as a Prosecuting Authority<sup>34</sup> alongside its risk work in September.'*

322. Annex 1 is attached to the end of the paper as page 5. It begins with the statement:

*'Post Office have been advised ...[to review all criminal cases from January 1 2010 to investigate] whether or not anything in the SS interim report should be drawn to the attention of any defendants (current or past) and if so they [external criminal lawyers] will be writing to the relevant defendants providing them with a copy of the SS interim report. We have an [sic] continuing legal duty as the prosecutors to do this'.*

#### *D.4.1.3 Conclusions*

323. We have seen that the first time the Board had heard anything of substance about the work or findings of Second Sight was on the Board call on 1 July when they were given a brief partial introduction to the Second Sight Interim Report. When the Board received the Second Sight Interim Report on 8 July, it was not accompanied or followed by a note from the CEO or GC summarising the major issues which it raised. The Second Sight Interim Report itself is not explicitly identified as a subject for Board discussion on 16 July. It was apparently handled as taken as read.
324. The Update paper covers some, but not all of the issues<sup>35</sup> identified in the Second Sight Interim Report, but does so, in our view, in a structure which makes some of

<sup>34</sup> This is a loose use of words as the Post Office is not a prosecuting authority as such but a government owned business which had established its own prosecutions function to bring private prosecutions through the courts.

<sup>35</sup> A summary of the Issues which in our view are contained in the Interim Report was given above in Section 6 of this Report.

them somewhat opaque. There is a great deal in this Update paper which should have attracted the attention of the Board, but like the Second Sight Interim Report itself, its lack of an executive summary means the significance of some of the points have to be extracted by the reader.

325. Returning to the checklist of normal expectations for a board paper prepared by the Executive outlined earlier, we find the following:
- a. Contained a clear executive summary of the key points which the Board needed to: know and understand; discuss; decide: **NO**
  - b. Summarised the material/events which had prompted the paper (in this case, the Second Sight Interim Report): **NO**
  - c. Summarised what the Executive have already done: **YES**
  - d. Summarised what the Executive proposes to do: **YES**
  - e. Summarised impact, if any, on current strategic plans: **NO**
  - f. Summarised impact, if any, on current risk profile: **NO**
  - g. Summarised proposed follow up measures so they may be tracked for subsequent report to the relevant part of the executive or board: **IN PART**
  - h. Set out any Board decisions which need to be taken: **IN PART**
326. In our view, the CEO, in consultation and collaboration with the GC, should have ensured that a comprehensive summary of the major issues raised in the Second Sight Interim Report was carefully considered by the Executive team, prior to its communication to the Board. We have seen no evidence that the CEO actually took full account of the full findings of Second Sight's work.

327. In our view the CEO should also have ensured a comprehensive summary of the major issues raised in the Second Sight Interim Report was explicitly and comprehensively drawn to the Board's attention.
328. Nonetheless, in our view, there was sufficient information in the Second Sight Interim Report and the update paper to alert an engaged NED that the Board should fully interrogate those issues and require the CEO urgently to report back on whether there were major risks in:
- a. POL current and past investigations and prosecutions policy and practices;
  - b. POL attitudes towards SPMs; and
  - c. POL's reassuring acceptance that the Horizon system was 'robust'.
- We have seen no evidence that the Board identified these matters as ones which required their engaged attention.

#### D.4.2 Issue 8: The quality of the discussion and decisions at the Board meeting of 16 July

##### *D.4.2.1 Introduction*

329. In preparation for a Board discussion, for which there is a paper in the Board pack, the following would normally be considered good practice:
- a. The responsible executive and/or author of the paper would normally be in attendance.
  - b. The CEO would decide who (the CEO herself or responsible executive/author) was going to present the paper. If not the CEO it would still be understood that the CEO carried ultimate executive responsibility for all matters concerning the running of the business.
  - c. The Chair would guide the flow of the discussion to ensure that: all major issues had been raised; NEDs had the opportunity to express their views and to ask questions; the Executive had the opportunity to respond prior to the Board making any decisions; and decisions identified in the paper and, relating to any matters arising in the discussion, are made.

- d. The Chair would ensure in the meeting, and in the minutes, that there was clarity on: the decisions which had been taken, any follow up to the discussion and the decisions; and any ways the Board would continue to exercise oversight of issues which they felt were ongoing/unresolved.
  - e. If the discussion was not a straightforward reflection of the board paper, the chair would normally sum up key points noted or decided in the meeting.
330. Following the meeting, the minutes of the Board item would normally be sufficiently full (but not verbatim) to record major matters covered in the discussion, with an emphasis on matters which were not already covered in the paper, any decisions made, any follow up actions for the Board, its committees, the CEO or other members present. If action was requested of executives not present in the board room, the CEO would normally be the intermediary to take the actions to her executive colleague.

#### *D.4.2.2 Evidence*

331. The Board minute (POL00021516) of Item 4: Horizon Update records the following as included in the Board's consideration of this paper.<sup>36</sup>
332. The CEO opened with an explanation (a) including:
- 'although the Second Sight report had been challenging it had highlighted some positive things as well as improvement opportunities'... praised in Parliament for setting up the independent review...the proportionality of the tiny number of cases...no systemic issues had been found with the Horizon computer system...cultural issues which had to be addressed to improve the support we gave to sub-postmasters...this (presumably the recognised need to support SPMs) was now a catalyst to make changes in the Business'.*
333. The minute then records what, we presume, is a summary of the questions and discussion which followed the CEO's introduction. We summarise each item:

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<sup>36</sup> The alphabetic letters in brackets correspond to those used in Board minute (POL00021516).

(b) Would the Business be opened to '*claims of wrongful prosecution*' and was the GC '*implicated*'?. The minute does not state what implications were being considered.

(c) '*strong views that the Business had not managed the Second Sight review well and stressed the need for better management and cost control going forward.*'

(d) Acceptance '*that this was an independent review and therefore things could happen which were beyond the control of the Business*'.

(e) '*However the things that could be managed... needed to be well managed with strong leadership*'. This was followed by a question to the CEO about whether the CEO had '*considered changing the person leading for the Business*' (we presume this is a reference to the GC).

(f) The CEO responded that she '*had considered this and recognised that the Business did not have good governance in place around Second Sight, but that the independence of the review, and the input from MPs and Justice for Sub-Postmasters (JFSA) had made this complicated*'.

334. The minute concludes with three Actions:

*'(g) The Chairman asked for a review, a post mortem, to report to the ARC explaining how we awarded and managed the contract. This should be put in hand swiftly. ACTION: SUSAN CRICHTON.*

*(h) The Board asked the CEO to decide on the way forward in terms of the leadership of this work based on the option which had least risk for the Business. ACTION: CEO*

*(i) The CFO was asked what the insurance position was. He promised the Board a note on this. He was also asked to ensure that both RMG and the Business' insurers were given notice of the review findings. ACTION: CFO'*

335. The discussion, according to the minute, covered only a small proportion of the material and only one of the risks (*claims of wrongful prosecution*) raised in the Second Sight Interim Report and the Board Update paper.
336. The minute does not record that the Board addressed the recommendations in the paper, or that the Board made the decisions requested.
337. The phrasing and substance of the Board minute of 16 July and other evidence given to the Inquiry indicate that the Board's mind, in so far as it was on Horizon or SPM matters at all, was gripped by their strong views of what they believed was '*poor management*' of the review process.
338. It appears to us that the Board's preoccupying concerns were the magnitude of the costs, the time taken to undertake the Second Sight work which after many months could only report on a tiny number of cases, and the apparent failure of 'the business' to control or at least influence the text of the report.
339. Whilst the criticism in the Board Minute is of the 'business', the Inquiry heard that those involved saw this primarily as criticism of the poor management, judgement and leadership of the GC, who was the executive responsible for managing the review. This was the context in which the Chair made her unexpected and unusual decision to exclude the GC from the Board meeting which would discuss the handling of the Second Sight Interim Report and follow up action.
340. Having heard the CEO's reassuring introduction to the paper, the Board's first and only noted concern (POL00021516, POLB 13/63(b)) apart from their criticisms of the poor management of the review is '*that the review opened the Business up to claims of wrongful prosecution*'.
341. But this did not lead to a discussion about the basis or implications of such claims.
342. The comment about '*claims of wrongful prosecution*' is immediately followed by a question about the role of the GC. The Board wanted to know: '*if Susan Crichton, as*

*GC, was in any way implicated in the prosecutions*'. We have seen that the Board, in so far as it is recorded in the minutes, was already of a mind to 'blame' the business (GC) for 'poor management' of Second Sight. The inclination to blame seems to us to continue with a question about whether (her) poor management may have extended into the realm of 'wrongful prosecutions'.

343. The CEO explains that the criminal law team had until 18 months previously been run by RMG and that *since separation the GC had proposed moving to the more normal position of using the CPS*'. This elicits no further minuted discussion, the implied question about poor management of prosecutions is left; the Board returns to its theme of 'poor management' of the review; and the proposal to move to use the CPS is left hanging.
344. The CEO does little to support her GC or show an understanding that in one sense any shortcomings in the executive are in some ways shortcomings of the CEO who is ultimately accountable to the Board for operational performance. She does not challenge the underlying criticism of her GC, accepting that the business *'did not have good governance around Second Sight'*, although she presents some words in mitigation, pointing out that *'the independence of the review and the input from MPs and Justice for Sub-Postmasters (JFSA) has made this complicated'*.
345. It seems to us that because the Board's mind is so concentrated on process and blame, it does not pick up that it is precisely *'the independence of the review'* and the *'input from the JFSA'* which, whilst a source of frustration and complication (in passing, one might note, for SPMs as well as POL), offers a new perspective and an opportunity for NEDs to challenge their Executive on the issue, not the process, and to enquire into the risks implied by the mention of 'wrongful prosecutions'.

#### *D.4.2.3 Conclusion*

346. Our conclusions about the Board discussion of the Update Report are grouped into 6 themes:
- a. Missing the value of Second Sight;

- b. Understanding the risk of wrongful prosecutions;
  - c. Attitude to, and dealing with, SPMs;
  - d. Discussing next steps and deciding on concluding actions;
  - e. The role of the Chair; and
  - f. Summary conclusions.
347. **Missing the Value of Second Sight.** There is no indication in the minutes that the Board saw the Second Sight Interim Report as a source of substantive information about clear or implied risks which seriously challenged the CEO's reassuring partial summary of the Second Sight Interim Report or POL's dominant perceptions and assumptions described in Issue 2 in this Report. The Board does not delve into what the Second Sight review could genuinely reveal about their own organisation's management and understanding of its operational and IT systems and its approach to SPMs and to investigations and prosecutions.
348. Such challenge would have been normal in a Board and not, as some might fear, indicate that the NEDs did not support their executive colleagues. NEDs drawing on their experience, have a responsibility to look beyond the executive headlines to see what is to be found in an independent assessment including consideration of the positions of apparent adversaries. It is their role to try independently to establish 'the facts' and purposefully require and oversee any remedial action which they determine is in the best interests of the business.
349. Such lines of enquiry would have been useful topics for the NED and Chair pre-meet since they need careful discussion between the Chair and the NEDs before taking them into the Board. Instead, the pre-meet was apparently consumed by operational and presentational criticisms which were top of the Board's mind.

350. In our view it would have been helpful if the Board had connected their criticisms of the time and costs of the review (which they laid at the door of the GC) with the warnings that Second Sight gave in the Second Sight Interim Report about data problems, contested evidence and the nature of proof in the circumstances in which SPMs found themselves.<sup>37</sup> Had this had their attention, the NEDs might have not only gained insight into the difficulties of conducting the Review, but they might also have learned something significant about POL systems and POL prosecutions and treatment of SPMs.
351. Throughout their discussion, it seems to us that the Board sees the dominant problem as the Review, not the Post Office. Although critical of the managerial process, the Board's overall approach reinforces rather than challenges the overall approach of the Executive. The Board's challenge is that the Executive needs to get greater control of the narrative, limit the costs, manage the review process better and clarify insurance cover. These concerns sit alongside an unchallenged acceptance of the reassuring comforting Executive narrative that Horizon is robust, the PO is fundamentally right in its actions, although it needs to make some 'cultural and support' adjustments.
352. **Understanding the risk of wrongful prosecutions.** There was just one significant non-process issue raised in the Board discussion: possible '*claims of wrongful prosecution*'. However, this does not generate a full discussion. The Board's discussion is, according to the Minute, limited to two concerns. The first, reinforces their general criticism of management by asking who is to 'blame' for poor performance in this regard. The second is to seek to establish the protection afforded to the Board and the Business by insurance should risks of claims for wrongful prosecution, crystalize. There is no action to enquire into the real validity of the claims. There is no discussion of Annex 1 of the Update Paper even though it expressly explains that POL now has a legal duty to review past criminal cases. Neither does anyone on the Board apparently make a link between this requirement and matters addressed in the Significant Litigation Report which is also on the agenda

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<sup>37</sup> The relevant contents of the Second Sight Interim Report are discussed in Section 6 of this report and found in POL00130412, paragraphs 2.4 - 2.6, 5.5.

for the Board on 16 July ‘for noting’.<sup>38</sup> That Significant Litigation Report contains a section on ‘dispute resolution’ which includes details of various Horizon claims from SPMs alleging wrongful termination of contract and/or damages based on alleged defects in the horizon system....and notes ‘*these are being investigated by Second Sight*’. There are 10 cases listed in the section on ‘principal criminal cases brought by the Post Office’. The minute of Item 11b, Significant Litigation Report (POL00099210) records that the Board noted the paper, apparently without comment or discussion.

