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What went wrong?

A Draft for Discussion.

Purpose

We need to explain, internally and externally, what has gone wrong around the historical Postmaster litigation. Explaining the past is essential to restoring trust with third parties, many of whom are understandably concerned and critical. It is important for Postmasters who are working well with us and should be reassured that they are in safe hands. It is important for longer serving colleagues who have worked with Postmasters, sometimes suspending, terminating and prosecuting. How should such colleagues interpret what POL leadership asked of them and their own actions? It is also important to us as leaders: we must be clear what went wrong to prove to ourselves and others that it cannot happen again.

Firstly, there can be no doubt that things have gone materially wrong:

- We expect the total cost of managing and settling claims to be £1-1.5b
- We have been publicly criticised by Mr Justice Fraser. Nick and I have apologised in public.
- We have not defended appeals against criminal convictions that we prosecuted.

The purpose of this paper is to document my personal view about what has gone wrong. It relies on my memory. That will be wrong or incomplete in places: a lot of public studies show that memories are not reliable. I joined in 2015, so many of the critical happenings took place before I joined. I am sure this narrative will also suffer from my unconscious bias to justify myself.

These issues need to be overcome so a single, core narrative can emerge. More voices need to be heard with different perspectives, including Postmasters and critics. We must be brave in getting it right without too much concern for consequences. We must be confident of our facts. A core narrative can then be distilled, enabling credible, consistent and durable answers for stakeholders.

Executive Summary

The main lines of criticism that we have faced are:

1. We have maintained an unacceptable relationship with Postmasters that was self-serving, based on an imbalance of power and information and a skewed contract.
2. We were over-reliant on Horizon when we knew its weaknesses.
3. The original prosecutions were a deliberate miscarriage of justice.
4. We should have settled the claims, apologised and moved on years ago. We have defended ourselves to avoid the consequences. A waste of public money and a postponement of justice.

In the paper below, I work through these and explain the things that, in my view and with the benefit of hindsight, we did wrong. My answers are changing over time as facts emerge.

At the heart of everything, the original sin of Post Office – and this may go back a very long time - is that:

1. Our culture, self-absorbed and defensive, stopped us from dealing with Postmasters in a straightforward and acceptable way.

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Everything else flows from that attitude and the lack of balance it created. It skewed the judgements made about the prosecutions and the subsequent management of the case.

The issues that followed are fundamentally for the Board, Executive and Legal teams. In particular:

2. We did not disclose Horizon issues to the defence when we prosecuted Postmasters.
3. We should never have conducted our own prosecutions. Some of the behaviours during the Prosecutions were unacceptable.
4. We did not re-assess our behaviour as prosecutors between 2014 and 2020.
5. We relied on anecdotal evidence that Horizon and our surrounding processes were working properly without fully investigating concerns on a proactive basis. We did not properly challenge and test what Fujitsu told us. This seems in part to still be the case.
6. We were and perhaps still are too focused on our tactical battles. Other priorities took second place.
7. We did not sufficiently challenge and test our legal advice until it was too late.

As part of our work we should test where we are today against these things that went wrong. This is especially true of number 1, which must be the essence and focus of our ongoing, cultural re-set. . It is urgent and important that we are satisfied that we have completed the journey on 5 and can prove it to others. We must keep challenging on 6 to ensure that the intense focus on Postmasters is maintained without much dilution from other important but secondary objectives

Underpinning everything, we must continue to be increasingly transparent, internally, with Postmasters and with critics: sunlight is the only effective antiseptic.

The Report

We have maintained an unacceptable relationship with Postmasters that was self-serving, based on an imbalance of power and information.

To me, this was the heart of Mr Justice Fraser's criticisms. He focused his comments on the contract. I think the issues were cultural before they were contractual.

The fundamental belief that guided POL when I joined and which had guided it for many years, was that Postmasters were and had to be held responsible for whatever happened in their shops. Once the systems, training and cash were handed over (and however well they were handed over) the Postmaster was accountable: "we cannot know what happens in a PO day to day. When money is missing, it may have been lost, stolen by someone else or stolen by the Postmaster. Whatever happened, the Postmaster still owes us the money".

This was not and is not stupid. Postmasters are mostly independent business people, franchisees not employees. We manage the Directly Managed Branches very tightly and very rarely experience significant losses. Many Postmasters provide great control. We provide significant amounts of cash to Postmasters and the business model that is Post Office will fall apart if we cannot reliably get it back. From a Post Office Limited perspective, it makes sense.

