

Sparrow Questions for Parliamentary Debate 17th December 2014

Scope and Operation of the Scheme

Q. How has POL defined “the system” – this was supposed to be wider than just Horizon?

- Scheme’s overall objective is to try to achieve the mutual and final resolution of Applicants’ concern about Horizon and related issues
- This is the definition that all parties have been working to

“...Horizon relates to the entire application. This encompasses the software, both bespoke and software packages, the computer hardware and communications equipment installed in Branch and the central data centres. It includes the software used to control and monitor the systems. In addition, I can advise you that testing and training systems are also referred to as Horizon”

Q. If it’s not a Horizon issue that is causing the problem, what is, 140 SPM’s can’t be wrong?

- That is precisely what the Scheme is designed to find out
- No two cases are identical, so inherent danger in trying to look for a general ‘problem’
- Indeed, claims are very broad and varied in nature
- Scheme set up in good faith and PO prepared to respond constructively to what it finds, good or bad
- Of course SPMs in the Scheme have faced difficult challenges but it would be quite wrong to then conclude that PO somehow must necessarily be responsible

Q. Paula Vennells talks about investigation “horizon and directly associated issues”. “Directly” is not what was agreed when the scheme was established.

- Members making too much of this
- PO understandably keen that Scheme set up with a very specific and defined purpose should not endlessly be piggy-backed on
- Definition of scope is one that all parties, including Second Sight and JFSA, should be working to
- Nothing prevents SPMs from raising a grievance with Post Office at any time but the Scheme is for a limited purpose

Q. Why did POL agree to incorporate convicted cases in to the scheme if it knew it wasn’t going to mediate?

- PO thought hard about this before coming to the decision to take an expansive view toward the Scheme
- Each case is looked at on its individual facts and merits
- PO considered that there may be circumstances where there might be a legitimate complaint about it in relation to matters which were not directly related to the evidence/facts giving rise to the conviction
- For instance, a failure on its part to follow certain procedures but where this would have had no impact on the safety of the conviction

Q. Why aren't POL mediating criminal cases?

- Each case is being looked at individually and in detail
- True that criminal cases do present very particular challenges
- PO does not have the power to overturn any conviction – it is not a court
- The Scheme documentation is at pains to make this clear
- Members should also note that PO has an absolute duty to immediately disclose any information which is capable of casting doubt over the safety of a conviction
- There is no doubt whatever in my mind that it is being particularly vigilant in this regard as it carries out its investigations

Q. JA states that the “outcome envisaged” at the start of the scheme was that not mediating would be the exception. Why is this not now the case?

- It was never envisaged that all cases would be mediated – at the beginning of the Scheme
- The Scheme is two parts – firstly, re-investigation and independent external review of each and every case and secondly, a recommendation from the Working Group as to the suitability of any given case for mediation
- Mediation is a voluntary and consensual process and, accordingly, neither Applicants nor Post Office are bound to process to mediation even where it is the Working Group's view that mediation is appropriate.
- PO accepting all eligible cases for investigation even when there appeared to be little substance to the cases
- PO look at every case on its merits and will mediate in cases where it is suitable for mediation they will of course continue to mediate.

Q. Why is POL excluding professional advisers from the final consideration of whether a scheme should go to mediation?

Q. How can we rely on Second Sight if paid for by POL?

- When I answered questions on this matter in this house last year the honourable member for Batley and Spen (Mike Wood MP) sought a specific commitment that the working group would include representation from Second Sight, recognising their independent understanding of the issues
- I gave the honourable member the assurance he sought and Second Sight continue to play a central role in all aspects of the Scheme
- The honourable member for North East Hampshire acknowledges their independence in his letter to the POL CEO and in a BBC blog where he wrote:
- “...someone had to pay for it. I wasn't going to, the Government wouldn't have forked out money from somewhere else to do so, and the Post Office offered to do so despite the risk involved to their reputation. That does contrast (well, IMHO) with the cover ups we've seen elsewhere in the public sector”.

Q. Who is Sir Anthony Hooper? Who Chairs the Working Group?

- The Working Group is independently chaired by Sir Anthony Hooper, whose appointment was announced on 29 October 2013.