353. Board papers identified on the agenda as ‘for noting’ are not normally discussed unless they prompt questions or concerns from Board members. Given the circumstances set by the Update paper, it would have been reasonable and helpful had a NED made the connection between the Update Paper, Annex 1 and the Significant Litigation Report and probed the connection and implications for risk.
354. The Board’s approach throughout the discussion appears to be that ‘the review’, not the Post Office itself, has ‘*opened the Business up to claims of wrongful prosecution*”.
355. In our view the very mention of ‘wrongful prosecutions’ should have generated many other questions, including:
- a. What is the basis and strength of any claims for ‘wrongful prosecution’ and ‘unsafe criminal convictions’?
  - b. What work needs to be done to understand why this has arisen? Is there evidence that the Post Office has really done something wrong here?
  - c. What should we make of Annex 1 in the Update paper on The Details of the Criminal Cases Review?

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<sup>38</sup> Whilst papers for ‘noting’ are not routinely discussed, the opportunity always exists for any Board member to request a discussion. In our experience this happens in Boards from time to time, because on reading a paper a director decides it should be discussed and not simply noted, or the Executive have new information which they wish to give to the Board.

- d. Why has the Post Office *'been advised by our external criminal lawyers to undertake a review of all cases?'*
- e. What precisely is in the Second Sight Interim Report which may need disclosing to defendants?<sup>39</sup>
- f. Do we understand the implications and the Board's choices with regard to past, ongoing or future prosecutions? Should we address this as a matter which is both urgent and important? What action and follow up from the executive are we requesting? How are we going to maintain oversight of these matters?<sup>40</sup>
- g. Should we set aside some time with the GC and our external advisers to consider this? Or at least should we ask the CEO to do this and report back to us?
- h. How are we going to keep a line of sight on these issues because it sounds as if they may embody major risks, not least because in an email to the board (POL00099121) 10 days previously, the CEO has said  
*'one of the main reputational and potentially financial risks arising from the review relates to possible attempts to reopen past prosecutions based on the findings'.*  
 Does Annex 1 not sound as if this is precisely what has now been advised by the Post Office's external lawyers?
356. There is no evidence that any of the challenges above were raised in Board discussion of the Update Paper.
357. **Attitude to and dealings with SPMs.** POL's proposals for changing their approach to SPMs features in the Update paper and the Board meeting, but it is not discussed further by the NEDs in the meeting. The Minute records part of the CEO's

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<sup>39</sup>

These matters are picked up in more detail in the Simon Clarke Advice Case 2013.

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The Inquiry has heard that the Board asked Alasdair Marnoch, Chair of ARC to meet Susan Crichton after 16 July to better understand the process of the Disclosure exercise including the issue of the start date. He sends an email to the Board following that meeting and the item goes onto the Agenda of the ARC where it is first considered in November 2013 and recommendations made about past current and future prosecutions in February 2014. This is considered in the Simon Clarke Advice Case 2013.

introduction, where she explains ‘*there were cultural issues which had to be addressed to improve the support...to sub-postmasters*’ and stressed ‘*that this was now a catalyst to make changes in the Business*’ (POL00021516).

358. Taking this statement at face value, to be done properly, we consider it would have required a reset of the contractual, business and social relationship between SPMs and POL. In other words, a big multi-functional, multi-level change programme. The NEDs could usefully have enquired:
- a. Is this what is meant in Section 3 of the paper: *Current activities already underway* which lists 3 reviews (technical considerations, business process and behaviours)?
  - b. What is the purpose, scope and time scale of these reviews?
  - c. Who is in charge of these reviews and who will report on them?
359. There is no record in the minutes that there was any discussion about how the cultural programme of change was to be tackled and how the Board was going to maintain line of sight on its progress.
360. One of the items included in the Second Sight Interim Report concerns the nature of the contract between SPMs and POL which ‘*transfers almost all of the commercial risk to the SPMRs, but with decreasing support being provided*’ (paragraph 7.2). If this was a surprise to the Board, then in our view it should have prompted the Board to interrogate its implications for POL’s approach to conducting investigations and prosecutions.
361. **Discussing next steps and deciding on concluding actions.** The minutes do not record any discussion about Section 4 of the update paper, ‘Proposed Way Forward Actions’ which includes mention of:
- a. the three initiatives already outlined in the press release (collaborative working party, independent review for a ‘safety net option’, branch user forum);

- b. the proposals on costs and budgeting;
  - c. a proactive approach in managing relationship with SPMs; and
  - d. a reactive approach in respect of the criminal cases going through the courts.
362. Taking section 4 of the Update paper as a set of proposed actions, no one on the Board is recorded as having questioned if the set is appropriate, sufficient and proportionate given the issues raised in the Second Sight Interim Report and Board Update.
363. It is in our view especially notable there was apparently no discussion of the pros and cons of the proposed ‘reactive approach’ and how it linked to Annex 1 on criminal cases review.<sup>41</sup> We would have expected the Board, which had already asked about wrongful prosecutions in this meeting and knew from the CEO’s update emails of 6 and 8 July (POL00099121) that she saw this as an area of potential major reputational and financial risk, to want to know more about this proposed way forward.
364. There were just 3 concluding actions minuted as arising from the Board discussion of Item 4.
365. The first two reflect the Board’s preoccupation with process and their criticism of ‘management’ (by implication, the GC):
- “(g)The chairman asked for a review, a post mortem, to report to the ARC explaining how we awarded and managed the contract...ACTION: Susan Crichton<sup>42</sup>*
- (h)The Board asked the CEO to decide on the way forward in terms of leadership of the work based on the option which had least risk for the Business.*
366. The third action addresses the Board’s concerns about insurance protection in light of any claims for wrongful prosecutions:

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<sup>41</sup> See further discussion in the Simon Clarke Advice Case 2013.

<sup>42</sup> Action for this item was assigned to Susan Crichton, even though she was not at the meeting and had been criticised for her management of the work. Effectively she was being given an action to conduct a postmortem into her own work. This posed a conflict of interest which was apparently unnoticed.

*“i)The CFO was asked what the insurance position was... He was also asked to ensure the [sic]both RMG and the Business’ insurers were given notice of the review findings”.*

367. Two specific recommendations conclude the Update paper, namely
- ‘The Board is asked to:*
- *Note the update and actions set out above;*
  - *Decide whether the Audit and Risk Committee should consider the position of the Post Office as a Prosecuting Authority<sup>43</sup> alongside its risk work in September.’*
368. According to the Minutes these concluding actions and requests are apparently ignored and left without comment or response.
369. A Board is not of course obliged to agree any recommendations or support any proposals made in a Board Paper. However, it would be normal good practice for a concluding decision on the recommendations and requests to be made and recorded.
370. Follow up on decisions is a vital part of the Board’s oversight role and cannot easily and consistently be done if there no decisions or no records on what has been considered and what has been decided.
371. **The role of the Chair.** We found no evidence in the minutes that the Chair guided the flow of the discussion to ensure that the major issues were identified above, were raised and discussed in ways which would enable ongoing board oversight of issues which the Board felt were unresolved.
372. Specific recommendations in the Update paper were apparently not addressed; there is no minute of the Board decision on the recommendations included in the Paper.
373. The GC was the author of the paper, the executive responsible for Investigations and prosecutions, and the legal expert with responsibility to report on legal matters to the

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<sup>43</sup> This is a loose use of words as the Post Office is not a prosecuting authority but a government owned business which had established its own prosecutions function to bring private prosecutions through the court.

Board. The Chair excluded the GC from the meeting, consequently the GC was not available to help the Board to identify the key Issues and determine the best way forward for the business.

374. A postscript on the position of the GC and her relationship with the chair. Neither of them acknowledged the clear conflict of interest which was inherent in the GC's multiple roles (as senior legal adviser to the Board, line manager of the legal function which included prosecutions and member of the Senior Executive team) nor suggested ways to mitigate the risks of this conflict. This was ultimately a matter for the chair to consider for its impact on the Board and to propose how the conflict should be handled.<sup>44</sup>
375. **Summary Conclusions.** In our view, the Board's receipt and discussion of the Board Update paper is a missed opportunity for the Board. Notwithstanding their annoyance with the management of the process, the Board knew that POL's present unresolved situation with the SPMs and POL's defence of the Horizon system was consuming large amounts of time and energy in the business and threatening that which the board held dear, namely the public reputation of the PO. The Board also knew the accounts of human hardship and suffering from SPMs which were current in the press and media and of great concern amongst some MPs.
376. Had the NEDs extracted any of the lines of enquiry suggested in the Second Sight Interim Report and the Update paper, they may have adjusted their view on sources and magnitude of risk derived from POL's handling of the prosecution of SPMs on the basis of Horizon Data. They had fragments of the jigsaw before them and had they delved deeper, more fragments, and the bigger picture, may have been revealed.
377. The Executive did not help the Board to see the bigger picture, or to take a longer time perspective, but the Board could still have required more focussed, coordinated and sustained work which is likely to have revealed the magnitude and interconnectedness of the risks in front of them.

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<sup>44</sup> This is further discussed in the Simon Clarke Advice Case 2013.

378. In our view, if the NEDs had made such challenges and required a different approach to these topics, it would not have crossed the line between business and board, or mean the NEDs were necessarily not supportive of the Executive. NED challenge to the Executive is a fundamental part of their role.
379. The principles of good governance are that NEDs support and challenge the Executive unless and until it is established that the Executive have taken decisions or actions which did not support the purpose, strategy and values of the business. There is much in the Second Sight Interim Report and the Update paper which suggests that the purpose, strategy and values of the Business were in danger of being seriously compromised; but these messages escaped the NED's attention.

#### D.4.3 Issue 9: Behaviour in the Board

##### *D.4.3.1 Introduction*

380. The Behaviour of the Chair, NEDs and Executive Board members has a great impact on the ways boards function and the culture they create within the board and project onto the wider organisation. We have limited insight from this one case however we wish to comment on the basis of evidence available to us on behaviours revealed in two related events: the NED and Chair pre-meet before the Board and the exclusion of the GC from the Board meeting. Both these events were connected to the Chair's decisions about how she would conduct the Board meeting on 16 July. We conclude this issue with a discussion of a third element of behaviour: the executive experience of being challenged by NEDs.

##### *D.4.3.2 The NED pre-meet*

381. Prior to the scheduled Board meeting at 9:30am on 16 July 2013, POL NEDs met for breakfast with the Chair at 8:15am in a local Bistrot. Such an occasional NED-only pre-meet is a normal characteristic of good governance. It allows NEDs to talk freely without Executives present, to voice their concerns without fear of unwittingly undermining the executive, and to share any concerns with each other and the chair. It was a normal part of POL Board life, and this pre-meet was not set up in response to the Board's consideration of the Second Sight Interim Review.

382. As is usual there are no minutes of the pre-meet discussion, however in her oral evidence Alice Perkins explained that the NEDs were very critical of the way that the GC had managed the work of Second Sight and the production of the Second Sight Interim Report. Such was their criticism that she:

*‘thought the Non-Executive Directors needed the opportunity to say what they wanted to say in the full Board, and I knew that it was going to be very critical of Susan’* (Oral evidence of Alice Perkins, INQ00001156 , p 137).

#### *D.4.3.3 The Exclusion of the GC from the Board meeting*

383. As the Chair told the Inquiry, at short notice and without consultation with the CEO or CoSec, and with the GC already sitting outside the Board Room in the expectation she would be called in for her paper, the Chair decided:

- a. to leave the GC waiting outside the room in a visible public place, with no information as to when and if she would be called into the Board room; and
- b. to exclude her from entering the meeting so that she was:
  - i. unable to present her paper,
  - ii. unable to present her professional view as the GC of the Post Office and the only in-house lawyer with direct access to the Board, and
  - iii. unable to participate in the discussion, answer questions or understand at firsthand what actions the Board required to follow from this item.

384. It is possible that the Chair thought then, as she told the Inquiry, that the GC would not be called at the beginning of the item and that there would be a short pre-discussion of the item (to allow a full and frank discussion of the criticisms of the GC) before the GC was called in. The Chair had time to tell the CEO of her decision and so presumably there could have been time for the CoSec, if not the Chair or CEO, to

forewarn the GC that she would either not be called for any discussion of this item, or she would be called mid-way into the item.

385. The Chair told the Inquiry that, as time went on, she thinks that she decided almost by default that the GC would not be joining the meeting. Even then she did not ask the CoSec to let the GC know of her decision. The CoSec has given evidence to the Inquiry, that when at some point during the discussion of the item, she asked the Chair “*Do you want Susan in the room because she has the detail*”. She was told “*No*”. (Oral evidence of Alwen Lyons, INQ00001150, p 140-2).