Fraser perceived a huge mismatch between the capabilities, information and insight available to POL versus individual Postmasters, especially smaller independents. This mismatch was true although in practice, it was never as great as he thought. On separation, POL lacked controls and data and was trying to understand its own outcomes. We did not and to some extent still do not have the capacity or skills to understand fully what happens in individual Post Offices.

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POL had a huge journey to go on to make itself resilient. We became fixed on our own needs and put them first. We knew that the stamps journey wasn't automated but it wasn't losing us money so it wasn't a priority…We had to manage vast amounts of money – 10m customer session a week - and couldn't also focus on the materiality important to many Postmasters, where £100 could be the difference between a good and bad week.

The fundamental belief that Postmasters were accountable meant that we did not prioritise getting better at understanding what was happening in individual Post Offices: the problem was left with Postmasters.

That fundamental belief was maintained without a clear assessment of whether we were delivering our fair share in training, support and resolution.

We were clear that the training was not good enough and have tried to improve it. Some of the follow up visits and hand-holding were stripped away, before being reinstated in 2018 and 2019. Support in the call centres was bureaucratic and focused on resolutions for us.

We had recognised before the Judgement, with Debbie Smith leading the way, that we did not help enough. In 2018-19 we *started* to increase the size of the field teams, challenge attitudes in the call centres and to improve Postmaster remuneration after years of decline. Interestingly, Paula was reluctant to support the expansion of the field teams, arguing that she would not pay people "just to have cups of tea with Postmasters".

In words that were drafted before the Judgement and agreed with the Board in March, summarising my intent as Interim CEO, I wrote:
"We have to make it easier for Postmasters to make more money for less effort and in a better spirit of partnership. More flexible models, more trust in their retail judgment, more practical help and advice, encouraging them to share best practice, support services that are obsessed with helping Post Offices serve customers, more automation, better data to identify and solve issues, less paperwork. Enabling digital to be a valued partner service not a competitor. And communicating in language and through channels that everyone understands."

Often, defensiveness stopped us listening to our critics. When I became interim CEO, Tim McCormack reached out to me. Paula had refused to talk to him for some time. The advice of Mark Davies, Communications Director, was never to talk to him because he couldn't be trusted. I did speak to him on 2-3 occasions and found him honest, concerned and trustworthy – he helped me understand and fix an issue and then praised us for it when he could have just made a public fuss.

Second Sight, discussed elsewhere, challenged us on the principle that because disputes were not fully and transparently resolved, Postmasters had little option but to hide them. This is clearly debatable. But I recall no debate: their report was drafted a few weeks after I joined. This idea conflicted so hard with the fundamental belief that it was not really considered.

The Judge's views made a difference to me. In Summer 2019, a Post Office came to me because they had a £4k shortage. I asked the Network Operations team to investigate. The real source of the issue was resolved. But it took months because there had been systematic mis-posting of stamps, which made it very hard to see what had been going on. We didn't chase errors in stamps because the Postmaster would probably fix them and it didn't cost us.

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Following the Judge's verdict, I raised my concerns with the General Counsel because I was now thinking about the Postmaster's experience not ours. The Network Operations team now proactively encourages Postmasters to get stamps right, counts are checked in Swindon and we do not convert shortfalls to cash….

The first and fundamental wrong is that "Our culture, self-absorbed and defensive, stopped us from dealing with Postmasters in a straightforward and acceptable way:

- *We did not engage with Postmasters with an open mind or listen properly to their concerns. We prioritised issues according to their materiality to us and not to a single Postmaster.*
- *We did not serve and assist Postmasters. Training was not good enough. Support was hard to access and of limited duration and insight. We lacked transparency with Postmasters. We did not resolve underlying issues, allowing them to recur continuously as we prioritised other change and our journey to profit.*
- *By forcing Postmasters to be responsible for the branch outcomes, they were more likely to pay for a shortfall or even accept a minor charge to avoid a major one. There was never a clear, transparent and objective process to resolve issues – and arguably still isn't.*
- *We did not engage with critics. We were convinced we were a good thing for the UK and anyone criticising was attacking. We defended or stayed silent."*

We were over-reliant on Horizon when we knew its weaknesses.

In 2014, POL stopped prosecuting Postmasters if the prosecution would place material reliance on evidence from Horizon. I do not think this decision included a full review of the implications for earlier prosecutions. It clearly should have done and it is important to know whether that question was badly addressed or not addressed at all.

