UKGI00002719

Note: Legally Privileged & Confidential

Sparrow Questions for Parliamentary Debate 17th December 2014

Some key points

- MPs are not part of the Scheme – we need to ask what 'withdrawing their support' means
- Are they asking for the Scheme to be stopped?
- Cannot say anything which can in any way be interpreted by applicants in the Scheme that their case may proceed in any particular way.
- Cannot end up being accused of applicants losing faith in the Scheme because they take away some suggestion about what may or may not happen in their case.

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 individual Applicants' specific concerns about Horizon and related issues
- This encompasses, as recorded in Second Sight's interim report, the following:

  "…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 SPMRs can't be wrong?

- 140 SPMRs is less than 0.1% of the total users of Horizon – there are thousands of other SPMRs who have not made a complaint
- That said, this question is precisely what the Scheme is designed to find out
- No two cases are identical, so inherent danger lies in trying to look for a "one size fits all" explanation
- However, investigations so far show that a large number of the problems were caused by how the Subpostmasters themselves were using Horizon.
- Scheme set up in good faith and Post Office is prepared to respond constructively to what it finds, good and bad
- Of course SPMRs in the Scheme have faced difficulties, but it does not necessarily follow that Post Office is responsible
- To do so would be anything but reasonable or fair-minded

UKGI00002719

Q. Paula Vennells talks about investigating "Horizon and directly associated issues". "Directly" is not what was agreed when the scheme was established.

- Scheme was set up with a specific and defined purpose which it is seeking to address.
- It is not in the interests of applicants or the thousands of other SPMRs delivering vital services to communities and our constituents to keep expanding the scope of the Scheme in the hope that something somewhere might be found when no issues have been found (thus far) with Horizon
- I would remind everyone that nothing prevents SPMRs from raising a complaint with Post Office at any time and Post Office will look into it.

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

- Each case is looked at on its individual facts and merits. That meant not pre-supposing the outcome of some cases by blocking their entry to the scheme.
- However, investigations so far have not revealed any suggestion that a SPMRs conviction is unsafe
- Let me be clear: PO does not have the power to overturn any conviction and nor does the Mediation Scheme – Only a Court does.
- Post Office is, however, under an absolute duty to immediately disclose any information which is capable of casting doubt over the safety of a conviction – Post Office has made no such disclosures arising out of the Scheme
- There is no doubt whatever in my mind that it is being particularly vigilant in this regard as it carries out its investigations
- The fact remains, uncomfortable as it may be for some, that nothing has to date surfaced which suggests that any of the convictions are unsafe. If it does it will be dealt with in accordance with POL's obligations. It will have to be.

Q. Why aren't POL mediating criminal cases?

- As I have made plain, I understand that each and every case is looked at individually
- You have suggested you have lost faith in the Scheme, and indeed a number of cases have already been resolved. So it cannot be said to have failed.
- However I am not going to say anything which could be taken by applicants which could suggest that Post Office or anyone else might decide whether to proceed in a particular way.
- If all cases are being considered on a case by case basis and I have not seen all the cases and I assume my honourable members have not either.

UKGI00002719

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
- No party could predict at the start of the Scheme what the investigations might discover with any certainty, nor could they given that the Applicants had not yet set out their individual complaints.
- The Scheme is two parts – an investigation and independent external review of each case and then, 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 proceed to mediation even where it is the Working Group's view that mediation is appropriate
- Post Office placed no bar on the acceptance of cases to the Scheme even where there appeared to suggest little of substance to investigate
- Post Office looks at every case on it merits and will mediate in cases where in its view mediation offers the genuine prospect of fair resolution

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

- Post Office makes a substantial contribution to Applicants to obtain professional advice in preparing their claims against it
- And, in cases which do proceed to mediation, a further contribution for professional advisers to attend
- In any event, Applicants and advisers are free to approach Post Office about mediation or a discussion on their case at any time
- This is the role of the Working Group – the Scheme was established in this way. Redesigning the Scheme at this stage in the process when some are suggesting that it is not working as they want is neither practicable nor realistic. .
- In any event, JFSA fulfil the role of representing the views of Subpostmasters on the Working Group

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

- In response to the honourable member for Batley and Spen (Mike Wood MP) last year, I gave a specific commitment that the working group would include representation from Second Sight, recognising their independent understanding of the issues
- Second Sight continue to play a central role in all aspects of the Scheme
- The honourable member for North East Hampshire (James Arbuthnot MP) 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

UKGI00002719

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.
- I understand he was suggested by JFSA
- He is a former member of the Court of Appeal of England and Wales.

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

- SPMRs were offered an opportunity to come forward when Second Sight were first appointed back in 2012.
- Those who wanted to apply for the 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 through any other channel and it will be investigated.