386. The Chair in her oral evidence reflects on the personal impact of her actions:

*‘obviously, I understand that that would have been very disconcerting for her and, as I said to her later, I am really sorry that that happened. I’ve been kept outside Boardrooms in my life and it’s not a comfortable experience and I knew that, but there were really good reasons for doing what I did’* (Oral evidence of Alice Perkins, INQ00001156, p 137).

387. The CEO in her oral evidence said ‘*I felt bad about that*’ [keeping GC outside]...*she must have felt terrible*’ (Oral evidence of Paula Vennells, INQ00001152, p 140).

388. As the Chair reflected in her oral evidence, she feels in retrospect she did not handle this part of the Board meeting well:

*‘I can see that what I should have done, in retrospective, is that I should have paused and I should have thought “We’re not having the kind of discussion about this paper that’s before us that we ought to be having and, therefore, we’ll have to have a separate discussion about it”. That’s what I should have done but I didn’t.’* (Oral evidence of Alice Perkins, INQ00001156, p 138-139).

#### *D.4.3.4 Conclusions on the NED pre-meet and the exclusion of the GC*

389. It is relevant to ask if such a series of events is unusual in the conduct of Board affairs.

390. We have known situations where NEDs at pre-meets have been very unhappy with a paper or the handling of an issue. In such instances the chair having listened to the fury, would normally resolve and make clear how the matter will be handled in the

immediately forthcoming Board and subsequently. This normally involves talking with the CEO either before or after the meeting.

391. The Chair in the pre-meet or before, if she is aware of growing NED disquiet, would normally be thinking of how to deal with the item by ensuring an effective discussion which is in the best interests of the business. If that involves standing people down from attending the board, or delaying their entry, the CoSec will normally ensure effective communication with those involved.
392. Having sat in many board rooms we know of instances where executives have come to the waiting area prepared to present 'their' paper to the Board and for reasons of time, or occasionally because the board having read the paper conclude it needs more work, have been told that they will not be called. Standing anyone down is never comfortable for a would-be attendee and it would normally be done in a direct personal way so that the presenter is not left for too long in anxious limbo. After the meeting, normally the Chair, CoSec or CEO or the person's direct line manager if not the CEO, will find the person who has unexpectedly not been called, explain the situation, offer explanation, support, apology and if necessary, advise them how the paper, or underlying work, can be improved.
393. The CEO would normally ensure that any matters which needed the Board's attention at that meeting and would have been brought to the Board had the person been present, would not be lost, either by filling in at the time with someone familiar with the issue, or with follow up information. The CEO would normally take the lead in ensuring any gaps would be filled.
394. Thus elements of the behaviours revealed in the Chair's handling of the pre-meet and Board meeting of 16 July are found in and around many board rooms. However, three things strike us as unusual in this instance.
395. Our first observation concerns the pre-meet and its relationship to the Board meeting. The NEDs having been 'full and frank' about their criticisms of the GC at the pre-meet, there was a question for the Chair about the benefit, or imperative, for a repeat full and frank exchange in the full board. Apparently, it had dominated the pre-meet,

when other important matters could usefully have been aired; what was the reason for it dominating the board discussion as well? If it were repeated, it would simply mean it was shared with the CEO, other executive board members present and the CoSec, who incidentally reported to the GC. Naturally the CEO should hear the criticisms, but that did not need to happen at the Board, unless the Chair was particularly keen to get a board minute of the criticisms.

396. What could the Chair have done differently? She could have said to the NEDs words to the effect: 'I hear and understand your annoyance and concerns about performance, and I will discuss them with the CEO and we will discuss with the GC and come back to you. But at today's board meeting, which is happening directly after our discussion, there are important issues to discuss arising from the Second Sight Interim Report and we need to have the GC in the room. She is the person who knows the detail of matters we need to discuss.'
397. Our second observation derives from the structure of the Board. The Board had no senior lawyer either as a member of the board, or as a routine attendee. Susan Crichton, the GC, was the most senior lawyer in the organisation. There were very important legal matters on the agenda, including the discussion of the Update following the Second Sight Interim Report. By excluding the GC, the Chair was denying the Board its own legal specialist who appeared to be the only person who understood the legal matters raised by claims of wrongful prosecution, unsafe convictions and the requirements for the disclosure of evidence.
398. As the GC's paper made clear in Annex 1, the Post Office's external lawyers had given particular advice on disclosures, which was also a matter of reference in Board Paper 11 (Significant Litigation Report). Possibly the GC may have made that connection herself had she been presenting the paper, or an eagle-eyed NED may have noticed and wished to query the connection between the two items. In the absence of the GC there was no one who could address any questions the Board may have had about legal matters. As the CEO and Chair asserted several times in their evidence neither of them nor any other member of the board was a lawyer. According to the minutes of the 16 July Board (POL00021516), no member raised the absence of legal expertise as a

barrier to a full discussion and consideration of options for future action as regards prosecutions.

399. Our third observation is the impersonal, public and some might say humiliating treatment of the GC. It implies a disrespect for colleagues and a lack of human sympathy, which is an entirely separate matter to evaluating the quality of the GC's work. To show human understanding of the situation would not have implied anything about the force of the Board's annoyance or the subject of their criticism.
400. This last element appears to us to give strong signals about the culture of the boardroom. One can be almost sure that even as this was happening, rumours and speculation would have been rife within headquarters and the incident will have become widely known. It suggests a disrespect for colleagues, a board which doesn't care about people, a rift between the GC, the Chair and the Board and a silence in the face of lack of consideration for others.
401. According to the oral evidence from the GC, we know that in the month following this Board meeting the GC concluded she no longer had the confidence of the Chair and the Board and tendered her resignation. We have no views on whether this was a wise move for either the GC or POL. We simply note it happened. There are likely to be lots of reasons and precipitating factors. It would be surprising if the GC's experience outside the boardroom on 16 July was not one of them.
402. Beyond the absence of legal expertise, the cultural messaging and human impact, there may have been other consequences of the Chair's decision to exclude the GC. Had she been present, the criticisms of her management of Second Sight may have been more muted, and more likely to be taken out of the board room to a private discussion. With less time and annoyance devoted to criticisms of the review process, the Board may have turned more of their attention to the important issues which escaped discussion and addressed the actions requested of the Board in the paper.
403. It may be that the Board would have learned about two important developments which had come into the possession of the GC in the days immediately before the Board meeting. The Simon Clarke Advice, was given orally to the GC on 3 July 2013 and

the letter from the CCRC dated 12 July 2013 (POL00040190), which apparently arrived on the desk of the CEO on 15 July, and was passed to the GC for action (Oral evidence of Paula Vennells, INQ00001152, p 88).<sup>45</sup>

404. It is the Chair's responsibility to run the board so as to enable all important matters to be aired and for decisions to be reached. The conduct of the Board in its discussion and decisions about Item 4: Board update on Horizon, did not meet the standards normally expected of a well-run board.

*D.4.3.5 The experience of challenge around the Board table*

405. Standards of good governance give emphasis on the NEDs being challenging and questioning the Executive. The inquiry has heard from NEDs that they were challenging and often gave the Executive a difficult time (Oral evidence of Susannah Storey, INQ00001184, p 75, 111-20; Oral evidence of Neil McCausland, INQ00001183, p 150, 111-13). It is however worth considering the experience of 'being challenged'. On the one hand this can mean experiencing a constructive challenge, which questions taken for granted assumptions or approaches. Typical questions for NEDs in this mode of constructive challenge would be: Is this the whole story? Do we need more information? What is the real problem here? Are we missing something critical? What really is the risk? Can we look at the problem this way? Can we see it from another perspective? On the other hand 'being challenged and criticised' in the board room can mean feeling strong and public criticisms about executive competence and performance.
406. There is a place for both in good governance. It is a fine distinction, and executives may find the experience of both constructive or critical challenge very uncomfortable and try to avoid them. However, it seems to us from a review of the evidence about the Board's handling of the Second Sight Interim Report that challenge in the POL board room at this meeting was so critical of executive competence and performance, that constructive challenge was excluded, both for reasons of time and sentiment. The strength of the criticism may have made it more difficult to raise productive constructive challenges at that meeting or in the future. Trenchant public criticism

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<sup>45</sup> The handling of these two documents is discussed in the Simon Clarke Advice Case 2013.

may induce or strengthen defensiveness which may, notwithstanding their responsibilities to do so, disincline executives to reveal serious risks or challenge their own taken for granted assumption. It may make the executives less likely to bring bad unwelcome news to the forefront in the future.

407. Chairs and NEDs are frequently making decisions about how and when to challenge performance. It is an essential part of their role, but it does not necessarily always benefit from being in the public formal place of the board room. It can be very effective in more private settings. Like much in this case study, it is a matter of judgement about what, in given circumstances, will serve the best interest of the company.

## **E. The Handling of the Simon Clarke Advice by the Executive 2013**

A case study to examine and draw conclusions on POL Governance and Management as illustrated in the handling of the Simon Clarke Advice from July 2013 to November 2013.

### **E.1 Introduction**

#### **E.1.1 Our approach**

408. This case study provides our description, analysis and conclusions on six issues, which we consider are important in evaluating the way the POL Executive in 2013 handled the ‘Advice on the use of expert evidence relating to the integrity of the Fujitsu Services Ltd Horizon system’, authored by Simon Clarke, Barrister, Senior Counsel from Cartwright King Solicitors and dated 15 July 2013 (POL00006798), known in this report as the Simon Clarke Advice.

409. As described in the introduction to this report, our analysis and conclusions are written with reference to our own direct experience of governance in various settings and our expert understanding of generally expected and best practice of the standards of governance, management and leadership in companies such as the Post Office Companies, as set out in Report 1 for the Post Office Horizon IT Inquiry.<sup>46</sup> Where we consider we need to amplify the matters discussed in Report 1 in relation to any of our identified issues, we provide additional commentary in the Introduction to the issue.

410. We appreciate the material on which we draw may be subject to different interpretations, and that there may be additional relevant material before the Inquiry, which we have not read.

411. It is not our intention or instruction to establish matters of fact.

#### **E.1.2 Context of the case: The commissioning and delivery of the Simon Clarke Advice**

412. Susan Crichton, POL’s GC, received legal advice from Cartwright King, POL’s prosecuting solicitors, because preliminary conclusions from the Second Sight Interim Report (POL00130412, paragraph 6.4-6.10) were showing that there were bugs in the

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<sup>46</sup> Report 1 for the Post Office Horizon IT Inquiry (EXPG0000006): Expected and best practice of the standards of governance, management and leadership in companies such as the Post Office Companies.

Horizon system which impacted branches. Simon Clarke realised that this finding might call into question the integrity of some POL prosecutions and might have resulted in some miscarriages of justice (First Witness Statement of Simon Clarke, WITN08130100, paragraph 34) and volunteered the Advice. Susan Crichton understood from Simon Clarke that some sort of review of cases may be needed to establish the size of the problem and to enable some sort of disclosure to defendants if there was a risk their convictions were unsafe.

413. The GC met Cartwright King and received a summary oral report of what would become known as the Simon Clarke Advice, on Wednesday 3 July 2013 (First Witness Statement of Susan Crichton, WITN00220100, p 92). We have assumed that the oral summary would have been explicit about the serious problems of Fujitsu's Gareth Jenkins as a witness, which are at the centre of the Simon Clarke Advice. This was 5 days before the publication of the Second Sight Interim Report on 8 July 2013.<sup>47</sup>
414. Although the formal written Advice was received by the POL Legal team on 17 July 2013 (POL00006798) it was sufficiently clear from the face-to-face meeting on 3 July that immediate action was needed. A review of cases and requirements for disclosure which became known as the Sift Review was instituted on the GC's instructions to be conducted by Cartwright King.
415. When the GC received the written advice on 17 July (WBON0000770), she shared it with members of the POL legal team (Hugh Flemington and Rodric Williams). In her evidence she says she does not remember reading it herself (First Witness Statement of Susan Crichton, WITN00220100, p 92) having met face to face with Cartwright King on 3 July. By this time, actions on the Sift Review were well underway. As Simon Clarke notes in his Advice *'I have already advised on the need to conduct a review of all POL prosecutions so as to identify those who ought to have had the material disclosed to them. That review is presently underway'*<sup>48</sup> (POL00006357, p 14 paragraph 38).

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<sup>47</sup> The Handling of the Second Sight Interim Report in the subject of the Second Sight Case 2013 in this report.

<sup>48</sup> That review became known as the Sift Review.

416. The Simon Clarke Advice outlines the duties of an expert witness. It shows how the evidence relied upon by the expert witness Gareth Jenkins was tainted. It concludes POL will need to conduct a disclosure exercise for SPMs where convictions have been secured on the basis of Horizon evidence and that those with grounds for appeal will be able to go to the Court of Appeal. It says emphatically that the existing witness, Gareth Jenkins, cannot be used again.