In my time, I do not recall until this year – but may have forgotten – any discussion of the ongoing duties of Prosecutors. Nor do I recall any review of historical issues with Horizon.

Having reviewed the appeal cases in 2020, the Board has concluded that disclosures of historical Horizon issues should have been made. The Board chose not to oppose appeals *where the evidence relied on Horizon.*

The media interpretation that the shortfalls were entirely caused by system issues - and never theft or lack of management - does not ring true. Many certainly hid issues and lied. Some will have stolen money or failed to manage it. However, that is now irrelevant. The convictions were and are unsafe. The convictions must be over-turned. No good can be served from seeking re-trails. The Postmasters are therefore innocent.

Our legal advice seems to have been wholly inadequate on the ongoing duties of prosecutors. Had we reviewed the prosecutions much earlier, we would presumably have known they were unsafe earlier and everything else would have been different.

The second wrong is "We did not disclose Horizon issues to the defence when we prosecuted Postmasters, especially between [2008], when evidence of concerns was emerging, and 2014".

The third wrong is that "We should never have conducted our own prosecutions." There is an important duality in the state's approach, where the Police investigate and the CPS prosecute. By undertaking both functions within POL, we set up a process that lacked challenge and independence. In addition, *"Some of the behaviours during the Prosecutions, where we seemed to using bullying tactics to get Postmasters to admit fault and take responsibility were unacceptable".*

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The fourth wrong is "We did not re-assess our behaviour as prosecutors between 2014 and 2020."

Instead, we went forward confident that the Horizon was fundamentally reliable. We debated several times in 2016-18 whether we should restart prosecutions. Our legal team were, rightly, firm that we should not restart but the reason given was that it might look as though we were being disrespectful of the courts. No one suggested that Horizon was or had been inherently inaccurate.

There were several reasons for this confidence:

- Second Sight completed its work in early 2015. They signalled anxiety but nothing was put forward that suggested specific, underlying issues.
- There was follow up work undertaken by Deloitte as part of the Chairman's review, following Tim's appointment. I never saw the work (I was taken through one element on suspense accounts) and don't recall it ever coming to Board. My understanding is that no significant issues were identified.
- To my knowledge, no one, including Mr Justice Fraser, has ever pointed to a specific example where a Horizon bug had been shown to have directly caused a loss in a branch. But did we ever try to prove it hadn't?
- Many Postmasters managed without issues and could be articulate in pointing out that if the Postmaster did what he or she was supposed to do, issues did not arise or could be resolved. A couple of weeks before Mr Justice Frazer's first judgement, I asked an experienced Postmaster what he thought. He said he had no doubt the claimants had been guilty.
- Given the scale of Post Office and the huge number of transactions, any systemic errors would drive material swings in our financial results, which we had not seen.
- Some of the accusations seemed to be stretching. Second Sight made a factual error in their 2015 report about balance sheet ageing and refused to correct it on the grounds that it was what they had heard. There was also a persistent rumour that Fujitsu had a "black ops" team changing branch accounts remotely. This was treated with derision as it seemed completely implausible and indeed implied a level of control that was simply missing. The belief in POL was that we were under attack from people with an agenda.

Fujitsu did have remote access, which was identified in 2015 (?) and then again later. There are, of course, contractual limitations with Fujitsu that are important to us but are not of interest to anyone else.

The fifth wrong is that "We relied on anecdotal evidence that things were working properly without fully investigating on a proactive basis. There were limited and partial investigations around Horizon and related issues like suspense accounts before and after 2012 but they were never thorough or complete. We did not seriously test what Fujitsu told us. Where we did investigate, we looked "big picture" and not at the level of materiality relevant to an individual Postmaster. I am afraid that this is still true."

The original prosecutions were therefore a deliberate miscarriage of justice.

I cannot comment on the motivations of the original prosecutors. I joined at the tail end of the mediation scheme. I never heard anything which suggested that the Board had been anything other than straightforward in its desire to resolve issues and move on. I suspect but cannot prove that POL people were in fact so convinced of their own positions that they interpreted every victory as being justice. If I am right, this was less a deliberate miscarriage of justice as a blindness towards the possibility of a miscarriage.

