

Case Summary

Complaint against the Post Office for unreasonably requiring the payment for the change of the postal franking machine die

THE COMPLAINT

The manager of a company (the Company) complained against the Post Office (GPO) for unreasonably requiring the Company to pay for the change of its postal franking machine die which would be invalid on 1 July 1997 due to the change of sovereignty shortly after the Company paid the replacement cost of the machine die on account of office removal.

FINDINGS AND CONCLUSION

2. Investigation by this Office revealed the following -
 - (a) The Postmaster General (PMG) is responsible for the issue of Licence for the Use of a Postal Franking Machine for Denoting Prepayment of Postage and Other Charges to facilitate the operations of individual organisations. Upon the issue of the licence, the supplier of the franking machine will engrave the designated post office, which is selected by the licensee for prepayment of postage and meter setting, and which is set out in the Schedule attached to the Licence, on the machine die before it is sold to the licensee. Subsequent changes to the

designated post office would both require PMG' s approval and the change of machine die, with the licensee bearing the replacement cost. In this case, the Company was a holder of a franking machine licence. Owing to office removal, the Company applied to the PMG in December 1994 for the change of the designated post office and eventually paid a replacement cost of the change of die at \$1,800 to the supplier.

- (b) According to the agreement reached between the British and Chinese sides of the Joint Liaison Group, all existing dies of franking machines, which display a Crown, will cease to be valid for postal purposes from 1 July 1997 onwards. The requirement to change machine dies due to this agreement was promulgated to all licensees by way of circular letters issued in May 1996 and again in July 1996. The letters also stipulated that the replacement cost had to be borne by licensees. The PMG considers that as the die is a component of a franking machine which is the property of the licensee, it is appropriate for the licensee to bear the cost for changing the die.

3. This Office agrees that the change of die due to the Company' s own office removal in 1994 and the requirement to change the die due to change of sovereignty on 1 July 1997 are separate issues. Nevertheless, this Office is of the view that although the franking machines are properties of the licensees, it does not necessarily follow that the licensees are obliged to bear the replacement cost of the die in the latter case for the following reasons -

- (a) The machines are acquired by licensees through a licensing process and both the PMG and licensees are legally bound by the conditions stated in the licence. There is no provision in the licence applicable to the present case and it might be unfair for

licensees to bear the cost for the change which is not within their control. Although the GPO contends that under the general provision (1) of the licence, the PMG may revoke a licence if he considers that any words, letters and marks which he regards as embarrassing to himself or to any officer of the GPO and which are printed or impressed upon or attached to a postal packet by means of the machine, such authority of the PMG has no relevance to the issue and should not be regarded as a valid basis for requiring licensees to pay for the change of die.

- (b) For control purpose, it is a normal practice for invalid and obsolete dies be surrendered to the GPO through the suppliers after the dies have been replaced. This practice also applies to the present case although the licensees are the owners of the dies which have been replaced.

4. This Office considers that it is only fair to licensees had careful consideration been given to the options of absorbing the cost either by the GPO or by the licensees in a balanced manner. In the event that the decision is adoption of the latter option, the requirement for licensees to bear the cost should be formalised through appropriate procedures. There is no indication from the information provided by the GPO that such a process had been gone through before coming to any decision. Requiring licensees to bear the cost simply for the reason that they are owners of the franking machines is far from convincing, particularly taking into account the arrangement that they have to surrender the old dies, which are part of the franking machines, to the GPO through the suppliers after replacement. Overall, this complaint is partially substantiated.

RECOMMENDATION

5. This Office recommends that the PMG should consider the need to review the terms and conditions of the existing franking machines licence and to establish appropriate procedural arrangements in the light of this complaint.

RESPONSE FROM THE POST OFFICE

6. The GPO maintains that the cost of changing the dies to enable their continued use after 30 June 1997 should be met by the licensees. The GPO also contends that the general provision (1) and condition 14 of the licence which gives the PMG absolute discretion to vary or add to the conditions are adequate to cover the requirement for changing the dies although it agrees to consider the need to review the conditions of the licence.

FINAL REMARKS

7. This Office's concern is not who should bear the cost. Our main concern is before arriving at any decision as to who should bear the cost, it should be appropriately deliberated to determine the responsibility and have it appropriately formalised. In the present case, this office considers that the authority of the PMG under the general provision (1) is irrelevant to the situation. If it is the intention of the PMG to exercise his discretion under condition 14 to vary or add to the conditions, he should have it formalised and promulgated to all concerned in advance. After careful consideration of GPO's comments, this Office cannot find sufficient ground to change the findings and conclusion of the investigation.

Office of The Ombudsman

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