Progress / Results of the Scheme

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

- Though Second Sight identified a number of areas of concern that needed further investigation, it must be noted that their primary finding was one of no evidence of system wide problems with the Horizon software

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

- The Report is confidential to those involved in the Scheme and Members will understand that I can't comment on document I haven't seen
- I do, however, know that it remains the case that no evidence of system wide (systemic) problems with the Horizon software has been identified

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

- I am unable to say and not all cases have completed the process – and I neither know nor am entitled to know the detail of cases.
- In any event I am not prepared to say anything which might, in some way affect the process or individual mediations.
- What I can say is that in none of the cases which have been re-investigated to date has any evidence been found of a system wide issue with Horizon or any suggestion that a criminal conviction is unsafe.
- What I observe, however, is a genuine and good faith effort being made by PO to try to resolve the issues raised by Applicants to the Scheme

UKGI00002719

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
- Of the 24 cases recommended for mediation by the Working Group, PO have only declined to mediate 2

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

- Post Office is not ignoring Second Sight's advice – on the contrary it takes all information into account when deciding whether to mediate
- However, PO cannot be expected necessarily to agree with Second Sight's recommendation
- If Second Sight's recommendation 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 the Working Group
- This is why recommending cases as suitable for mediation is one of its role as jointly designed by JFSA, POL and Second Sight

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

To date, Post office has invested over £5 million in the scheme and matters associated with it.

This includes, but is not limited to:

- Approaching £1m on Second Sight, the independent forensic accountants
- More than £400k for Applicants to obtain professional advice in preparing their claims against Post Office, including £31k for JFSA's advisor
- £2 million on investigating cases and supporting the Scheme

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, and that resolution is a realistic outcome – mediation may not be able to deliver what an Applicant wants.

UKGI00002719

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

- Again, Post Office 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 be suggestions of this nature, SPMRs 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, no two cases are the same, 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
- Some investigation reports run to over 30 pages and 80 pieces of information/evidence
- 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
- Each case is investigated afresh and on its own merits
- This takes time

JA "asks" of POL

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

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

UKGI00002719

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

- I absolutely cannot commit POL to anything such as this.
- 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 SPMRs 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 SPMR from bringing Court proceedings against Post Office before a limitation deadline passes.

Q. Will Post Office agree to not destroy data ?

- Not sure what is being suggested here?
- Of course Post Office will not destroy available information related to their investigations
- The Scheme anticipated that some cases would be old and information may not be available.

Q. Why is Post Office being so secretive?

- It is not being secretive, it is being responsible.
- The cases involve sensitive and personal information and that cannot be discussed or made public
- Post Office must respect Subpostmasters' privacy
- This is what the Chair has said
- 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
- The Scheme documentation makes it clear to applicants that they and Post Office must endeavour to keep details of their case confidential and that all matters discussed in the actual mediation will be strictly confidential
- The confidentiality of mediation is common to all mediations, not just cases mediated as part of this Scheme
- The Centre for Effective Dispute Resolution (CEDR) is providing the mediation for the Scheme
- The arrangements are in line with CEDR's own Code of Conduct and the European Code of Conduct for Mediators which the Civil Mediation Council requires all UK providers to observe in order to maintain accreditation

UKGI00002719

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

Treatment of SPMRs

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

- Post Office only brings a prosecution when it meets the tests set out in the Code for Crown Prosecutors. This means that the prosecution is in the public interest and is supported by sufficient evidence.
- Before pleading to any offence, a subpostmaster has the benefit of seeing Post Office's evidence and would have the opportunity to take legal advice.

Q. SPMR's contracts are 100 pages long – what else do/did Post Office do to ensure SPMRs understand their responsibilities?

- The vast majority of the contract deals with everyday matters such as holiday leave and sickness pay.
- The key issue in the context of the Scheme is the SPMR's responsibility for the safekeeping of the public money held in their branch. This duty is explained to SPMRs in their contract and during their training, and is consistent with obligations under the general law.

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

- Details of any settlements are confidential between Post Office and the SPMRs involved and so I do not have details of this
- The Chair's letter says 14 cases have been resolved prior to mediation

Q. Why has POL suspended access to the Horizon mediation schemes data room?
Use the draft letter to James

- Scheme data can only be used for the purposes of the Scheme in order to protect the privacy of the Subpostmasters involved
- JFSA suggested in a press release that it had left the Scheme and so JFSA's access was temporarily suspended whilst that matter was clarified
- JFSA later confirmed that they are still supporting the Scheme and therefore their access has been re-instated.

UKGI00002719

Q. What are the arrangements for ex SPMRs who did not hear about the scheme but want their case investigated (ie we already say SPMRs can approach POL in one of the answers, but does that extend to ex SPMRS)?

- The Scheme is closed to new Applicants but a subpostmaster can raise any concerns direct with Post Office at any time.

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?

No – the actions of the Working Group are confidential. I'm disappointed that someone has leaked these to JA as I think this may cause concern to some SPMRs who don't want this type of publicity of their sensitive cases and just want an opportunity to have their case investigated privately.

The chair has provided me with such information as he is prepared to disclose and we should all respect his position as the independent Chair

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

I can't speculate on what JA may or may not think about someone else.