## **E.2 Issue 1: Who should have received the Simon Clarke Advice?**

### E.2.1 Introduction

417. In this section, we consider who should have received the advice, looking at different levels in the organisation:
- a. The Board
  - b. The Chair
  - c. The CEO
  - d. The Executive
418. We do this by looking at the formal structures, roles and relationships specifically between the Chair, CEO and GC. These relationships tend to be highly complex and nuanced, especially when tensions arise, because the GC reports to the CEO but has a dotted line through the Chair to the Board. If the GC is not a member of the Board, and not normally in attendance at the Board, the importance of the GC, CEO, Chair relationships are magnified.
419. All three have responsibility to develop and manage their relationships as they affect the flow of information to the Board.

## E.2.2 Evidence

### *E.2.2.1 The Board*

420. The Inquiry has heard that the Simon Clarke Advice was not seen by the Board and that the first opportunity for it to be raised in direct conversation with the Board<sup>49</sup> was lost when the GC was kept outside of the Boardroom on 16 July 2013.
421. In our view the Board should have been given a clear statement about the Simon Clarke Advice at the 16 July 2013 board meeting, even though the written advice did not arrive until 17 July. This could have been in the form of a written or spoken communication or could have been specifically added to the Horizon Update paper (POL00099218). In any form, the communication to the Board should have been accompanied by a written or spoken communication from the Executive (CEO or GC) setting out the Executive view of the implications of the Advice and their proposed action.
422. Simon Clarke also provided POL Advice on 8 July (POL00006365, p 2 at (ix)) confirming that '*POL has instructed CK to conduct a review of all cases prosecuted by POL so as to ensure compliance with their duties as prosecutor*'. It contains important Advice on what POL must tell RMG in relation to past unreliable prosecutions. This should also have been communicated to the Board as a matter of urgency.
423. Had Susan Crichton, been present in the board meeting on 16 July she should have communicated the Advice to the Board, saying that she would confirm with them directly or via the Chair, when the written Advice was received and that she would share the written Advice, or a summary of the Advice or the conclusions of the Advice after the meeting. Any of these three forms would in our view have been acceptable. As she was not invited into the Board on 16 July,<sup>50</sup> she should have ensured the Board was properly briefed on the Advice as soon as possible after the Board meeting.

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<sup>49</sup> See the Second Sight Case 2013.

<sup>50</sup> See the Second Sight Case 2013.

424. It seems to us that the information received by the Board in relation to the Simon Clarke Advice was fragmented and partial. Whilst the actual pieces of paper which contained the Advice do not appear to us to have been circulated beyond the legal team, elements of the Advice were told to the Board although not under the title of the Simon Clarke Advice.
425. Elements of the Advice were contained in Annex 1 of the Horizon Update paper (POL00099218), entitled Details of the Criminal Cases Review, circulated to the Board for discussion at its meeting on 16 July 2013. Annex 1 began with the statement *‘Post Office have been advised ... (to review all criminal cases from 1 January 2010) to investigate ‘whether or not anything in the SS interim report should be drawn to the attention of any defendants (current or past) and if so, they (external criminal lawyers) will be writing to the relevant defendants providing them with a copy of the SS Interim report. We have an [sic] continuing legal duty as the prosecutor to do this’.*
426. In our view it is surprising that Annex 1 was not explicit that it was the existence of bugs known by an expert witness that had been undisclosed to defendants in criminal cases which was the basis on which POL was advised to review all criminal cases. Nonetheless the Board was told in Annex 1 that this review was required as a ‘legal duty’. It seems to us very doubtful that around the time of the July 2013 board meeting, the board were told:
- a. about the unreliable witness,
  - b. why specifically and comprehensively the review of past prosecutions (of which they were fully aware from Annex 1 of the Update Paper) was necessary,
  - c. the rationale for a start date for the review of January 2010, and
  - d. consequent serious risks following from the use of an unsafe witness.
427. It seems to us that elements of the Advice were also evident in the face-to-face meeting between the Chair of the ARC, the GC and CoSec on 27 July 2013 (First Witness Statement of Susan Crichton, WITN00220100, p 82, at paragraph 222). At this meeting the start date for the review of 1 January 2010 was discussed in order that the Chair of the ARC could understand better why that date was chosen (POL00145891). However, in our view, the ARC Chair should have been given all of the Simon Clarke Advice’s conclusions as a matter of extreme relevance to the ARC discussion of the

process for the Sift Review, and the GC's recommendation to the Board on 16 July not to review cases before 2010.

#### *E.2.2.2 The Chair*

428. The Inquiry had heard that the Chair said she did not see the Simon Clarke Advice and or hear about it until late November 2020.
429. In our view, the Chair should have been told as a matter of urgency about the Advice.
430. It should have been something which as soon as she knew of the Simon Clarke Advice, the CEO should have reported immediately to the Chair and if no answer was forthcoming, followed up. The CEO is responsible for ensuring good communications with the Board about important matters as well as actively managing reporting on risk.
431. If in the GC's view, the CEO, having been told about the lawyers' concerns over the witness, had not understood the real issue and risk to the business, then the GC should have escalated to the Chair quickly. She should have done this following the 3 July 2013 meeting with Cartwright King and followed up with a summary of the oral Advice, before the 16 July 2013 board meeting. Instead, the GC says in her witness statement (First Witness Statement of Susan Crichton, WITN00220100, p 92) she did neither and did not see it as a priority for the Board.
432. The Inquiry has heard there were strains in the relationship between the Chair and the GC around the time of the delivery of the Second Sight Interim Report, which in our view may have significantly reduced the GC's direct access to the Board (POL00407582; Oral evidence of Paula Vennells, INQ00001152, p 92). We have heard no references of agreed escalation procedures for the GC in a crisis.

#### *E.2.2.3 The CEO*

433. The conclusions of Advice received by GC in person on 3 July 2013 should have been a matter for urgent discussion between the GC and CEO. The GC should have shared all the conclusions of the Simon Clarke Advice with the CEO communicating in a way which the CEO understood. She should have sent the CEO a copy of the Simon Clarke Advice or a clear summary, in writing, when POL received it on 17 July.

434. If having communicated it, the GC felt that the CEO did not understand the risk to the business of the unreliable witness, when it was told to her, or the CEO proposed a course of action that was not in the view of the GC, in the interests of the business, then the GC should have escalated this directly and quickly to the Chair.
435. It would be surprising to us if the GC did not talk to the CEO before attending the meeting at Cartwright King on 3 July. In our view, the summary of the conference with Richard Morgan KC in June 2012, which GC believes she shared with CEO and Chair (First Witness Statement of Susan Crichton, WITN00220100, p 58), was sufficiently clear as to the reputational risks and legal issues relating to the business in opening up the review of cases that we would expect the CEO to be interested in subsequent legal advice. The report of the conference states Richard Morgan KC's view was (POL00006484):

*'Whatever the findings of the expert report it will not solve the problem. POL will be 'damned if they do and damned if they don't'. If the findings are that there are no issues with Horizon people will see that as a 'whitewash' whereas if the findings are negative that will open the floodgates to damages claims by SPM's [sic] who were imprisoned for false accounting and Access Legal will start to pursue all the civil cases they are currently sitting on'.*

#### *E.2.2.4 The Executive*

436. In other executive teams we have seen, the CEO would not see the Advice purely as a matter for the GC and her legal team. In our view, having received the Simon Clarke Advice, it should have been made available to ExCo to consider and interrogate the problems implied. This would provide the basis for it being clearly communicated to, and known by, the Board, and for recommendations to be made by the Board about its implications both for immediate action and for the broader and deeper risks which it signalled.
437. The Advice raised wider issues of the manner and consequences of POL prosecutions policy and practice which needed to be considered collectively in the Executive, so that the senior team, led by the CEO, fully appreciated and communicated its significance in terms of risk.

### E.2.3 Conclusions

438. If it is found that neither Susan Crichton, GC from July 2013 to November 2013, nor her successor until 2015 Chris Aujard, informed the Board of the Simon Clarke Advice, specifically that criminal prosecutions may have been undermined by the failure of Gareth Jenkins to disclose evidence of bugs in the Horizon system, then this is a failure of governance, in so much as governance is a combination of formal roles, competence, formal and informal relationships.
439. However, it is not in our view a failure which can be laid simply on the GCs.
440. The GC must be able to speak their mind, represent their professional responsibilities in the sure confidence they will be listened to.
441. The expectation that the GC will provide objective legal advice to the Business and to the Board, means they need the opportunity, if they consider it necessary, to report to the Board independently of the CEO. This is arguably more difficult to achieve in situations where the GC does not sit on the board.
442. The Chair, CEO and GC, share a responsibility for facilitating a relationship between the GC and the board based on mutual trust, respect and capability.
443. The Board, normally through the Chair, should be able to seek the GC's advice directly. Effective governance in this respect depends on a strong relationship between the Chair and the GC, also based on mutual trust, respect and capability.
444. In our experience, these GC, CEO, Chair relationships are always complex and nuanced especially when tensions arise. This reflects the structure in which the GC reports to the CEO as a line manager; and the GC is a member of the CEO's senior leadership team; and the GC has a 'dotted line' to the Board, normally through the Chair; and the GC has a duty to offer independent legal advice to the Executive and the Board. In situations where the GC is neither a member of the Board, nor normally in attendance, it is the Chair's ultimate responsibility to ensure that the GC is confident she is able to offer such advice.

445. The Inquiry has heard that there were strains in the CEO / GC relationship. The CEO's report of a conversation she had with the GC on 24 July 2013 documents her concerns about *'gaps in her [GC] capability'* which are being dealt with by *'supporting her with individuals who are organised and structured, and by a process to monitor.'* (POL00118496).
446. It is the CEO's responsibility to develop their relationship with the GC so that the right balance is struck between independent advice and collective membership of the top team charged with running the business.
447. The Inquiry has heard several references by the CEO to the effect that 'this is a legal matter' or 'this is an issue for legal', which implies a failure to integrate legal knowledge into collective executive discussions and decisions. It is as if legal knowledge is in a 'black box', which the CEO and others do not need to, or cannot, understand (Oral evidence of Paula Vennells, INQ00001152, p 58, 128, 146).
448. In this case 'legal' seems to us to be almost semi-detached from the business and the CEO to be happy for issues of a legal nature to remain the responsibility wholly of the GC and the legal advisors.

### **E.3 Issue 2: What should have been done with the Advice?**

#### E.3.1 Introduction

449. This section considers what actions should have been taken with the Advice. We do this by looking at:
- a. What the CEO should have done with the Advice?
  - b. What the GC / SC should have done with the Advice?
  - c. What the NEDs should have done with the Advice?
  - d. What the Chair should have done with the Advice?

### E.3.2 Evidence

#### *E.3.2.1 What should the CEO have done with the Advice?*

We examine this question in terms of three aspects of the CEO's responsibilities:

- a. Sustaining a focus on risk;
- b. Creating a collective executive view;
- c. Relating the Simon Clarke Advice to the CCRC letter.

450. **Sustaining a focus on the management of risk.** The ability of the CEO to focus her executive team and through them the management on risk is an important part of governance.

451. The CEO has the ultimate power and responsibility to lead the management. In our view, she should, on learning from GC that POL was exposed to a major risk of breaches in prosecutions, have started to galvanize the Executive in thinking about how to manage this better. ExCo might have reflected on its strategies and processes for prosecutions and built a collective view of the risks. Culture, complexity and pressing immediate priorities tend to all militate against this sort of thinking in management teams which is why good governance needs the executive and the board to keep a clear focus on risk.

452. We have seen no evidence that management took the issue of prosecutions risk as a topic and then focused on it in greater depth. This would have included, but not be restricted to, updating the risk register which would involve a discussion with the Board.

453. We have looked at the minutes of the meeting of ARC in November 2013 (POL00038678) in order to better understand what ExCo did and whether there was a shared view of risk:

- a. Item 4 on the agenda at ARC on 19 November 2013 is PROJECT SPARROW AND PROSECUTING AUTHORITY at which the GC Chris Aujard presents his paper and gives an update on the approach to prosecutions brought by the Post Office.

- b. Having discussed the background and the current situation, the GC's prosecutions paper (POL00027150, p 4) sets out 4 options for discussion:
  - i. Preserving the status quo;
  - ii. Pursuing a prosecutorial capability but focussed only on high value cases / cases involving vulnerable members of society, and engaging with the police in relation to other matters;
  - iii. Ceasing all prosecutorial activities;
  - iv. Ceasing all prosecutorial activities as per option c) BUT coupled with work (as yet not formally defined but some of which has already started as part of Project Sparrow and NT).
- c. The minutes (POL00038678, p 3) record that the GC explains that currently POL brings criminal prosecutions under s.6(1) of the Prosecution of Offences Act, 1985, making explicit the right the PO has to bring prosecutions is one which is available to any individual or company (there is no *special prosecutorial authority* for the PO).
- d. Questions asked by the committee are recorded as relating to:
  - i. cost recovery: whether POL would still be able to recover losses through the civil courts and if this would take longer than recovery through criminal cases; and
  - ii. the role of criminal prosecutions as a deterrent to others.
- e. The GC cannot assure the committee that PO will be able to recover as much, or in as timely a fashion, in the civil courts, as would be possible following prosecution.

