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**From:** Belinda Crowe[IMCEAEX-  
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\_CN=RECIPIENTS\_CN=BELINDA+20CROWE79B93F11-569F-4526-A078-  
F5B4958A8917220@C72A47.ingest.local]

**Sent:** Wed 04/12/2013 6:02:50 PM (UTC)

**To:** Rodric Williams[**GRO**]; Jarnail A  
Singh[**GRO**]; Charles  
Colquhoun[**GRO**]

**Cc:** Belinda Crowe[**GRO**]; Chris  
Aujard[**GRO**]

**Subject:** RE: Enquiry re: Current Prosecutions

I now have the actual action from the Board. Copying Charles as he will need to assist with this, and also get signed off through Chris Day. Absolute deadline is Close Friday so I will need a final document by midday Friday. The action is:

***The Board asked for a note from the General Counsel explaining who was named in past prosecutions and the liability for the Business and individual Board members. The note should also include information on both PI and D&O insurance cover.***

This includes the table Rodric and I discussed today about a timetable for prosecutions back as far as we have them, by quarter and in who's name they were brought (e.g Post Office – presumably after 2011 or RMG).

What I have so far is:

At its meeting on 27 November the Board asked for a note from the General Counsel explaining who was named in past prosecutions and the liability for the Business and individual Board members. The note should also include information on both PI and D&O insurance cover.

#### **Previous prosecutions**

The attached table shows ?????? prosecutions by period, going back to ??????

***Jarnail, could you please provide the table and if we are unable to state who brought the prosecutions (e.g. RMG or Post Office can we please say what it would take to get them. What I mean by that is that if we would need to trawl back through old files to get the exact data and it would take x period of time and cost £x then can we please say so.***

#### **Prosecutions already in process before we 'paused'**

I will insert the information provided by Jarnail earlier today.

#### **Business liability**

***Charles/Rodric can you provide a paragraph on liability for the Business. On the one hand I assume that should be obvious but it needs articulating***

#### **Liability for Individual Board Members**

It is highly unlikely that any individual director would have any personal liability in connection with this review, unless they had acted in bad faith or maliciously, In the highly unlikely event that an action is brought (which could only be by Post Office Limited or in very rare circumstances by the shareholder acting on behalf of the company) there is insurance in place to cover their liabilities. The policy provides cover up to £60 million and has a £25,000 excess for claims by the company but no excess for claims brought by individual directors. It is also retrospective.

#### **Directors' duties**

POL's directors are subject to various personal duties including the duties to:  
- act in accordance with the company's constitution and for a proper purpose;

- promote the success of the company;
- exercise independent judgement;
- exercise reasonable care, skill and diligence.

Provided a director makes fair and reasoned decisions in good faith, s/he is unlikely to breach these duties. If a director takes a decision in bad faith or maliciously, this could create personal liabilities, e.g. for:

- malicious prosecution against an SPMR;
- breach of the Data Protection Act in misusing personal / Horizon data;
- inducing a breach of contract between POL and an SPMR.

The duties are owed to the company, i.e. POL, and can only be enforced by POL. In rare circumstances, these duties can be enforced by a shareholder (i.e. BIS) acting on behalf of POL (a “derivative action”). These duties cannot be directly enforced by others, e.g. employees, contractors and/or SPMRs. Directors should be careful when externally commenting on specific SPMRs / cases as they can be held personally liable for any defamatory comments.

There are no personal consequences for a director under criminal law if POL has failed to make adequate disclosure in any criminal proceedings as no director has directly and personally led the disclosure process.

## Insurance

We instructed our broker to provide notice of potential Horizon-based claims to our insurers  
?????when?.

This was a precautionary measure given:

- currently, no claims have been made against POL which would trigger coverage under the relevant policies (Director & Officer Liability, Public Liability, Professional Indemnity);
- the policies are unlikely to cover the types of claim which we currently anticipate could be made against POL.

The potentially responsive policies are:

### 1. D&O

- covers claims or written demands which allege specific individuals engaged in “wrongful acts”
- also covers some claims against POL itself, but these claims do not seem likely to arise

### 2. Public Liability

- covers claims for personal injury
- notice was given because this could include stress, e.g. SPM claims compensation for the stress the Horizon issues caused
- very high deductible - £250k each and every claim - before insurance would pay out

### 3. Professional Indemnity

- covers claims for breach of professional duty by POL resulting in a third party loss
- only provides cover for claims connected to POL’s government services contracts (DVLA, UKBA)
- very high deductible - £250k each and every claim - before insurance would pay out

Other barriers to recovery:

- timing of notification
- the mediation scheme is a proactive step we have taken to try to avoid claims being made
- the absence of a “trigger” event (i.e. a claim or written demand) means insurers will be very reluctant to consider any payment
- that said, our brokers could ask insurers to contribute to a resolution if it would avoid a larger claim

being made

Please could you let me have comments/answers/information as requested in my note asap.  
Many thanks  
Best wishes  
Belinda

**Belinda Crowe**  
148 Old Street, LONDON, EC1V 9HQ

**GRO** Postline: **GRO**  
belinda.crowe **GRO**

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**From:** Rodric Williams  
**Sent:** 04 December 2013 16:50  
**To:** Jarnail A Singh  
**Cc:** Belinda Crowe  
**Subject:** RE: Enquiry re: Current Prosecutions

Thanks.

I have another question – do you know who was responsible for prosecuting cases before separation, i.e.:

- in whose name were the prosecutions brought;
- who was the prosecuting authority; and
- who would ultimately be responsible if a prosecution was found to be have been improperly conducted?


Kind regards, Rod


Rodric Williams | Litigation Lawyer


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 148 Old Street, LONDON, EC1V 9HQ

 **GRO** Postline: **GRO**  


 rodric.williams **GRO**

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**From:** Jarnail A Singh  
**Sent:** 04 December 2013 11:47  
**To:** Rodric Williams  
**Cc:** Belinda Crowe  
**Subject:** RE: Enquiry re: Current Prosecutions

Rodric  
Please find attached a Current snapshot position of POL prosecution cases.  
Let me know if you need anything further.  
Jarnail.

Jarnail Singh | Criminal Lawyer



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POST  
OFFICE

**From:** Jarnail A Singh  
**Sent:** 03 December 2013 22:49  
**To:** Rodric Williams  
**Cc:** Belinda Crowe  
**Subject:** RE: Enquiry re: Current Prosecutions

Rodric  
I will put together up to date after checking all the present data.  
regards

Jarnail Singh | Criminal Lawyer



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**From:** Rodric Williams  
**Sent:** 03 December 2013 22:30  
**To:** Jarnail A Singh  
**Cc:** Belinda Crowe  
**Subject:** Enquiry re: Current Prosecutions

Jarnail – senior management has asked for the “current position on prosecutions – when paused/what do we have in train”.

Can you please put something together? I’m back in the office tomorrow if we need to discuss.

Thanks, Rodric

Rodric Williams | Litigation Lawyer

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