
DISCLOSURE NOTE IN RELATION TO: (1) NBSC CALL LOGS; (2) A REVIEW OF BONUS / INCENTIVISATION SCHEMES; AND (3) POL'S APPROACH TO THE POST APPEAL DISCLOSURE TEST
24 AUGUST 2022

1. In accordance with its ongoing disclosure obligations, and in line with the Disclosure Management Documents, the Respondent is continuing to review material not previously considered for disclosure which is coming to its attention, including material arising out of new or ongoing criminal appeals, civil claims and/or the Post Office Horizon IT Inquiry.
2. This note is intended to address three matters:
 - (i) The loss of NBSC call log data;
 - (ii) A POL review of bonus / incentivisation schemes relating to POL employees involved in the investigation or prosecution of criminal offences; and
 - (iii) POL's approach to the disclosure test in relation to post-appeal disclosure.

LOSS OF NBSC CALL LOG DATA

3. In 2014, NBSC call log data was migrated from Royal Mail Group Limited's ("RMG") 'Remedy' system to POL's 'Dynamics' system. This migration was necessary following the separation between the two entities in April 2012. During this migration, a significant quantity of NBSC call log data was lost.

Investigations by Peters & Peters Solicitors LLP ("Peters & Peters") and findings

4. POL instructed Peters & Peters to undertake an investigation into the data loss but that investigation has been unable to definitively establish the precise extent of the loss.
5. However, as part of its investigations, Peters & Peters compared a sample of sets of NBSC call logs taken from Remedy before migration and still in POL's possession (which, therefore, are assumed to be complete) with logs for the same branch and time period still

available on Dynamics. On average, 87% of entries present in the Remedy call logs were missing from the Dynamics call logs.

6. RMG has stated that it has not retained any data from Remedy and POL does not appear to hold a complete set of the call logs that were on Remedy prior to migration to Dynamics. Therefore, there are no known means of recovering missing logs.
7. Accordingly, POL accepts that copies of the NBSC call logs obtained from the Dynamics system cannot be treated as a reliable record of all calls made by branches to the NBSC helpline during the relevant period. It is accepted that calls made to the helpline during the relevant period may not appear on a branch's NBSC call log obtained from the Dynamics system.
8. Copies of NBSC call logs disclosed to individuals as part of their case specific disclosure are likely to have been obtained from the Dynamics system and may therefore be affected by the data loss.
9. However, where copies of NBSC call logs are contained within the defence case file¹ disclosed to individuals, those NBSC call logs will have been obtained from the Remedy system at the time of the prosecution and will not therefore be affected by the data loss.
10. As part of the Generic Disclosure Review, POL has disclosed a document called the NBSC Schedule. The call logs used to compile the NBSC Schedule were taken from the Dynamics system. As such, whilst the schedule accurately reflects the calls shown on the logs available to POL, it is accepted that the schedule cannot be treated as a reliable indication of the total number of such calls made during the relevant period.

Peters & Peters' awareness of the data loss

11. During its investigations, Peters & Peters established that it was first notified on 20 February 2020 that some NBSC call log data might have been lost on migration. This occurred at a meeting with the solicitors who had acted for POL in the Group Litigation where the purpose of the meeting was to understand all the data repositories that might have been relevant for the Post Conviction Disclosure Exercise. However, following that

¹ As defined in paragraphs 25 and 26 of the Disclosure Management Document or DMD.

meeting, Peters & Peters proceeded on the mis-understanding that this meant that either all data for a particular branch was lost or, if there were still call logs for that branch, that the data was complete.

12. It was not until 10 November 2021 that Peters & Peters discovered that the volume of data was likely to be a substantial proportion of the total logs, or that individual logs could be missing from within the records of a particular branch, even if other logs for that branch remained accessible.

