

DRAFT LETTER TO BNR – PROJECT SPARROW

At our meeting on 26 January 2016, I provided you with an update on the work I have undertaken with the assistance of Jonathan Swift QC and Christopher Knight, both of 11 Kings Bench Walk Chambers to review of the Post Office's handling of complaints made by Sub-Postmasters about the operation of the Horizon software system. I now write to set out further information about the approach to the review, the scope of work undertaken so far, and my initial findings. I also outline my plans to bring the work to a conclusion.

Before doing so, I wish to stress that this update, and the work which underpins it, reports on the legal advice I am currently receiving and is, accordingly, subject to legal professional privilege and provided in confidence. I am, of course, aware that once the various additional strands of work I am pursuing are complete, we will need to find an appropriate method of communicating the results of my review to a wider audience.

Scope of the Review

My objectives were as follows.

“To review the Post Office's handling of the complaints made by sub-postmasters regarding the alleged flaws in its Horizon electronic point of sale and branch accounting system, and determine whether the processes designed and implemented by Post Office Limited to understand, investigate and resolve those complaints were reasonable and appropriate”.

I considered that the review should address both what had happened to date (in the period 2010 – 2015), and also the important question as to whether there were any gaps in the work done and what more, if anything, could now reasonably be done to address the complaints that had been raised.

I decided that the particular focus should be on those matters at the heart of the complaints raised against the Post Office, namely:

- i) criminal prosecutions;
- ii) the Horizon system (i.e. the software);
- iii) the support provided to sub-postmasters through training and helplines; and
- iv) the investigations in the circumstances of specific cases where a complaint had been raised.

The remainder of this letter summarises the headline findings of the review in these areas, and the recommendations made against each.

I can confirm that my advisors requested and were given unrestricted access to documentation. Numerous meetings were held between them and a range of Post Office staff, employees of Fujitsu (who provide the system), and Deloitte. I met with Lord Arbuthnot, and with Second Sight (the forensic accountants who worked on this issue) and. I asked Alan Bates, the Chairman of the Justice for Sub-postmasters' Alliance, to meet me, but regrettably he declined.

Principal Findings and Recommendations

i) Criminal Prosecutions

The safety or otherwise of any specific conviction is a matter for the Criminal Cases Review Commission, the independent body established to consider complaints of miscarriage of justice, and which is currently considering some 23 applications from former sub-postmasters. The Post Office is co-operating fully with the CCRC's work and I have, of course, directed that it should continue to do so.

The Post Office has previously taken advice from solicitors and Leading Counsel expert in criminal law on the adequacy of the Post Office's policy and practice on disclosure where it acts as prosecutor. Based on that I am satisfied that proper disclosure was made and that those facing prosecution were not deprived of evidence or information which would have been helpful to their defence.

One matter raised in the BBC Panorama programme and elsewhere is the claim (and I must stress that it is only a claim) that the Post Office brought concurrent charges of theft and false accounting against sub-postmasters when there was no sufficient evidence for a charge of theft, and the theft charge was only brought to put pressure on the sub-postmaster concerned to plead guilty to the false accounting charge. As a result of the review I have decided to take the following steps.

- (1) I will take advice from specialist criminal counsel as to whether the decision to charge theft and false accounting could undermine the safety of any conviction for false accounting if (a) the conviction was on the basis of a guilty plea following which, and/or in return for which, the theft charge was dropped, and (b) there had not been a sufficient evidential basis to bring the theft charge.
- (2) If the advice received is that such a conviction could be undermined in those circumstances, I will ask counsel to review the prosecution file in the cases concerned to establish whether, applying the facts and law applicable at the relevant time, there was a sufficient evidential basis to conclude that a conviction for theft was a realistic prospect such that the charge was properly brought.

ii) Horizon

The review report recognised that in a system of the age, size and complexity of Horizon, it was unremarkable that occasional bugs, errors or glitches were uncovered and addressed. A limited number of specific problems with the potential to affect branch accounts were brought to the attention of Second Sight during the course of their work, together with details of the way in which the Post Office had addressed these matters. Based on the review it has become apparent that these bugs were capable of having a generic impact (i.e. of affecting all users of the Horizon system and not only those who had raised complaints about them). However, the review did not disclose any evidence to suggest that any of these bugs had been the cause of loss to any sub-postmasters other than those who had raised the problem. In the context of this review exercise, I have concluded that there is no basis on which to recommend further action in relation to these known, specific, errors.

Nevertheless, the review report suggested that consideration should be given to whether it would be possible, by analysis of the transaction logs of sub-postmasters who made complaints, to determine more comprehensively whether or not the matters complained of by each sub-postmaster could show the existence of some *other*, generic, bug within the system. Work is now underway to assess if such testing is possible, and if so, to scope the work that would need to be done.

Further work is also underway to address suggestions that branch accounts might have been remotely altered without complainants' knowledge. In particular the security controls governing access to the digitally sealed electronic audit store of branch accounts over the life of the Horizon system, will be reviewed.

iii) Training and Support

A consistent theme of the complaints against the Post Office is the allegation that sub-postmasters were provided with insufficient training to operate the system effectively and/or did not receive an appropriate level of support while in post.

A number of factors, including the lack of specificity in the allegations made and the relative paucity of available training records, made it very difficult for the review to determine the merits of these complaints.

I have concluded that these issues have already been addressed as comprehensively as is reasonably possible by both the Post Office and by Second Sight through their investigations of all complainants' cases. However, I am taking forward one further line of enquiry in relation to the very limited number of cases where allegations were made of misleading advice being provided by the Post Office's helplines.

iv) Investigation of Cases

The review also looked at the Post Office's investigations of the complaints as part of the Mediation Scheme process. It has concluded that the investigations were detailed and thorough, and left no more than very limited gaps which might now reasonably be filled by further work. There is, only one further accounting exercise recommended by the review team, which consists of an examination of the extent of any relationship between unmatched balances in the Post Office's general suspense account and branch discrepancies, and independent experts have been instructed to undertake this examination.

Next steps

I have commissioned independent persons to undertake the necessary work. I am satisfied that they meet the standards of expertise and independence appropriate to the tasks.

I do, of course, share your aim that matters should be drawn to a conclusion as soon as possible consistent with the need for the work that remains to be done to a high standard. I hope you will understand that, particularly in relation to the further testing of the Horizon system, this work may take some time. I anticipate that I will be in a position to report back on the outcome of this further work during May

I firmly believe that the focus and scope of my review to date, together with the further work which I have now commissioned, will at that time allow me to confirm that the processes designed and implemented by Post Office Limited to understand, investigate and resolve those complaints were reasonable and appropriate, and that there are no further enquiries which need to be undertaken into this matter, whether by Post Office Limited or, indeed, by anyone else.

Finally, may I mention two other matters? First, and as I have noted above, a number of sub-postmasters have made applications to the Criminal Cases Review Commission for the circumstances of their convictions to be looked into with a view to those cases being brought back to the Court of Appeal. That work is on-going and the Post Office continues to co-operate fully in the process. Second, the Justice for Sub-postmasters Alliance is reported to have received funding to instigate civil proceedings against the Post Office. However, at the time of writing, no claim has been issued, nor has any letter before claim been received.

I hope that the above sets out matters satisfactorily. If you would like to discuss the review report with me, I would be happy to do so.

[ENDS]