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DRAFT Observations on the Investigations Function

What have we have found out about POL's Investigation Function in reviewing the Case Files during the Horizon Investigation?:

In reviewing POL's documentation relating to the 29 MP-referred cases, and the 20 cases referred by the JFSA, 2nd Sight has gained an insight into the workings of POL's Investigation Team. The following observations are based solely on what we have seen in those case files. We have not interviewed any of the members of the Investigation Team, nor its senior management. We have not reviewed its mandate, manpower or workload. We have also not researched the legal basis upon which POL conducts either Investigations or Prosecutions. With that proviso, we make the following interim observations:

1. POL investigators and investigations are overwhelmingly focussed on obtaining an admission of False Accounting from the interviewed SPMR (or employee).
2. POL Investigators often appear to have paid scant attention to the interviewee's assertions of innocence or his/her reference to specific transaction anomalies. They seem to have shown little or no willingness to *establish the underlying root cause* of any given shortfall.

This disinterest seems to be driven by the desire to 'get the money back' from the SPMR, knowing that a False Accounting conviction will provide a relatively inexpensive (to POL) pathway to that goal. In the event that an SPMR has not committed any criminal offence, then clause 12 of the standard contract provides an equivalent pathway to asset recovery using Civil Law.

In either event (Criminal or Civil Case), since POL doesn't need to show where the money has gone, investigators see no business benefit in trying to establish the underlying root cause(s) of the loss.

Under the contract between SPMR's and POL , the burden of proof (that they are *not* responsible for the loss) falls on the shoulders of each SPMR even though none of them (in the cases reviewed) had any investigative skills and their requests for assistance and provision of underlying data were routinely denied, mostly on cost grounds. This meant that the accused had neither the expertise, the external support, nor the data to establish the true reason for the loss and thereby either prove their own innocence *or realise that they really were responsible for the loss.*

3. In none of the cases examined so far did any investigator record anything that indicated that there might be any widespread *systemic* problem worthy of investigation, despite similar allegations being made by different, unconnected, SPMRs.

One might expect that similar assertions by many SPMRs would trigger an investigation into the possibility that some of those assertions might be correct, but we found no evidence that this had ever happened. Examples of much-repeated assertions include problems involving postage labels; lost cheques; transactions dropped or duplicated as a result of power or communications failures; transactions executed under the IDs of branch staff but denied by them; GIRO or AP payments that were not charged to customers; ATM shortages; and Lottery Scratch Cards.

This is not to question why *every single assertion* was not fully investigated but to suggest that, where repeated assertions have been heard, a sample should be deeply investigated until they have either been proved to be true or comprehensively dismissed.

4. We saw a repeated failure to reach consensus or closure with the interviewees. Where the SPMR was wrong in his or her assertions, one would expect that to be convincingly articulated and proved by the investigator. Time and again, however, the investigator and the SPMR got close to consensus but failed to arrive at it. This led to

repeated situations where more and more time was spent re-visiting the same old issues, but at progressively greater distance from the underlying transaction(s). Had every SPMR's assertions been thoroughly investigated - and documented - at the outset, much wasted time would have been saved.

5. The overwhelming impression gained from reviewing the transcripts of investigative interviews is that the SPMR was *viewed as an enemy of the business*. The culture within the Investigation Team appears to be one of a "*presumption of guilt*" when conducting an investigation, rather than the aim of "*seeking the truth*". (See comments on the consequences of "Tunnel Vision" at the foot of this report.)

POL's investigators will have come across SPMRs who have been responsible for their own shortfalls; who really did steal POL funds; or whose staff or relatives stole POL funds (and some of those will have '*jumped on the Horizon-bashing bandwagon*' in their efforts to evade responsibility), but there will have been *some who either really were innocent or who passionately believed that they were*.

It is the handling of this group that seems to have been seriously flawed. By failing to investigate those SPMRs' assertions (or even to pay proper heed to them during interviews), the investigators have alienated all of them. It is that group (the SPMRs who evidently still believe themselves not only to be innocent but also to have been cheated by POL) who *really have become enemies of the business*.

Had POL's investigators handled their assertions more sympathetically - and professionally - at the outset, and invested a little more time in reaching closure with them, there would now be far fewer of them calling for their cases to be re-investigated.

What changes should POL make to its Investigation Process?

2nd Sight cannot be certain about the changes that will be needed without completing some further work. That would necessarily include:

1. Interviewing the current Investigation Team Management and some of its senior staff;
2. Examining the team's Mandate, Mission Statement, Goals and any Operational and Ethical Guidelines that it follows;
3. Reviewing the CVs of the team's management and staff (including team members' professional backgrounds, qualifications and work experience);
4. Reviewing the team's workload and management information (how many cases does the team deal with each year; what is it that *drives* the investigation workload; how many reports does it produce; what other work product does it generate; etc.);
5. Reviewing a representative sample of the team's reports and other work product (e.g. Training Material and Courses Delivered; Systemic Issues Identified; Input to Systems Designers; etc.);
6. Obtaining feedback from the team's 'customers' and other corporate stakeholders.

Once that work has been done it will be possible to formulate recommendations that could reasonably be expected to transform the effectiveness of the Investigation Process within a 6-12 month timescale.

Some beneficial results would be rapidly achieved simply by modifying the Team's Mandate and Mission and then driving the new message home through short but intensive training of all team members. Those team members who then proved themselves unable to make the necessary transition would need to be redeployed.

