

OFFICIAL SENSITIVE

To: Secretary of State and Jo Swinson

From: Laura Thompson **GRO**

Date: 11 March 2015

Subject: Post Office mediation scheme: letters

Purpose: Following Tuesday's announcement by Post Office of changes to the Mediation Scheme established in relation to the Horizon IT system, we need to respond to a question from James Arbuthnot MP raised at Prime Minister's Questions today, as well as a letter in similar terms from the head of the Justice for Subpostmasters Alliance (JFSA) Alan Bates.

Recommendation:

- a) That you note the background to the accusations from Mr Arbuthnot and Mr Bates
- b) That you agree and sign the attached letters, to Mr Arbuthnot from the Secretary of State and to Mr Bates from Jo Swinson.

Timing: Urgent – we should respond promptly to Mr Arbuthnot given he raised his issue at PMQs. We recommend the letters are both issued on Thursday 12 March.

Summary

1. The Post Office mediation scheme was established in 2013 to consider concerns from a small number of (mostly former) subpostmasters that flaws with the Horizon IT system had caused accounting discrepancies which, in some cases, led them to be charged with false accounting or theft and made to repay the loss. Post Office commissioned independent forensic accountants, Second Sight, to investigate this. No evidence of systemic issues with the Horizon system have been found. Nevertheless, Post Office set up a mediation scheme to investigate the individual cases that subpostmasters have raised, and 136 applications were accepted into the scheme. That scheme is independent of Government and cases are confidential.
2. Post Office announced on Tuesday 10 March that it had completed its investigations into all cases remaining in the scheme – 56 cases have been mediated or otherwise closed so far, and so 80 cases remain. Previously, a Working Group consisting of Post Office, JFSA and Second Sight, plus independent Chair Sir Anthony Hooper (a former Court of Appeal Judge) had considered whether cases should proceed to mediation. Post Office announced on Tuesday that they would progress all cases to mediation which did not involve a previous Court ruling and consider those that did on a case-by-case basis. This renders redundant the role of the Working Group and as such it will close. The changes are designed to accelerate completion of the scheme – something that has been desired by all sides - ensuring applicants with cases in the scheme are able to progress to mediation quicker.
3. James Arbuthnot has led interest in this issue from the outset (first raised in 2012) and has been working with JFSA ever since. Today Mr Arbuthnot bid to ask an Urgent Question about the scheme, which was rejected, and then was given the opportunity to raise the issue at PMQs. His question was:

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"Is my Rt Hon Friend aware that in the Post Office mediation scheme the Post Office has just sacked the independent investigators Second Sight and told them to destroy all their papers. Does my Rt Hon Friend agree that it is essential that Second Sight's report should not be suppressed but should be supplied to subpostmasters and MPs, starting with the Hon Member for West Bromwich (Adrian Bailey) and the BIS Select Committee."