- f. The minutes record that the CEO, having heard the concerns of the NEDs, diverts from support for option D, and reassures the committee that:

*‘The Business was not saying that it would never bring prosecutions, but that it would be more circumspect in the cases it chose to take. She agreed that the current approach was a deterrent but explained that there were other deterrents such as suspension or termination of contract’.*

454. In our view the CEO’s reaction to the challenges from NEDs is ambiguous. On one hand she says that the business is not saying it will continue, nor, it will cease, prosecutions. On the other, she is saying that there were other ways to deter SPMs from fraud.

455. We note the GC Chris Aujard in his oral evidence speaks of an apparent change of direction by the CEO, between ExCo and ARC:

*‘ExCo were in favour of ceasing prosecutions entirely but when the matter was discussed.. at the committee, Paula interjected or made the comment that proposal (d), proposition (d) to cease everything entirely, should not be taken as what I’d intended it to be, ‘never bring prosecutions’ (Oral evidence of Chris Aujard, INQ00001135, at p 98-99).*

456. The decision of ARC on 19 November 2013 is that they are nervous about changing the approach to prosecutions as in their view it acts as a deterrent and an effective means of cost recovery.

457. Had the CEO and ExCo known and understood the Simon Clarke Advice, good governance in our view would have seen the Executives bringing all relevant information openly to the ARC, avoiding weak signals or contradictory messages, recommending that POL cease prosecutions (Option D) and the NEDs leaning in, being curious, and challenging the case for future prosecutions within a wholistic risk framework.

458. **Creating a collective executive view.** The CEO has a responsibility to be able to bring together the right people and to be able to sustain that team once it is assembled. This is easier said than done. In this section we look at the CEO’s challenges in building a team in an organisation, which has been described as working in siloes (First Witness

Statement of Simon Clarke, WITN08130100, p 13, paragraph 34) where the executive functional leads have separate and different experiences, interests and priorities.

459. When the CEO proposed the Working Party<sup>51</sup> should take a historic approach and be proactive in seeking out SPMs to review their cases she was met with different opinions in her team.

- a. The CEO initially suggested opening access to the Working Group to all past convictions and that the scheme proactively review all past cases of false accounting going back a decade. The GC wanted an historic approach but only going back to 1 January 2010.<sup>52</sup> Mark Davies, POL Director of Communications and Corporate Affairs, advocated there should be no historic approach.
- b. Mark Davies said in an email solely to the CEO that he would prefer historic cases not to be included because of the risk to POL' s reputation:

*'if we say publicly that we will look at past cases...whether from recent history or going further back, we will open this up very significantly, into front page news. In media terms it becomes mainstream, very high profile. It would also give James Arbuthnot a very strong case for asking for a Parliamentary statement from BIS...It [would] lead to a very public statement about the very nature of the business, raising questions about Horizon (the reality of what [Second Sight] has found would be misunderstood)... (Oral evidence of Paula Vennells, INQ00001152, p 60).*

- c. The CEO replies, *'You are right to call this out. And I will take your steer'* (Oral evidence of Paula Vennells, INQ00001152, p 64).

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<sup>51</sup> The 'Working Party' also known at times as the 'Working Group' or 'Task Group' refers to a joint JFSA and POL group, working collaboratively to a) explore the SS (8) themes for improvement and agree how they can be implemented b) look at the remaining past cases with JFSA to see if further themes or new evidence emerges c) review the findings of the activity of the external lawyers to review all prosecutions in the past 12-18 months (First Witness Statement of Paula Vennells, WITN01020100, p 233).

<sup>52</sup> POL00099218 Annex 1 of Susan Crichton's paper to POL Board titled 'Update following the Publication of the Interim Report on Horizon' states '*POL have been advised by our external criminal lawyers to undertake a review of all cases going back to the time of the migration from old Horizon to Horizon Online (aka HNGX) – 1<sup>st</sup> January 2010*'.

- d. Yet, as we now know, the review was historic and in line with the proposed approach of the GC and agreed with the lawyers (POL00099218).
  - e. It is, as far as we have reviewed evidence, an open question about whether the GC took the decision for the Sift Review to be reactive rather than proactive, without the CEO's involvement.
460. Good standards of management in our view would have seen the different priorities including the CEO's own, balanced with those of Legal and Communication Directors and brought together into one collective strategy which balanced the detailed requirements with the bigger picture. That bigger picture would also have reflected POL values, which should have led the CEO and her Executive to include consideration of the impact of their decisions on SPMs. The CEO with her Executive team behind her, would then have had the courage to take the decisions which needed to be made; forming them into proposals to the Board which they would collectively support and explain to the Board.
461. **Handling of the CCRC Letter (POL00039994)** The CEO should be open with the board about the risks to the business. Such an approach would have led her to mention Gareth Jenkins and relate concerns about the witness alongside consideration of the CCRC letter when the letter was mentioned to the board. In our view, the CEO's handling of the letter from the CCRC suggests that the CEO could have been more determined to seek to understand matters of legal risk. This would mean working collaboratively with the GC to make sure the situation which prompted the CCRC letter was understood and what promised to be a difficult situation communicated as well as possible to the Board and stakeholders.
462. We look at the CEO's collaboration with the GC by looking at the response to the CCRC letter:
- a. A letter was written to the CEO dated 12 July that draws her attention to possible appeals from the SPMs where evidence from the Horizon computer system is relevant. We would expect the letter to be drawn to the CEO's attention, and for the CEO to talk to the GC before the board meeting on 16 July and not, it seems

to us, to see it as a ‘legal matter’ which did not warrant her attention (Oral evidence of Paula Vennells, INQ00001152, p 58, 128).

- b. The letter (POL00039994) explains:

*‘The Criminal Cases Review Commission is an independent public body ... set up ... to review possible miscarriages of justice in the criminal courts of England, Wales and Northern Ireland and refer appropriate cases to the appeal courts’.*

- c. It refers to the media coverage concerning the Post Office Horizon computer system and says:

*‘...it would be very useful for us to have more information directly from the Post Office especially accurate information as to number of criminal convictions that might be impacted by the issue and what action is proposed, or being taken, in that respect’.*

- d. It notes that *‘the Attorney General was called upon on Tuesday to set up an enquiry and we are in contact with his office about that’.*

- e. It further explains:

*‘the Commission’s role in this is likely to relate to anyone who is convicted of a criminal offence (in England, Wales or Northern Ireland), where evidence from the Horizon computer system is relevant, where (i) they have already tried to appeal against that conviction or (ii) they were convicted at Magistrates Court following a guilty plea’.*

463. A clear response to the CCRC would require a summary of the state of play in POL with the review being undertaken and might well have referenced the Simon Clarke Advice (or substance of it). The CEO and GC should be sufficiently regularly in touch before the Board meeting and following the CCRC letter, that the CEO would be fully aware of, and in agreement with, the proposed response to the CCRC notwithstanding the fact that the GC will also get considerable legal input into the proposed reply.

464. We would expect that the mention of the CCRC letter by the CEO to the Chair would have happened either as part of her regular updates or any that were driven by any emergency meetings around this time. Such emergency meetings would have been considered necessary in order to handle the new position POL found itself in as a prosecutor allegedly in breach of its duties. Such meetings might well have led to a discussion about the looming issues of past and current prosecutions and how best to keep the Board informed about the number of disclosures and many other matters of business which relate to POL prosecutions policy and practices.

*E.3.2.2 What should the GC have done with the Advice?*

465. **Actions on Disclosures, the Sift Review.** The Advice made very clear that by POL having breached their own role as prosecutors, convicted defendants were entitled to disclosures relating to the existence of bugs. GC Susan Crichton agreed the protocol for the Sift Review of cases and disclosures in her face-to-face meeting with Cartwright King and the Sift Review was under way by the time of the 16 July Board meeting.

466. When the board was informed that what became known as the Sift Review was underway, it should have been explicitly told it was necessary because of POL's failure to disclose bugs in the Horizon system. They should have had an opportunity to discuss the rationale for the start date of January 2010, which the Inquiry has heard was the subject of a follow up meeting between the ARC Chair with the GC and CoSec, Alwen Lyons. The Board should also have discussed and weighed the pros and cons of POL taking a proactive approach to cases by looking at all past prosecutions, or a reactive approach to cases. The GC had recommended a reactive approach<sup>53</sup> to the board and without board discussion, this became the basis on which the Sift Review was conducted.

467. The immediacy of the action taken by the GC to start the Sift Review strikes us as good management. However the standards of good governance were breached by the GC and the CEO not escalating the risk and not bringing the reasons for the Sift

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<sup>53</sup> Susan Crichton's Update to the Board (POL00099218), discussed in the Second Sight Case 2013.

Review to the Chair's attention, and the Chair not requiring explicit Board involvement in the decision on the GC's proposed reactive approach.

468. **Action on prosecutions.** We look at how the GC could have presented information to the ARC in November 2013 to see what information the NEDs on the ARC might have been told relating to prosecutions. The communication should have been clear and focused so that the ARC would fully understand the basis for the recommendations of ExCo.
469. The charges in the Simon Clarke Advice appear to us to be major risks to POL and we would expect such a revelation to trigger an urgent review of prosecutions policy and for the GC to bring this, and the reasons underlying it, to the attention of the board. The Advice made it very clear that by doing their own prosecutions, POL would always be vulnerable to charges of wrongful convictions, breach of duties, etc.
470. In her Horizon Update paper to the Board on 16 July, Susan Crichton, the GC, proposed that *'the position of the Post Office as a Prosecuting Authority'* should be considered by the ARC *'alongside its risk work in September'*. There is no record of the Board's decision on this recommendation in the minutes of POL Board meeting on 16 July.<sup>54</sup>
471. There being no clear decision on this proposal by the end of the July Board meeting, POL's prosecutions policy might have been discussed as a pressing matter by ExCo or ARC over the Summer of 2013 but it does not appear on the ARC agenda until 19 November 2013.
472. The Inquiry has heard that prosecutions had effectively ceased by October 2013 because *'POL had not yet found another expert witness'* (First Witness statement of Chris Aujard, WITN00030100, p 42, 43, 45, 195).

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<sup>54</sup> See the Second Sight Case 2013.

473. One of the first tasks facing Chris Aujard, POL's new GC, when he took up his post on the 14 October 2013 was to prepare a paper for the ARC on POL's overall strategy for investigating and prosecuting future cases (POL00030716).
474. The paper should have started with an executive summary which clearly gives the rationale for a review of prosecutions and says why it is needed at this time. He might have done this bringing to the ARC's attention matters (i) and (ii) of the conclusions of the Simon Clarke Advice:
- (i) *'Dr Jenkins [sic] failed to disclose material known to him but which undermines his expert opinion. This failure is in plain breach of his duty as an expert witness.'* and
- (ii) *'Accordingly Dr Jenkins [sic] credibility as an expert witness is fatally undermined; he should not be asked to provide expert evidence in any current or future prosecution.'*... *'material which should have been disclosed to defendants was not disclosed, thereby placing POL in breach of their duty as prosecutor'*
- before going on to state options.
475. There were other pieces of information the GC might have included: his personal and professional view that he did not believe that POL should be conducting prosecutions drawing on his evidence of how other institutions of comparable size handled prosecutions. He might have reinforced the view of Brian Altman KC that *'Post Office Limited's prosecutions role is perhaps anachronistic...'*. He might have challenged Brian Altman KC's statement that *'POL is thus the only commercial organisation (albeit Government owned) .. that has a commercially based, sophisticated private prosecution role .... to that extent it is exceptional if not unique'* by pointing out that POL has no special prosecutorial authority. He could have brought the warnings that he was given in his induction briefing from Cartwright King to the paper that this: *'was an important and far-reaching failure the consequences of which are only now beginning to crystallise'* (POL00108136, Oral evidence of Chris Aujard, INQ00001135, p 79). He might also have included the information in Brian Altman KC's, 'General Review' on 15 October 2013 (POL00006581, p.6) which says *'I agree that Gareth Jenkins is tainted and his position as an expert witness is untenable. Thus a new expert should be identified as soon as is practicable'*.

476. He should have reminded and perhaps clarified in the ARC's mind that whilst the conclusions by Brian Altman KC of his independent review (his Backward Looking Report, POL00006581) found *'no systemic or fundamental flaws in the review process'* and made *'a number of relatively small procedural recommendations'* (POL00124833), this in fact referred to POL's review of the Sift Review and should not be confused with a review of POL's processes for conducting investigations and prosecutions.