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People under-estimate the chaos and lack of control in PO in its early years as an independent business. Its systems were old and increasingly shaky: it took 4 years to separate them from RM. Its governance was entirely new: it had always been a wholly owned subsidiary. Its processes and ways of working were undocumented and often driven by the character of individuals and beliefs about what the organisation would and would not do. Its people were "victims": they believed that everything had been better 20 years earlier, nothing could be done about it and it was someone else's fault. There were no documented controls. Many Postmasters were not suited to a role in a commercial organisation, preferring to work 9-5, five days a week, serving but not selling. The business was losing £115m annually from trading.

As a result, there were and to some extent still are too many fronts to fight on, making it difficult not to focus on today's battles versus systemic, underlying change. The living example is our decision not to resolve Postmaster contracts now. Another may be hard-to-place branches.

The sixth wrong is that "We did not – do not - always balance the tactical battles with other priorities."

We should have settled the claims, apologised and moved on years ago. We have defended ourselves inappropriately to avoid the consequences of our actions. This has been a waste of public money and a postponement of justice.

On the creation of POL as an independent business, the Board set up a mediation scheme. This was coming to an end as I joined. Everything I heard suggested that the new Board in 2012 had set out to reach a real settlement so the business could move forward. This clearly hadn't happened and the narrative when I joined was:

- We had tried to reach a fair settlement
- We should not try and settle with people with criminal convictions. By definition, they had been found guilty by an independent legal process. Many had also admitted guilt.
- The amounts some people were claiming were disproportionate – school fees for years. This was opportunistic and unreasonable
- Second Sight were the wrong choice. We should have got a proper accounting or law firm to do a professional piece of work and move on.
- This was not the right use of public money

Paula, Jane and I discussed informally settling rather than closing the mediation scheme in 2015. Jane's strong and unwavering view was the issue could not be settled because any settlement would trigger a second wave of claims. Later, she also expressed concerns that it might trigger a change in CCRC view. The logic was – we have not done anything wrong – we could justify settling for £10-20m but not for £100ms. Jane's view never wavered and she was right on one aspect – the settlement of the GLO precipitated exactly the challenges and costs she was concerned about.

This conversation recurred at different points. Jane's view was strengthened by the advice from our legal teams: we were going to win in court and our contract with Postmasters was lawful.

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This legal advice became increasingly fixed in place. In my view the legal team of Jane, WBD and David Cavender (QC on the common issues trial) became an increasingly tight group that constantly reinforced each other's views: an extreme example of group-think. We did challenge – I have always held the view and articulated it that you only end up in court when both sides have lawyers telling them they have a 70% chance of winning.

Paula also questioned whether WBD were good enough but Jane held the line very firmly, from a belief that a more assertive firm might make us look like bullies. With hindsight, a more assertive firm would have seen the pitfalls and kept us out of court in the first place.

Mr Justice Fraser was very critical of us from the off. When we pushed Cavender on this, he said that he had caught the Judge's eye and they were as one. Fraser was just posturing so it didn't look like he was against the claimants. When we asked Cavender if he might be wrong, he said that was his advice and he had been successful in a long career.

When the Common Issues judgement came out, the Board asked for a second firm to provide independent advice, challenging our team's position. This was done with eminent QCs but it was not explained to the Board at the point of choosing this advice (again, from my memory) that they were all from the same chambers.

We were pushed very hard to appeal. Cavender constantly laded his comments with "this awful judge" until I had to ask him to stop. The advice simply doubled down. Eventually and really too late, we changed GC, added HSF and changed QC – instantly the advice changed and we moved on a path to settlement.

We should have been tackling these issues 10 years ago. However, I do not believe that an earlier settlement was practically possible because the serious claimants believed there had been a miscarriage of justice and required recognition and an apology as much as they wanted money. Paula did not believe there had been a miscarriage and could not have got there emotionally. We believed that there were material financial consequences that had to be justified: there was consciousness that this was public money that could not be spent unnecessarily, however ironic that seems now. Also, there were underlying concerns that we could undermine the basic ability of Post Offices to function, denying customer access to products that matter.

In conclusion, because the deficiencies in the prosecutions had not been identified, POL did not believe there had been a miscarriage of justice. It was therefore impossible for Paula and Jane to recommend a settlement that would have cost a great deal of money, an apology and would probably trigger new claims and even change the CCRC mind-set. No settlement would have been agreed without these things. The Board were at least in my time never really given the choice.

We accepted very bad legal advice. The Board should have had the downside explored and the advice challenged much earlier, as well of course as assessing the earlier prosecutions. This has indeed been a waste of money and a postponement of justice.

The seventh wrong is that "We did not sufficiently challenge and test our legal advice until it was too late."