POL'S REVIEW OF INCENTIVISATION OF POL EMPLOYEES

Introduction

13. In accordance with its ongoing duty of disclosure, POL has conducted a review of material relating to the bonus/incentivisation scheme that applied to employees involved in criminal investigations and prosecutions during the relevant period, in order to determine whether it operated so as to incentivise or encourage improper conduct capable of leading to unfairness in those investigations and prosecutions (the “**Review**”).² In particular, the Review considered whether POL employees were improperly incentivised to recover apparent losses through post-conviction compensation or confiscation orders.
14. The Review, and the material generated during the course of it, has been carefully considered by independent disclosure counsel conducting the PCDE. No material has been identified during the Review which satisfies the disclosure test.
15. The Respondent is providing this disclosure note, in the interests of transparency, to disclose the fact of the Review so as to enable any Appellant to make representations in relation to the Review and/or the relevance of the Review to the facts of any particular appeal in which it might be relevant.

Scope and ambit of the review

² The Review was conducted by Peters & Peters as part of the Post-Conviction Disclosure Exercise (“**PCDE**”) as set out in the Disclosure Management Document dated 19 August 2020. The Review covered employees and teams in both POL and (pre-separation), RMG. References to ‘POL’ employees and teams in this document include the period when they were part of or directly employed by RMG. The Review was conducted after a former POL employee contacted POL’s CEO and indicating that the number of convictions and/or losses recovered could affect bonuses paid to members of the POL Security Team. [The Review was conducted in accordance both with POL’s PCDE obligations and also under POL’s investigations and whistleblowing policies.]

16. More than 17,000 documents were collected and reviewed as part of the Review, including electronic and hard copy material relating to the Criminal Law Team and Security Team. This included, where available, HR files relating to individual members of the Criminal Law and Security teams, which contained details of their individual / team-wide objectives and financial records (e.g. pay / bonus information), as well as management documents relating to remuneration and bonuses more widely.
17. Peters & Peters also interviewed a number of current and former POL Security Managers in relation to, among other matters, the POL Security Team's bonus / incentivisation scheme.

*Findings in relation to the POL Security Team*³

18. The POL Security Team operated a bonus / incentivisation scheme during the period between 1999/2000 and 2013 (the “**Relevant Period**”) during which POL prosecuted sub-postmasters and branch personnel relying on evidence from Horizon.⁴
19. The scheme included, among others, objectives relating to the recovery of POL losses through criminal confiscation or compensation proceedings, or by repayment direct to POL during the course of an investigation or prosecution.⁵
20. The recovery of POL losses, which was typically expressed as a percentage of losses caused by fraud activity, was a recorded team objective within the POL Security Team. The achievement of this would account for a proportion, albeit a small one⁶ of the total bonus awarded to members of the POL Security Team that were entitled to receive bonuses. These objectives were concerned solely with team outcomes, not individual performance.

³ The POL Security team included those tasked with conducting criminal investigations and with post-conviction recovery through confiscation and associated proceedings.

⁴ After this period, there was only one further prosecution of a shortfall in which POL served evidence from Horizon, in 2015.

⁵ Other objectives included working efficiency, properly applying procedures and demonstrating teamwork.

⁶ The achievement of this objective would account for, in some instances, 5-10% of the total bonus payable to the individual, depending on the number of objectives assigned to the POL Security Team.