477. All of this may not have proved sufficient to change the NED's minds and alert them to the underlying risks, particularly as they were receiving counteracting positive messages not least from the October CEO's update to the Board, as to the small scale of the number of cases needing disclosure. The CEO under the title 'Project Sparrow' says in Appendix 1 of her October 2013 report to the Board:

*'Our external firm of criminal solicitors, Cartwright King (CK), has now completed a review of 301 cases subject to past prosecution to identify whether we have a duty to disclose the findings of the Second Sight report and associated issues. [The conclusion is that] 'disclosure is appropriate in 10 of these cases' (POL00027150, p 7).*

478. When there is a difference of opinion between GC and CEO, expected standards of good governance would require that GC and CEO discuss differences, the GC would fully explain the basis of his views, and if their differences persisted (which would be a reasonable outcome in many situations in which decisions are finely balanced) they would consider how to brief the board to help the Board see all the issues and make a final decision.

#### *E.3.2.3 What should NEDs have done with the Simon Clarke Advice?*

479. The NEDs serve on the board to oversee management's efforts to create an effective organisation. However, they need to be able to do more than ask good questions. They need to be sufficiently well informed to contest management views. Most NEDs expect to monitor management and on occasion to 'get tough' with management. They are expected to make important decisions. It sounds a truism, but NEDs must be clear when they are offering advice and when they are making a decision that management must accept.

480. At the ARC meeting in November 2013 it appears the NEDs were actively involved in decisions when they approved the approach to risk and the identity of the top six plus three risks to the business and made changes to the outcome on the prosecutions item moving away from the GC's preferred option. In this they were actively involved in the key decisions for POL (POL00038678).
481. If the NEDs had known the real risks to POL they should have used the information to ensure there was a fully informed discussion on prosecutions policy in the Autumn of 2013 and Spring of 2014. This may have led to a different Option being chosen in ARC than the decision to continue with some prosecutions. However, to our mind, this was not inevitable because governance proceeds not simply based on the information available but on the context set by behaviours, values, questions and priorities.

*E.3.2.4 What should the Chair have done with the Advice?*

482. The Board should have felt themselves to be in a position where they could talk frankly and with full information about POL prosecutions policy. Whilst pressing issues of business can make it extremely difficult to find time on agendas for meaningful discussion of particular issues, the Chair should have ensured the Board could have done this.

E.3.3 Conclusions

483. When looking at what should have been done with the Advice, we make the following observations:
- a. On receiving the Simon Clarke Advice, the POL Executive, led by the GC, needed to take immediate action to review past and present criminal cases and start the disclosure exercise using the process agreed with POLs lawyers, Cartwright King. As we have heard, Susan Crichton recognised that immediate action was needed and acted on the advice of the lawyers so that the Sift Review was underway by the time of the 16 July 2013 Board meeting.
  - b. In our view it was a broad Executive, not just a legal, responsibility, to review the conclusions of the Simon Clarke Advice and make recommendations,

initially discussed and agreed within ExCo to the Board. All Functional heads share responsibility for briefing the CEO and their team colleagues, but the CEO's role, in focusing the team on the issues for the business, is crucial.

- c. The prosecutions policy would almost certainly have been thought a priority by the ExCo had they considered it, and it should have been addressed as a matter of great urgency. Furthermore, any member of the ExCo who were Board directors, have an ultimate duty to the Board to bring any matters of consequence to the Board.
- d. The GC should have been in regular contact with the CEO throughout the week before the board meeting, conveying to the CEO the lawyers' proposals and initial work and they should have been jointly discussing any implications for the business and assessing the risk.
- e. The GC generally, has a duty fully to inform the ARC and the Board, in order to protect the business in situations where the CEO may not be doing this. Although not a member of the POL Board, the GC had a direct duty to the Board. If the GC felt at any time when the board was making important decisions of Policy, the board was being given incomplete or inaccurate information, whilst obviously in a difficult situation, they must inform the Chair of their concerns and express their opinion at ARC even when it differs with that of the CEO. At the same time, the GC should continue to discuss with the CEO any differences of opinion.
- f. POL was slow to react to breaches in their duties as a prosecutor because the CEO and ExCo collectively did not acknowledge that the Simon Clarke Advice (or the substance of it) revealed a problem with prosecutions, nor did they take them as a coherent picture to the board. Yet, the Board also has a duty to challenge small issues before they become big ones. The Board knew about the need for disclosures, about the possibility of some miscarriages of justice and about problems with bugs. These were either explicit or implicit in the content

of, and subsequent Board Update on, the Second Sight Interim Report.<sup>55</sup> The board should have had a frank discussion with the CEO about what the Board must understand in relation to miscarriages of justice in order to be able to recognise the problem before it got out of control. Had they done so, management might have shown that they knew much more about the issues associated with disclosures than was revealed.

## **E.4 Issue 3: Internal and external conflicts of interest**

### E.4.1 Introduction

484. Conflicts of interest are a major governance issue because they introduce the opportunity for bias in decision making, meaning that people do not always have only the interests of the organisation in mind, when they act. We have seen no evidence that the potential for conflicts of interest occurring in POL structures were acknowledged or discussed when POL prosecution policy and practice was being considered in 2013.

485. In our view, there were conflicts of interest where:

- a. The GC was conflicted in their oversight of POL prosecutions by their position in the structure.
- b. Cartwright King were conflicted in performing a disclosure exercise where they had helped POL as their prosecuting lawyers.

### E.4.2 Evidence

486. It appears to us that there was a conflict of interest inherent in the GC's line responsibility for the security and legal teams, which had for decades been responsible for POL prosecutions. We know that Susan Crichton and Chris Aujard advised early in their respective tenures as GC that POL should cease its own prosecutions and hand all prosecutions over to the CPS. However, the Inquiry has heard that this did not happen. Thus, the conflict between their personal views as GC and the decisions made by the Board remained. The GC was also responsible for the Working Group just as

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<sup>55</sup> Second Sight Case 2013.

they had been for Second Sight, and again, the same structural conflict of interest is apparent.

487. The second conflict is the Sift Review and the disclosure exercise which was in the hands of Cartwright King which had been centrally involved in some of the prosecutions they were reviewing. We have seen evidence which suggests that Brian Altman KC raised and considered an apparent conflict of interest (POL00006581, paragraphs 98-99) but we have not seen any evidence that the Executive, legal or CEO discussed his view.
488. We heard evidence that the approach to disclosures was designed and laid down before Chris Aujard joined POL as GC in October 2013. He understood that they had it under control. He received a briefing from Cartwright King which referred to the review (POL00108136, p.6), but he did not receive a handover from the previous job holder on the Sift Review and describes himself as a ‘*Caretaker for the Disclosure process*’ (Oral evidence of Chris Aujard, INQ00001135, p 105). He says:

*“my own understanding...was historic issues had arisen, Cartwright King had put in place a process to sift all the cases to ensure appropriate slower [sic] [progress] was made, and none of these additional issues were raised to me by them at the time’.*

489. This external conflict of interest built into the work plan would normally in our experience be a cause for concern and considered action by the GC and, given the CEO’s responsibility for the business, the CEO herself.

#### E.4.3 Conclusions

490. The CEO is responsible for internal structures and for ensuring that any conflicts are acknowledged and handled. Where an internal conflict exists, discussion, agreed frameworks, routes for what to do if there is disagreement might be openly discussed and agreed. The established principle where someone has a conflict of interest is that they should be as clear with the CEO / Chair and with other members of the ExCo as possible. At POL the GC should have had a dialogue with the CEO and possibly the Chair about any potential areas for disagreement, and structures or frameworks for handling the conflict.

491. Another area which may be problematic is whether the external lawyers conducting the Sift Review were wholly aligned with the interest of POL, as they were reviewing prosecutions in which they had played a part. On the one hand an external independent firm was necessary but on the other it may be that the decision was made that on balance, it would be advantageous to have the firm which already knew a great deal about the cases and the process to conduct the review. In which case, what was put in place to ensure the firm were not overly concerned to make sure their own part in the prosecutions historically, was protected? Did the Board and CEO ask these questions about whether Cartwright King could ever be truly independent?
492. There is no easy answer to these questions, but it was a question the Board should have addressed with the CEO.

## **E.5 Issue 4: Communicating risk**

### E.5.1 Introduction

493. In this issue we look at communication because whilst communication involves at the one level the relatively simple act of sending a message and receiving it, how the message is received is a crucial part of board life and the decisions people make about what information to act on.
494. Effective communication is two way. All parties to a communication, which is arguably as important to the business as the Simon Clarke Advice, have a responsibility to be sure they know what they want to communicate and then check and clarify if the meaning of messages being received is the same as that intended by the sender.
495. Governance and management involve the interpretation of what is important and in complex environments making messages clear and memorable helps busy colleagues focus. Executives must 'help' NEDs, CEO and ExCo colleagues engage in the issues and NEDs must follow up with the sender and ask for more information, if they are not clear.

### E.5.2 Evidence

496. The GC says she told the CEO by the time of the Board meeting on 16 July 2013 that there would be a significant number of claims by SPMs for wrongful prosecution, but the CEO claims she did not understand the meaning of the message nor the likely number of the claims. She said:

*‘the way it was presented to me was not in the way that I now understand it to have been so important, and I didn’t see the Simon Clarke advice of 15 July. It was presented to me as I’ve explained, as a frustration and something that seemed – that was a logic that I couldn’t follow – that Lesley Sewell had explained and that I couldn’t follow either’* (Oral evidence of Paula Vennells, INQ00001152, p 143).

497. The Inquiry has been shown an email from the CEO to the Chair (POL00382001) dated 21 October 2013 which mentions the unsafe witness referenced by Susan Crichton and Lesley Sewell in their conversations with the CEO. The CEO’s email says:

*‘My concern re Sparrow currently is our obligations of disclosure re., an unsafe witness. (The representative from Fujitsu made statements about no bugs, which later could be seen to have been undermined by the SS Report.) We do not think it material but it could be high profile.’*

498. In our experience as NEDs an email such as this would not suggest it was a matter we should regard as urgent and very important; it gives a weak signal of risk. It implies a reassuring message to the effect that: ‘we are managing this; it is not material; I am drawing the Chair’s attention to it as it may create negative media’. How the Chair received and responded to this message will depend on what else she knew. We have seen she had several clues that there were serious problems in prosecutions, but not the Simon Clarke Advice. This is not a strong message.

499. The GC’s positioning of the need to review prosecutions did not reflect the concerns of the Simon Clarke Advice, nor the evidence of the Altman Advice<sup>56</sup> for why Gareth Jenkins was not suitable as a witness. Leaving the ARC with an impression that the prosecutions policy needed updating, because it was tied to ongoing work with Second

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<sup>56</sup> POL00006581 15 October 2013.

Sight and the Sift Review had yielded only a small number of disclosures, meant it did not convey an urgent trigger that decisions on past and future POL prosecutions needed to be carefully considered and made. The communications at the ARC did not send a clear signal.

### E.5.3 Conclusions

500. In all of these examples, the information needed in order to convey important messages that the CEO, Chair and ARC respectively needed to hear, was not strongly and coherently communicated. The communications might have raised knowledge in the recipient but none of these communications prompted a change in approach or priority.
501. All three 'senders' should have wanted the recipient to be well informed and genuinely insightful in their deliberations that followed the message, but they provided no reason for the CEO / Chair / ARC to be proactive: they did not say how they wanted the recipient to be involved.
502. Good governance in our view requires the executives to bring all relevant information openly to the CEO / Chair / ARC, avoiding weak signals or contradictory messages, and the Non Executives leaning in, being curious, and challenging the case for future prosecutions within a wholistic risk framework.
503. It also requires people to take responsibility and accountability and yet in these communications, it is as if the people who sent these messages almost do not want to take responsibility for making their views unambiguously clear. Status and hierarchy can have the effect of making people believe their views are not as important as other peoples. Diffusion of responsibility when people assume that responsibility will be shouldered by others who are involved in a situation requiring action, can be extremely dangerous especially in a crisis.

## **E.6 Issue 5: Executive understanding of risk**

### E.6.1 Introduction

504. Where there is knowledge which may significantly detrimentally impact the performance of the organisation, executives are expected to share this with each other, with the CEO and from the CEO to the Board. This should happen whether the risk is retrospective and relates to past events or current or prospective risks.

505. It is the Board's role to support any and all members of their Executive to bring risks to the Board, and to seek and spot information which enable NEDs constructively to challenge the inclusion and omission or perspective on the risks presented.

506. Risk is a fundamental and necessary part of executive responsibilities.

*'It is an Executive responsibility to build an integrated and dynamic understanding of the company's risk profile which is effectively communicated to the board and shareholders' and*

*'The identification, analysis and management of risk lies at the very heart of running a company, contributing directly to effective management and corporate performance' (EXPG0000006, Section 4.2.1)*

507. An effective risk framework requires risk to be identified, prioritised in terms of their seriousness to the business, mitigated and monitored and communicated clearly to the board. It is the CEO's responsibility to ensure this framework is in place. This depends on the CEO creating a senior leadership team in which colleagues will share significant developments which impact risk. This enables the executive to develop a collective view on top level risks for the business which may not fall within their individual functional or business domain.

508. The Chair is responsible for running the board and for maintaining a balance between its strategic responsibilities and oversight of operational matters, for which the Executive is responsible. The Chair's leadership of the board is important in balancing operational matters and strategic risk. It is the responsibility of the Chair to find time in busy agendas for important matters to be considered, to be alert to 'clues' that problems are lurking in the shadows and need to be brought into full light of Board scrutiny, to know when to push open difficult conversations and drive them to their

conclusions. This is especially important in determining how the Board handles ‘bad news’.