- He was appointed by PO on the basis of a recommendation from JFSA and Second Sight [please check]
- He is a former member of the Court of Appeal of England and Wales.

Q. When were subpostmasters able to complain? Hundreds have been frozen out of the process.

- Subpostmasters who wished to have their case considered in the context of the Mediation Scheme had three months between August and November 2013 to submit their applications
- The Post Office advertised the Scheme, as did the Justice for Subpostmasters Alliance, and I'm sure interested honourable members would have done so also
- There is nothing to stop any SPM from raising a concern with PO at any time

Progress / Results of the Scheme

[DN: This is hardest section to brief on by its nature - below is base material only]

Q. What were the main accusations of the interim report?

- Though Second Sight's "preliminary" conclusions were as follows, it must be noted that their primary finding was one of no evidence of system wide problems with the Horizon software
- Other conclusions were:
 - 2 incidents where defects in the Horizon software gave rise to 76 branches being affected by incorrect balances or transactions, which took some time to identify and correct (but which were corrected);
 - Occasionally an unusual combination of events, such as a power of communications failure during the processing of a transaction, can give rise a situation where timely, accurate and complete information about the status of a transaction is not immediately available to a SPMR;
 - When individual SPMRs experience or report problems, POL's response can appear to be unhelpful, unsympathetic or simply fail to solve the underlying problem. The lack of a 'user forum' or similar facility, means SPMRs have little opportunity to raise issues of concern at an appropriate level within POL;
 - The lack of an effective 'outreach' investigations function within POL, results in POL failing to identify the root cause of problems and missing opportunities for process improvements;
 - The end of Trading period processes can be problematic for individual SPMRs, particularly if they are dealing with unresolved Transaction Corrections ('TCs').

Q. What were the main accusations of the leaked thematic report?

- No evidence of system wide (systemic) problems with the Horizon software were found
- Report supposed to describe and expand on common issues identified by Second Sight as being raised by multiple Applicants
- Aim was to provide general information that could then be applied in specific cases
- However, Post Office does not endorse the report as it found it to
 - Be inaccurate in important areas,
 - Lack evidence to support some of its assertions; and
 - Include matters which are beyond the scope of the Scheme.
- In the interests of transparency and to assist the resolution of complaints brought under the Scheme, Post Office responded through its own report to correct inaccuracies and provide information that Second Sight's report omits.

Q. Can the minister summarise the findings of the scheme to date, in her view?

- Unfortunately, disclosing detailed information would breach of confidentiality obligations
- What I can say is that in none of the cases which have been re-investigated to date has any evidence been found by PO or by Second Sight of a system wide issue with Horizon

Q. Why has POL rejected 90% of cases going to mediation?

- I have heard this figure being quoted and it is extremely unclear how it has been arrived at
- Information shared with me by the Working Group tells a different story
- The reality is 110 (73%) cases remain in the scheme, the others having been resolved or otherwise discontinued
- Of those recommended for mediation by the Working Group, PO have only declined to proceed to mediation in 10% of cases;
- Applicants themselves have refused to mediate in 5% of these cases.

Q. Why are POL ignoring Second Sight's advice if they are independent and are recommending mediation?

- PO does not ignore Second Sight's advice – on the contrary it takes great care to understand and incorporate it into its own work
- However, PO cannot be expected necessarily to agree with Second Sight's recommendation
- If Second Sight's advice alone was the determinant factor in whether the case was recommended for mediation then that decision would be made without the benefit of the views of JFSA, Sir Anthony Hooper and the PO
- In contrast, the Working Group is able to consider all relevant factors
- This is why recommending cases as suitable for mediation has always been its core function – as jointly designed by JFSA, POL and Second Sight.

[DN: I think the following paras make a good point but need to reflect on how to get across] - Further, by entering the scheme, individual Applicants have expressed a willingness, at least at the outset, to mediate with Post Office. At no stage in the process however has Post Office's views on mediating a particular case been sought. Indeed had the view been advanced earlier in the lifecycle

of the scheme that the Working Group should only have a role in deciding whether a case is suitable for mediation where Second Sight does not recommend mediation, Post Office may have taken a less lenient approach to accepting cases into the scheme or set out its investigation Report its view on mediating a case.