4. The Prime Minister committed that you (Secretary of State) would write to Mr Arbuthnot to respond to his concerns. On Tuesday afternoon, Mr Alan Bates (head of JFSA) wrote to Jo Swinson along similar lines, his email is attached at Annex A. We recommend that you respond to both letters along similar lines and draft letters are attached at Annexes B and C.
5. The main accusations are that Post Office has "sacked Second Sight" and is attempting to "gag" them or suppress information. This is untrue.
6. Post Office have served notice to terminate Second Sight's contract – this gives 30 days' notice, and Post Office have arranged to meet Second Sight again on Friday (having met them on Tuesday to inform them of the news) to agree a schedule of work for the duration of the contract. Post Office also intend to make an independent report by Second Sight available to all applicants with cases remaining in the scheme who would like one, and will provide funding for applicants to engage Second Sight to review their case. This is clearly not the same as "sacking" Second Sight.
7. Regarding Second Sight's second (or "thematic") report, this report is not and was never due to be published. The report was designed to be shared with members of the Working Group only (which does not include Government, or Mr Arbuthnot), and then used to inform future mediations. Post Office have committed that they will support Second Sight to complete this second report and ensure it is available for future mediations. Post Office have also published on their website a very detailed report into many of the accusations made regarding the scheme.
8. The fact remains that, following nearly two years of investigation, no systemic issues have been found with the Horizon system. As such, JFSA, some MPs, and even Second Sight, are seeking to broaden the remit of the scheme perpetually, straying into areas which Second Sight are not qualified to investigate (such as contract law or criminal prosecutions). This is causing reputational damage, not least due to the ability of JFSA and indeed MPs to make false or inaccurate statements about the scheme or Post Office, which are difficult to rebut given the confidential nature of all cases involved. It is worth noting that the National Federation of Subpostmasters (NFSP), who are often critical are fully supportive of Post Office's position on this and have publicly expressed scepticism of many of the cases being represented by the JFSA (including in evidence to the BIS Select Committee).
9. We therefore recommend a robust reply to Mr Bates and Mr Arbuthnot, answering the concerns that they raise. We recommend that you should copy the reply to Mr Arbuthnot to Adrian Bailey as Chair of the BIS Select Committee, both because he was mentioned in Mr Arbuthnot's statement and also because the Committee has taken evidence on this scheme in the past month (although we do not know if they intend to publish a report before Parliament dissolves).

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Annexes:

A: Letter from Alan Bates to Jo Swinson dated 10 March 2015

B: Draft letter from Secretary of State to James Arbuthnot MP

C: Draft letter from Jo Swinson to Alan Bates

Copied to: Ministers' offices, SpAds, Permanent Secretary, Mark Russell, Antony Odgers, ShEx POL team, Parly Unit, Hannah Franklin-Wallis, Christina Murphy, Ministerial Advice Team

Advice received from:

Finance	SpAds	Press	Legal	Analysts
No	No	No	No	No

Have devolution issues / impacts been considered?

Devolution Issues	Equality Analysis	'Impact on Families'
N/A	N/A	N/A

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Annex A: Email from Alan Bates to Jo Swinson

From: Alan Bates [mailto:alan.bates@jfsa.org.uk] **GRO**
Sent: 10 March 2015 13:24
To: Swinson MPST Correspondence
Subject: FW: Post Office Press Release today.

Dear Minister,

This morning I have been informed by Post Office that it has closed the Initial Complaint Review & Mediation Scheme, a copy of their press release is attached, and much of what is stated in it is incorrect.

I understand that Post Office this morning has also terminated the Second Sight contract and placed a ban on them speaking with JFSA.

I remind you of your assurance to me in your letter dated 22nd September 2013 when JFSA raised concerns about Second Sight being contracted to Post Office. In your letter you stated :-

"I have noted your concerns about the Mediation Scheme and the work of Second Sight being funded by POL and the potential, therefore, for their independence to be questioned. But it is important to be clear that Second Sight are not employed by POL."

JFSA took you at your word, and engaged with the process, so how can Post Office terminate the Second Sight contract if they, as you state, "are not employed by POL". JFSA has always understood that Second Sight works for the Working Group and as such, if their services were no longer required, it was a Working Group decision to make and not just POL's. Similarly if a decision was to be made to close the Working Group as its work was complete, then that too was a decision for the Working Group, not POL to make by itself.

JFSA pointed out to you at the start of the Scheme that it was a mistake for POL to be holding the purse strings in this matter, as it uses this as a lever in order to try to cover up the years of incompetence that led to the need for this Scheme in the first place.

Presumably you are aware that the first draft of the Second Sight Part Two report was due out tomorrow, ready for discussion at what was to be the next Working Group meeting on 24th March 2015. Post Office's actions today has attempted to gag Second Sight and stop this report from being published. Furthermore, there are numerous outstanding questions that Post Office has yet to answer, and large quantities of documentation yet to be provided by them, but in POL's eyes the Scheme is now closed, as they now want to bury everything.

Minister, were you aware of Post Office's actions today? Did you approve beforehand their decision close to the Scheme?

I look forward to your response,

Regards
Alan Bates
Chairman
Justice For Subpostmasters Alliance