Why having a first-rate Investigation Team is essential:

Because identifying loss drivers and correcting systemic weaknesses is such an essential part of Effective Loss Management, it is absolutely vital that the organisation does that job really well. Responsibility for this work usually falls to the organisation's Investigation Team, or sometimes Internal Audit. It is hard to overstate the importance of this function in maintaining the health of the organisation. A properly functioning Investigation Function within POL will:

1. Be staffed with trained and experienced individuals, of sufficient seniority and credibility that they command organisation-wide respect. Those individuals must also maintain a reputation as people who can be *trusted* by their fellow employees and by SPMRs (some of whom will be informants, whistleblowers, those accused of wrongdoing, etc.)
2. Have a balanced team comprising individuals with backgrounds in commercial fraud investigation; in POL's operational processes and standard operating procedures (a deep understanding of the mechanics of branch processing is vital); and in police investigations (though it is vital that the team is not overwhelmingly staffed with ex-police individuals, not least because there can then exist a risk of 'tunnel vision' - an overwhelming focus on evidence of guilt - that will need to be corrected)
3. Be well-versed in the law relating to the conduct of commercial and criminal investigations*
4. Understand the enormous power that POL's Investigation Team wields (for example in the impact it will have on the lives of the subjects of its investigations - whether or not those investigations lead to criminal prosecutions)... and, over time, demonstrate that it can be entrusted with such power
5. Understand that POL's Investigation Team in fact has far more power than almost any other business's Investigation Team (e.g. by reason of

its power and adopted practice of bringing prosecutions without them first having to be approved by the Crown Prosecution Service)

6. Show, by its actions, as well as by its communications, that any innocent parties (including employees and sub-contractors) who become the subject of one of its investigations will always be dealt with in an even-handed and unbiased manner, with at least as much effort being directed at establishing innocence as in collecting evidence of guilt (note: this is just as important in preparing for Civil Asset Recovery and Internal Disciplinary Cases as it is in investigations that will produce evidence for Criminal Prosecutions)
7. Have the authority to select and prioritise those cases that it will investigate (it is generally more productive, in the long term, to investigate a few cases well than many cases poorly or superficially)
8. Receive high-quality and up-to-date management information from which the team will identify the businesses / branches / processes / products that deserve investigative attention
9. At all times strive to 'get to the truth' without being concerned about the consequences for POL (knowing that defence of the business, once the underlying facts have been established, will be the responsibility of others)
10. Always bear in mind that POL's *short-term* interests (which might appear to be well-served by very quickly dismissing other peoples' or other organisations' claims) can sometimes be seriously at odds with its *long-term* interests (e.g. rejecting an SPMR's valid claim might save money in the short-term but undermine POL's franchise in the longer term)
11. Provide valuable feedback to POL's senior management regarding the trends, underlying root causes, systemic flaws, training and HR issues, etc. that have been detected during the team's investigations

12. Provide meaningful input to systems and process designers to ensure that opportunities for error and fraud are progressively designed out of tomorrow's systems, processes and products
13. Ensure that every one of its recommendations (such as for improved training, process change, control re-design, etc.) yield a payback that meets or exceeds POL's ROI target (this will ensure that no suffocating and low-yield overheads are added)

* NOTE: Examples of Laws and Guidance relating to the conduct of Investigations include:

- The Criminal Procedure and Investigations Act 1996 - <http://www.legislation.gov.uk/ukpga/1996/25/contents>
- The Police and Criminal Evidence Act 1984 ('PACE') - <http://www.legislation.gov.uk/ukpga/1984/60/contents>
- 'How to conduct an investigation' (UK Standards Board) - <http://cmis.milton-keynes.gov.uk/CmisWebPublic/Binary.ashx?Document=36295>
- http://www.cps.gov.uk/legal/d_to_g/disclosure_manual/disclosure_manual_chapter_1/
1.14. The prosecution team's duties under the CPIA 1996 are not simply about compiling schedules of unused material as part of preparation for court. At the heart of every investigation is the obligation, in the CPIA 1996 and Code of Practice, to pursue all reasonable lines of enquiry whether these point towards or away from the suspect.
- http://www.cps.gov.uk/legal/d_to_g/disclosure_manual/disclosure_manual_chapter_4/
4.2. There is a duty under the Code of Practice for an investigator to pursue all reasonable lines of enquiry, whether these point towards or away from a suspect. What is reasonable will depend upon the circumstances of a particular case.

- <http://www.justice.gc.ca/eng/dept-min/pub/pmj-pej/p4.html>

4. TUNNEL VISION

I. INTRODUCTION

Tunnel vision has been defined as “the single minded and overly narrow focus on an investigation or prosecutorial theory so as to unreasonably colour the evaluation of information received and one’s conduct in response to the information.” [114]

Tunnel vision and its perverse by-product “noble cause corruption,” [115] are the antithesis of the proper roles of the police and Crown Attorney. Yet tunnel vision has been identified as a leading cause of wrongful convictions in Canada and elsewhere.

The role of the Crown Attorney has received considerable judicial comment, with frequent emphasis upon the inherent fairness that is integral to the role. The most oft-quoted comment is from Boucher v. The Queen, where Rand J. said:[116]

It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is represented: it should be done firmly and pressed to its legitimate strength but it must also be done fairly. The role of the prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.