#### E.6.2 Evidence

509. The Inquiry heard that the ARC in its meeting in November 2013 was pleased with POL’s ‘new’ approach to risk but felt it was still developing (ARC Minutes November 2013, POL00038678): Under the item ‘RISK MANAGEMENT – TOP COMPANY RISKS’, Item (e) notes:

*‘The Committee thanked the CEO, noted that a lot of progress had been made on risk identification and review and applauded the proposed approach. The Committee acknowledged that although good progress had been made to date it stressed the need for further progress to be delivered at rapid pace’.*

Item (g) notes:

*‘The Chairman asked that the Business go back 18 months and review the 6 top risks and the 3 further risks to see how many would have been identified at that stage’.<sup>57</sup>*

510. This suggests to us that the Chairman wanted POL to develop its approach to risk identification and that this was likely to be because the risk processes were still not felt to be adequate to support good governance.
511. Although there are four months between the Simon Clarke Advice and the November 2013 meeting of the ARC, the minutes of this meeting (POL00038678) show a discussion of the top 6 plus 3 key risks facing the business. The risk of wrongful prosecutions is not shown as one of the risks.
512. To get prosecutions risk into the list of the top six plus three key risks would have needed the management to understand and discuss the risk and elevate it to the Board; and for the Board to see it as a major risk.

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<sup>57</sup> POL00038678.

### E.6.3 Conclusions

513. The role of CEO is critical in creating an executive and management focus on risk discussions. The CEO was not able to bring prosecutions risk to the attention of POL ExCo because, at a minimum, it seems to us, she did not understand it.
514. Without the risks relating to the Simon Clarke Advice being clearly framed in ExCo, it was impossible for managers to go back to their functions and start building the governance around the risks. Good governance of risks requires the risk to be fully shared and agreed in ExCo cascaded into teams where it is discussed and plans and mitigations formulated for consideration within the risk framework.

## **E.7 Issue 6: POL Culture**

### E.7.1 Introduction

515. Culture, described in Report 1 as *'the collection of attitudes, values, behaviour and beliefs which characterise... everyday experience'* is hard to change.
516. In this section we examine the way the governance of the Simon Clarke Advice was impacted by POL culture. Our particular focus is on the relation between culture and its impact on the choices the executive make about the information they bring to the board, and the way the board engage with available information.
517. Senior leadership teams inevitably work within a set of taken for granted assumptions which enable them to run the business effectively. They cannot be expected to engage in introspective examination of their assumptions on an everyday level. At the same time however, senior leadership teams should ensure that they are open to challenging themselves about their beliefs and to countenance, even seek, alternatives to assumptions and perceptions reflected in the status quo. In doing this they contribute to the evolving culture of the company.
518. Creating executive teams that can from time to time look critically at their assumptions, requires the teams to regulate themselves; members must draw on their diverse experiences, knowledge and beliefs and bring their own challenges into the collective executive arena. This is crucial if they are to make high quality decisions in

uncertain and difficult situations. Achieving this sort of respectful interdependence is frequently a challenge for senior teams. It is particularly hard in highly siloed organisations, where each function - legal, communications, operations, network, technology – is led by executives whose experience is largely limited to their own functional area.

519. Responsibility for creating the conditions to encourage this way of working is a matter for all individual team members. However, the CEO embodies a disproportionately large influence on, and responsibility for, the extent to which there is constructive internal challenge to prevailing culture in terms of accepted attitudes, beliefs and assumptions.
520. The Board also has a vital governance role to play in prompting the CEO and her Executive team to challenge the culture of assumptions and beliefs. The Board's effectiveness in this role begins in part, with it deciding both explicitly and implicitly, on those strategic matters on which the board wants to focus, and those operational matters, which, in the board's mind, are predominantly for the Executive to manage, unless and until there is evidence that there are problems of operational performance which are creating serious risk for the business.
521. The NEDs are more likely to ask for information and hit on 'the right conversation' if the matter is one which NEDs feel is a strategic or performance matter for the board. They are less likely to ask, and indeed may feel discouraged from asking, for information or spending board time on issues which they consider are 'operational' and thus for the Executive. Making these distinctions, is a matter for the whole board, yet, the Chair has a disproportionately large impact on how the Board spends its time and where its focus lies.
522. The Chair together with the NEDs also has responsibility for enabling productive discussions with the executive on matters on which they may feel particularly defensive and consequently, less likely to volunteer for discussion.

## E.7.2 Evidence

### E.7.2.1 The CEO and the Executive Team

523. The Inquiry has heard that in 2013, despite evidence to the contrary, it was a common place, little challenged internal belief that POL had historically been right to pursue prosecutions on the basis of Horizon evidence. This belief was embedded in a POL culture, characterised by beliefs in the robustness of the technology, a lack of proportionate interest in the system's users, a superiority derived from a position as guardians of public money and commonly held views about the integrity of SPMs and their place in POL.<sup>58</sup>
524. The Executive view linked the Sift Review to the Second Sight Interim Report and not to Gareth Jenkins as an unsafe witness. In doing so, they linked the findings of the review to technology which they 'knew' was 'robust'. Furthermore, in not bringing a discussion of the Simon Clarke Advice to the Board, members of the executive encouraged the NEDs to continue on a path which did not focus on the much rehearsed concerns of MPs and SPMs.
525. The beliefs of the Executive persisted throughout the work of Second Sight, notwithstanding many clues identified in the analysis for this case for this case and the Second Sight Case 2013, that their assumptions were ill founded. On being questioned about an email she had written on 3 August 2015 in which she wrote '*our priority is to protect the business and the thousands who operated under the same rules and didn't get into difficulties*' (Oral evidence of Paula Vennells, INQ00001151, p 35 - 36), the CEO said in her oral evidence:

*'We had just spent three years investigating with Second Sight, and I accept all of the things that went wrong through that process which I'm sure we will come to, but we had prioritised more than any other time in the Post Office, looking into issues raised by individuals. I had been told, and the Inquiry has heard other people say the same, that nothing had been found and so my understanding at this time was that the way the business was operating was an acceptable way...'* (Oral evidence of Paula Vennells, INQ00001151, p 37 - 38).

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<sup>58</sup> See Overview, Section B.3.3 paragraph 'Organisational Culture; Second Sight Case 2013, 2.0 Priorities and Perceptions of the Board.

526. The Inquiry has heard frequent reference by the CEO to the effect that a matter was a 'legal issue' or 'a matter for the GC' (Oral evidence of Paula Vennells, INQ00001152, p 58, p 128). Such an approach once again draws our attention to the problems of functional silos impacting how the top team operates.
527. Had, prior to the ARC meeting on 19 November 2013, ExCo agreed collectively that their preferred option was Option D for the future of prosecutions, then it seems to us that it would have been much more difficult for the CEO to change her view, mid discussion, to accommodate the concerns of the NEDs at that ARC meeting.
528. The new GC was potentially a 'fresh pair of eyes' on prosecutions, particularly as prior to the November ARC meeting, he had received an induction briefing note from Cartwright King which covered POL's history and approach to prosecutions including the Simon Clarke Advice on the failure of Gareth Jenkins as an expert witness (POL00108136, paragraph 10). The note described the failure as '*an important and far-reaching failure the consequences of which are only now beginning to crystallize*'. When questioned about his receipt of this briefing in his oral evidence (Oral evidence of Chris Aujard, INQ00001135, p 79 - 80), Chris Aujard says he believes that he saw the Gareth Jenkins issue as '*an historic issue - recently discovered but nonetheless historic issue and that was being dealt with as part of an overall process... to review cases by Cartwright King...*' The GC was well placed to challenge the prevailing view of the CEO and ExCo on POL's policy and practices on prosecutions. It seems to us he was clear in his preference to cease prosecutions, but he was not clear to his colleagues or the Board about POL failures in their prosecutions.
529. Structures or relationships frequently get in the way of challenge, in this case, it appears to us that the new GC was confused about his accountability to the Chief Executive to whom he reported, and his duty to escalate critical issues to the board.
530. The Board Chair sat on the ARC and so there was a direct route for escalation but instead, the GC's November paper to ARC seems to send mixed messages. He repeats the positive claims made in the CEO's update report to the October Board about the small number of disclosures and POL's processes for reviewing prosecutions, while recommending Option D which sees POL ceasing prosecutions altogether,

commenting that Brian Altman KC says POL's role in prosecutions is an anachronism. Throughout he makes no mention of the Simon Clarke Advice.

#### *E.7.2.2 The NEDs*

531. The Inquiry has heard that NEDs saw issues associated with Horizon including implicitly the prosecution practice of reliance on Horizon data, in terms of operational matters of technology, which were largely matters for the Executive.
532. We have seen no evidence the NEDs took a strong interest in enquiring into the reasons for the apparent performance problems in these areas. They were critical of executive management's handling of Second Sight, but did not challenge the operational management of the Horizon system, prosecutions or approach to SPMs.
533. They were especially critical of GC Susan Crichton about her handling of Second Sight just the same time as she was receiving and acting on the Simon Clarke Advice. Their criticisms contributed to the Chair's decision to exclude her from the board discussion at which she may have spoken about the Simon Clarke Advice.
534. We have seen no evidence that the NEDs sought to use any opportunity to open up a broader and deeper discussion of POL prosecutions policy. Had they done so, it is possible, but not certain, that the full details of the Simon Clarke Advice would have been revealed to them.

#### E.7.3 Conclusions

535. It seems to us that the POL culture with its underlying taken for granted assumptions was so strong, that the CEO and Exco did not see any link between persistent underlying flaws in the prosecutorial process and the evidence that POL had not taken the concerns of SPMs seriously. In our view, they lived, without question, within their accepted beliefs. It was as if miscarriages of justice were a mirage, not quite real and the Sift Review was required because of the disclosure about bugs, not an unsafe witness.
536. Functional silo working makes challenging established assumptions, attitudes and beliefs as a basis for building a different culture especially difficult for the executive

team. If the CEO and ExCo had looked collectively at the Simon Clarke Advice and been asked critically to focus on the implications of it for their strategies and goals, it is possible, but by no means certain that prosecutions would have become a significant priority area for the POL Executive to address and to escalate to the Board.

537. It seems to us odd that the CEO and her ExCo did not seriously challenge the assumption that POL had historically been right to pursue prosecutions on the basis of Horizon evidence even though both GCs in the period 2013-14 held personal views that POL should not be conducting private prosecutions and, at least some members of the team were aware that POL had breached its duties from the Simon Clarke Advice.
538. Clearer sight to the culture may have meant that POL prosecution policy and practice would have secured the challenging and thorough attention from the Board which in our view, was warranted. The Executive did not open this door for the Board; but the Board could have opened it themselves, had they not also apparently, accepted the prevailing assumptions.
539. It is arguable in our view that the chances of challenging the impact of POL culture on the way it approached the concerns of MPs and SPMs about the use of Horizon data in prosecutions, would have been increased had the board had timely and full access to the Simon Clarke Advice.
540. We note that much of the burden of the Simon Clarke Advice, particularly the need to review all past prosecutions in the disclosure exercise was already known to the Board from the GC July 2013 Update Paper and the Second Sight Interim Report,<sup>59</sup> and this did not change the Board's focus.
541. Boards and management teams fixed in their assumption, often find they need prompting opportunities to challenge their accepted beliefs and practices. The Second Sight Interim Report was one such opportunity, which was missed.<sup>60</sup> The appointment

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<sup>59</sup> See the Second Sight Case 2013.

<sup>60</sup> See the Second Sight Case 2013.

of a new GC, Chris Aujard, was another opportunity for a fresh pair of eyes on the way POL did prosecutions, but this does not seem to have led to a challenge to the established assumptions and processes.

542. The Inquiry has heard from NEDs that as they reflect on their experience in POL, they talk of an organisation which was exhibiting widespread defensiveness (Oral evidence of Neil McCausland, INQ00001183, p 162 - 163). From their position of NEDs at the time, and from their wide experience of other organisations, they may have been aware that defensiveness – in the top executive, and in teams lower down the organisation - often engenders two responses. One is that people may be less inclined to share ‘bad news’ with their seniors because it will engender (more) criticism. Secondly people may find it difficult to take on board new information which contradicts their central assumptions and beliefs. Both of these responses are more likely to be found at times of crisis, which is often heightened further by media and government interest. Such an understanding of responses to defensiveness, in our view, heightened the responsibility of the Chair and the NEDs, to be both more careful and determined to challenge executive assumptions and to interrogate matters in ways which it is possible, but not certain, would have led to a full understanding of the burden of the Simon Clarke Advice.