As it is, Post office took the view at the outset to investigate all cases, except those which were ineligible under the terms of the scheme, on the understanding that it would have the opportunity to consider all the information available (including Second Sight's review) before forming and expressing a view on mediation.

Q. How much has POL spent on this to date:

On their own internal costs

On Second Sight

On their legal and other advice

On legal and other advice for SPMs

On mediation

Q. Given POL has spent so much, why is POL not going the final mile to mediation?

- Mediation is a voluntary and consensual process, designed to get agreement through compromise
- But there must be something to suggest that responsibility for what went wrong is really in doubt
- Where the Applicant, Second Sight or Post Office have produced no evidence to suggest that the question of responsibility is in doubt, it makes no sense to mediate and simply raises expectations in a completely unwarranted way

Q. JA admits that some SPM's might be trying it on – have there been any cases where the working group / JFSA / SS agree?

- Again, PO is unable to provide any detail relating to specific cases in order to protect Applicants' privacy
- Members will understand that, perhaps particularly in cases where there may suggestions of this nature, SPMs are unlikely to want this information disclosed

Q. Post Office has taken six months to investigate some cases, SS have only taken 2-3 months?

- Each case is being considered individually and it is important that each case is rigorously investigated
- Some of the cases are complex and some date back many years, involving exhaustive searches of PO records
- PO investigations are obviously therefore the longest part of the process for many cases
- PO prepares a case report and provides this, together with the all material retrieved, perfectly ordered, to Second Sight for their analysis

- A much shorter period is required for this because it does not involve searches and retrieval.

Q. Why is the scheme taking so long to complete?

- In circumstances where the integrity of the system which millions of people up and down the country rely on every day is being questioned, that requires an appropriate response
- It is imperative therefore that all investigations are thorough and complete
- This takes time

JA “asks” of POL

Q. Will the delay in investigating the scheme mean that POL can rely on the statute of limitations so that applicants cannot bring action against them?

The progress of the Scheme does not affect any Subpostmaster's legal rights. If a Subpostmaster is facing a limitation deadline, there is nothing stopping them from starting Court proceedings against POL if they believe their case has merit.

Q. Will POL agree to waive the time bar to statute of limitations in this matter?

The Limitation Act protects defendants against very old claims that may not be able to be properly investigated. Like everyone else, Post Office has the right not to be sued after a limitation period has expired. However, Post Office has paid for Subpostmasters in the Scheme to receive support from professional advisors who can help with any limitation issues and they are encouraged to contact Post Office if a case is facing a limitation deadline. In any event, there has never been anything stopping a Subpostmaster from bringing Court proceedings against Post Office before a limitation deadline passes.

NOTE: Post Office should not equivocate on this answer. If the Minister were to even suggest that limitation might be waived, this may amount to an estoppel that would prevent POL from running a limitation defence in subsequent Court proceedings. I've copied Rodric in case he has a view on this.

Q. Will POL agree to not destroy data ?

Post Office is taking steps to preserve information material to the cases that have been put through the Scheme and will continue to do so until those cases are concluded.

Q. Why is POL being so secretive?

- Some of the cases in the Scheme are sensitive and not all Subpostmasters want publicity
- Post Office must respect Subpostmasters' privacy
- This is why details of the Scheme are confidential.
- However, that confidentiality is balanced by the fact that that Scheme was designed to be overseen by an independent Working Group chaired by Sir Anthony Hooper

Q. [JA refers to “the response of 22 September 2014” – what was this and what's the line of his attack, presumably it's about scope of the scheme?]

Treatment of SPMs

Q. Did POL pressure people in to pleading guilty to lesser offences?

Q. SPM's contracts are 100 pages long – what else do/did POL do to ensure SPMs understand their responsibilities?

Q. What has POL done to settle out of the scheme?

Q. What has POL done to resolve issues at mediation?

Other – possible questions to fire back at JA?

Q. JA quotes the January minutes of the working group. Should he have had access to these?

Q. Is JA clear about Second Sight – he either trusts them or he doesn't