21. The level of bonuses awarded to POL Security Team members would depend principally on the individual's Performance Development Review score at an annual appraisal. This score was comprised of two parts, namely: (i) the achievement of objectives set at the start of period being appraised (including team-wide objectives such as the recovery of POL losses); and (ii) individual behaviours (i.e. demonstrable behaviours indicating how the individual achieved those objectives). Both parts were equally weighted in the evaluation of an individual's performance. In addition, business-wide factors such as POL's annual profits were significant in determining bonus levels. The recovery of POL losses was one of multiple targets used to assess the performance of individual members, but this was a team-wide objective and individuals were not penalised or rewarded individually in relation to any recovery of POL losses target.
22. The Review identified no evidence that the bonus / incentivisation scheme applicable to the POL Security Team was based on the numbers of prosecutions, convictions, or recommendations for prosecution in any given year. As part of the Review, Peters & Peters collected bonus data and conducted an exercise to identify whether there was any correlation between the number of convictions and level of bonus awarded to individual POL investigators and/or Security Managers in a particular year. No such correlation was found (i.e. a greater number of convictions did not necessarily equate to a higher bonus paid).
23. By way of illustration, in 2008 there were 48 POL-prosecuted convictions compared to 71 convictions in 2009. From 2008/9 to 2009/10 there was an increase in the average bonus of the Senior Security Managers of £3,116.33 and an increase of £208.04 for the Security Managers. However, the number of convictions decreased from 77 in 2009 to 73 in 2010. From 2009/10 to 2010/11 the average bonus for the Senior Security Managers decreased by £6,789.33 whereas the average bonus for the Security Managers increased by £666.17.
24. Although not a finding of the Review, it is noted for completeness that charging decisions were taken by lawyers in the Criminal Law Team, not by investigators / Security Managers. Therefore, from the evidence reviewed, it appears that the POL Security Team had no direct control over the number of prosecutions and, consequently, whether POL pursued compensation or confiscation post-conviction.

Criminal Law Team

25. The Review has not identified any policy or performance objectives or other material to suggest that there was any direct financial incentive for lawyers in the Criminal Law Team to charge, convict and/or recover monies from defendants.
26. The Review identified that a bonus was paid to one of RMG's criminal lawyers, whose employment was later transferred to POL following the RMG/POL separation, in 2012/2013. Peters & Peters has not been able to ascertain the circumstances surrounding this payment, how it was calculated and/or whether bonuses were awarded to other criminal lawyers. This lawyer left POL's employment in 2014.
27. RMG, which employed most of the criminal lawyers from the beginning of the Relevant Period until the separation of RMG and POL (i.e. 1999/2000 – April 2012), operated a company-wide bonus scheme for management grade staff (which included lawyers) that was typically linked to company and individual performance. RMG stated in response to this Review that it was not able to identify details of how the bonus scheme operated, but it did not find evidence that the bonus scheme was linked to the number of successful prosecutions or sums of monies recovered.

POST-APPEAL DISCLOSURE TEST

28. The Respondent set out the test to be applied in considering disclosure within the PCDE at paragraphs 6 to 8 of the Disclosure Management Document dated 19 August 2020. In the particular circumstances of considering appeals arising out of Horizon, the Respondent indicated that it would disclose material within the PCDE that would have been disclosable under the CPIA test, which is a broader test than that required by *R (Nunn) v Chief Constable of Suffolk Constabulary [2014] UKSC 37*.
29. The Respondent continues to apply this test in relation to disclosure to Appellants or potential appellants who are appealing, or who might wish to do so, their convictions.
30. However, there are now a substantial number of individuals who have brought unsuccessful appeals, either because their appeals have been rejected by the Court or because the appeals have been abandoned following receipt of Respondent's Notices (and full disclosure).

Whilst the Respondent, as the prosecutor, does bear a continuing disclosure obligation towards such individuals, the question arises as to the appropriate test to be applied when considering the exercise of that obligation.

31. Given the findings of the Court in *Hamilton & Others [2021] EWCA Crim 577* and the subsequent decisions of the Court (particularly paragraph 9 of *White & another [2022] EWCA Crim 435*), where an appeal has been unsuccessful in establishing that Horizon reliability was essential to the conviction, it is not considered appropriate or proportionate to apply the wider test envisaged in paragraph 8 of the Disclosure Management Document. Accordingly, when considering disclosure to such individuals, the Respondent will apply the *Nunn* test as set out at paragraph 6 of the Disclosure Management Document.

Peters & Peters Solicitors LLP
24 August 2022