## **E.8 Overall conclusion**

543. This case study provides our description, analysis and conclusions on six issues, which we consider are important in evaluating the way the POL Executive handled the Simon Clarke Advice in 2013. The Advice should have been escalated to the Board however, if it is found that there was a failure to do so, in our view it is not a failure that can be laid simply on the GC.
544. In our view it was a responsibility on the CEO and the ExCo not just on the GC to have reviewed the conclusions of the Simon Clarke Advice and then made recommendations to the Board. It is ultimately the responsibility of the Chief Executive to ensure there is a focus on all top level risks in the business so that all members of the senior executive team, feel part of a shared endeavour in which they

will identify, communicate and mitigate risks in their areas and escalate them with urgency when needed.

## ANNEX A

### GLOSSARY

#### **Board**

The highest level of governance of a company.

**A Unitary Board of a listed company** would normally include a Chair (independent on appointment), Non-Executive Independent Directors, possible Non-Executive Non-Independent directors, and at least one Executive director (normally the CEO).

**An Executive Board of a non-listed company** may have a Chair (Executive from within the company or independent on appointment) and Executive Directors. They may choose to have Non-Executive Directors

**A board of a subsidiary (wholly owned) company** will have the structure determined by the parent and by regulation (as in UK banks). It may, or may not, include a Chair (independent on appointment), Non-Executive Independent Directors, Non-Executive & Non-Independent directors appointed by the parent and at least one Executive director (normally the CEO)

**A Board of a government owned company** may have an Accounting Officer, if the PAO in the sponsoring department chooses to appoint an AO in the government owned business. In such cases the AO would normally be the Chief Executive or the person responsible for the day-to-day running of the company. They may also have independent governance arrangements, for example, a Board made up of a majority of independent Non-Executive Directors from outside government.

#### **Culture**

The prevailing attitudes, values and beliefs as experienced by people within the company and stakeholders who interact with the company.

#### **Executive**

The senior people, often called Directors or Chief Officers or Senior Executives in any company, usually referring to the CEO and their most senior leadership team, usually their direct reports, often including CFO, CRO, COO, HRD. Together the CEO may constitute them as an Executive Committee.

#### **Executive Committee**

The group of senior leaders in the organisation whom the CEO chooses to join with the CEO in making key decisions, overseeing the company's operations and policies and implementing strategies agreed by the board. The group is sometimes formally appointed by the Board to act on behalf of, and with the powers granted to them by the Board.

**Governance**

Structures and systems by which the company is governed and the mechanisms by which it and its Executive are held to account by the owners of the company.

**Internal Controls**

Systems designed to ensure that information, concerning compliance with applicable laws, regulations, contracts, policies and procedures, is reliable, accurate and timely.

**Leadership**

Two meanings, both used in this report:

- a) Used in this report to describe the people who are in Senior Positions in a company, also referred to as the Executive;
- b) Used to describe the practices of those who lead others, not directly related to senior position. Occasionally it is used in this meaning in this report.

**Management**

Two meanings, both used in this report:

- a) The processes and structures through which the company is run;
- b) The people in the organisation who have 'positions as 'managers' but are not the most senior who are referenced as 'Executives'.

**Structure**

The roles and reporting relationships which are specified within the company.

**ANNEX B****DEFINITIONS, ACRONYMS & ABBREVIATIONS**

ARAC	Audit Risk and Assurance Committee
ARC	Audit and Risk Committee
BAC	Board Audit Committee
CoSec	Company Secretary
BERR	Department of Business, Enterprise and Regulatory Reform
BEIS	Department of Business, Energy and Industrial Strategy
BIS	Department of Business and Industrial Strategy
BRC	Board Risk Committee
BRemC	Board Remuneration Committee
Bond Dickinson	Womble Bond Dickinson formerly Bond Pearce / Bond Dickinson
Cartwright King	Cartwright King Solicitors
CCRC	Criminal Cases Review Commission
CEO	Chief Executive Officer
CFO	Chief Finance Officer
COO	Chief Operating Officer
Coyne Report	An independent review of Horizon technology which forms part of the case made by Mrs Wolstenholme against POL (WITN00210101) dated 21 January 2004
CPS	Crown Prosecuting Service
CTO	Chief Technology Officer
DTI	Department of Trade and Industry
EGM	Extraordinary General Meeting
ESG	Environmental, Social and Governance
ExCo	Executive Committee
EA	External Audit
FCA	Financial Conduct Authority
FRC	Financial Reporting Council
FSA	Financial Conduct Authority

GC	General Counsel
GRC	Governance Risk and Compliance
Horizon	the Horizon IT system
HRD	Human Resources Director
IA	Internal Audit
INED	Independent Non-Executive Director
JFSA	Justice for Subpostmasters Alliance
MD	Managing Director
NAO	National Audit Office
NED	Non-Executive Director
NINED	Non-Independent Non-Executive Director
OPOB	Ownership/Oversight of Post Office Business
PAC	Public Accounts Committee
PAO	Principal Accounting Officer
POB	Post Office Business
POC	Post Office Counters Ltd
POL	Post Office Ltd
POHI / the Inquiry	Post Office Horizon IT Inquiry
RMG	Royal Mail Group
RMH	Royal Mail Holdings
ShEx	Shareholder Executive
Simon Clarke Advice	The ‘Advice on the use of expert evidence relating to the integrity of the Fujitsu Services Ltd Horizon system’, authored by Simon Clarke, Barrister, Senior Counsel from Cartwright King Solicitors and dated 15 July 2013 (POL00006798)
Sift Review	The review undertaken by Cartwright King of convictions obtained by POL for the purposes of post-conviction disclosure
Second Sight Interim Report	The ‘Interim Report into alleged problems with the Horizon system’ prepared by Second Sight dated 8 July 2013 (POL00130412)

SoS	Secretary of State
SS	Second Sight Support Services Limited
UKGI	UK Government Investments

## Annex C

### List of people mentioned by name in the Report showing their positions and organisations

Name (alphabetical order by surname)	Position and Organisation
Brian Altman KC	Barrister
Rt Hon James Arbuthnot MP	Member of the Horizon Compensation Advisory Board, and former MP for North East Hampshire
Chris Aujard	Former GC, POL
Alan Bates	Former Subpostmaster and Founder of the Justice for Subpostmasters Alliance
Keith Baines	Contract manager, POL
Patrick Bourke	Government Affairs and Policy Director at POL Former Program Director for the Mediation Scheme, POL
Alisdair Cameron	Chief Financial Officer and former Interim Chief Executive Officer, POL
Simon Clarke	Barrister and former Senior Counsel, Cartwright King Solicitors
Jason Coyne	Author of the Coyne Report, expert in the Cleveleys case
Peter Corbett	Former Finance Director, POL
Susan Crichton	Former GC, POL
Adam Crozier	Former Director, RMG and Former CEO, RMG
Mark Davies	Former Group Communications & Corporate Affairs Director, POL
Chris Day	Former Chief Financial Officer, POL
Hugh Flemington	Former Head of Legal, POL
Sir Michael Hodgkinson	Former Chair of POL and former Senior Non-Executive Director of RMH
Rod Ismay	Former Head of Product and Branch Accounting, POL
Gareth Jenkins	Former Distinguished Engineer, Fujitsu Services Limited, expert witness
Allan Leighton	Former Chair of RMG, former Chair and former Non-Executive Director of POL, former Non-Executive Director of RMG
Alwen Lyons	Former CoSec, POL
Neil McCausland	Former Senior Non-Executive Director and Interim Chair, POL
Richard Morgan KC	Barrister
David Mills	Former CEO, POL
David Miller	Former Managing Director of Post Office Network, former Chief Operating Officer of POL, and temporary Managing Director of POL
Alice Perkins	Former Chair, POL
Lesley Sewell	Former Chief Information Officer, POL

<b>Name (alphabetical order by surname)</b>	<b>Position and Organisation</b>
Jarnail Singh	Former Post Office lawyer
David Smith	Former Managing Director of POL
Susannah Storey	Former ShEx / UKGI official
Jo Swinson	Former Parliamentary Under-Secretary of State for the Department of Business, Innovation and Skills
Paula Vennells	Former CEO, POL
Rodric Williams	Former litigation lawyer, POL and current Head of Legal (Dispute Resolution & Brand), POL
Julie Wolstenholme	Former sub-postmistress, Cleveleys, Lancashire

## ANNEX D

### QUALIFICATIONS AND EXPERTISE OF DAME SANDRA DAWSON AND DR KATY STEWARD

**Professor Sandra Dawson** *BA (Keele Univ.), MA (Univ. of Cambridge), Hon DSc (Keele Univ.), DBE*

Dame Sandra is Professor Emerita at the University of Cambridge. She was formerly Director of Cambridge Judge Business School (1995-2006), Master of Sidney Sussex College (1999-2009) and one of the Deputy Vice Chancellors of the University (2008-2012). Prior to moving to Cambridge, she held academic positions in Imperial College, University of London.

She teaches, writes and consults on organizational behaviour, leadership and governance.

She was invested as a Dame Commander of the British Empire in recognition of her contribution to higher education and management research.

She has wide practical experience as a Board member in the commercial, public and charitable sectors. Former Board positions include: Chair, Riverside Mental Health NHS Trust (1992-1995); Chair, Executive Committee, Social Science Research Council, USA (2009-2019); Trustee and sometime Vice-Chair, Oxfam GB (2006-2012); Senior Independent Director and Chair of the Remuneration Committee, TSB Bank (2014-2020); Non-Executive Director and sometime Senior Independent Director and Chair of Remuneration Committee, Financial Services Authority (2010-2013); Non-Executive Director and member of the Audit committee, Barclays plc (2003-2009), Non-Executive Director and member of the Audit Committee, JPMorgan Claverhouse Investment Trust (1996-2003); Chair, Remuneration Committee and member of the Audit and Ethics Committees, DRS plc (2012-2016); Chair, ESRC Advanced Institute of Management Executive Steering Committee, 2007-12; Member, Prime Minister's Council on Science and Technology (2011-2014); Member, Windrush Lessons Learned Review Advisory Group (2017-2020); Member, Senior Salaries Review Body (1996-2003), Trustee and sometime Chair of the Academic Affairs and Research Committee, American University of Sharjah (2014-2023). She currently Chairs the Advisory Board of the Cambridge Museum of Zoology and sits on the Advisory Board of Cambridge Judge Business School.

**Dr Katy Steward** *MA (Univ of Cambridge), MBA (Imperial College, Univ of London), PhD (Imperial College, Univ of London)*

Dr Steward is currently a Visiting Scholar at Sidney Sussex College, Cambridge. In 2022-23 she was a Visiting Fellow at Cambridge Judge Business School, University of Cambridge.

She has taught, advised, coached and consulted on leadership, organisation culture and governance for the past 30 years. Her experience includes:

Head of National Culture and Leadership Program, NHS England, (2021-2022), including advising on governance, leadership, culture change and whistle blowing.

The Kings Fund, Independent Health Think Tank, (2004-13), including advising and coaching various CEOs of health and other organisations, Professions' regulators, an independent care provider and a large international development organisation, on leadership, governance, culture change and organisation structure.

Monitor (Regulator of all NHS Foundation Trust Hospitals) (2003-04), including developing frameworks for the evaluation of governance and culture.

Membership of Boards in the charity and public sectors, including Non-Executive Director and member Audit Committee and Nominations Committee UK UNHCR, (2021-date); Non-Executive Director and Chair, Quality Committee & Board Culture Change Committee, Norfolk and Suffolk NHS Mental Health Trust (2020-23); Trustee and sometime member of Safeguarding Committee, Oxfam GB (2013-2020); Trustee, Amref,UK (2011-2014); Trustee, The Kaloko Trust (2006-2011).

Membership of various groups, including Member, National Guardians Office Roundtable on Whistleblowing (2022); Member, NHS England Culture and Leadership Advisory Group (2019-21); Member, Lord Carter Productivity Review of Ambulance Services and Mental Health (2016-17); Director, National Foundation Trust Governors' Association, Advisory Group, Kings Fund (2005); Chair, NHS Board Chairs Leadership Program Advisory Committee, Kings Fund (2005-13).

**ANNEX E****Report 2 to the Post Office Horizon IT Inquiry by Dame Sandra Dawson and Dr Katy Steward.****Declaration**

We, Dame Sandra Dawson and Dr Katy Steward, declare that:

- 1) We have been appointed jointly by the Post Office Horizon IT Inquiry to act as expert witnesses on matters of governance, management, and leadership.
- 2) We understand that our duty is to give an objective, unbiased opinion on matters within our expertise in order to help the Inquiry achieve its terms of reference. We have complied, and will continue to, comply with that duty.
- 3) We know of no conflict of interest in undertaking this work.
- 4) Annex D sets out our expertise and qualifications.
- 5) We have endeavoured in our Report to be accurate. Any matters on which we have expressed an opinion lie within our field of expertise and represent our true professional opinions on the matters to which they refer.
- 6) This report is provided to those instructing us with the sole purpose of assisting the Inquiry. It may not be used for any other purpose without our express written permission.

**Statement of Truth**

The contents of this report are true to the best of our knowledge and belief.

Signed:

**GRO**

Signed:

**GRO**

Date:

11<sup>th</sup> November 2024

Date: 11th November 2024

Dame Sandra Dawson

Dr Katy Steward