

From: The Rt. Hon. James Arbuthnot, M.P.



HOUSE OF COMMONS
LONDON SW1A 0AA

8 December 2014

Paula Vennells
CEO
Post Office
148 Old Street
London EC1V 9HQ

Dear Paula,

1 Thank you for your letter of 28th November 2014. In it you say that "the Scheme and its processes are, in fact, operating as they were designed to". In our meeting of 17th November you told us that you had done exactly what you said you would do. I disagree with you on both points.

Scope of the Mediation Scheme

2 The Mediation Scheme was set up in order to address the issues identified by Second Sight in their interim report which was discussed in the Statement on 9th July 2013.

3 As Mike Wood MP then said, "when the Post Office talks about Horizon, it does not just mean the software in the computer system; it means the wider issues, including the interface between that system and other systems; training staff how to use it, and so on". The Minister accepted this point in her reply, and in discussions with MPs you too have always accepted it. The terms of reference of the Mediation Scheme state that the Scheme was established "to help resolve the concerns of SubPostmasters regarding the Horizon system and other associated issues".¹ In your letter you change the emphasis of the terms of reference by your importation of the word "directly".²

¹ Overview of the Initial Complaint Review and mediation Scheme; 4 September 2013

² "you appeared to suggest that the scope of the Scheme should now be broader than issues directly associated with the Applicants' complaints and dissatisfaction with the Horizon system and directly associated issues. However, the Scheme was established with the specific and targeted purpose of addressing each of the individual Applicants' complaints and dissatisfaction with Horizon and directly associated issues and the fact is that no fault with the system has been identified in any of the now 119 cases that have been comprehensively re-investigated by Post Office or as part of Second Sight's general work."

2.

4 Your assertion that "no fault with the system has been identified in any of the now 119 cases" incorrectly limits the meaning of the word "system" to the software. This contradicts your own definition of Horizon.³ And as the Minister said in the Statement, "what it has found to be lacking in Horizon is not the software, but the support and other issues around the software".

5 Other issues identified by Second Sight in their interim report included "the Post Office audit and investigations methods [which] have had a profound impact on the SPMRs involved in almost all of the cases we have examined",⁴ and the availability to, and awareness amongst, SPMRs of the contract of over 100 pages.⁵

6 You agreed that the Mediation Scheme was to be available to all SPMRs whose cases had been identified by Second Sight as giving rise to concern. Specifically you agreed that it would be available to SPMRs, such as my own constituent, Jo Hamilton, who had pleaded guilty to criminal charges. You knew that I – amongst many other MPs – would not otherwise have agreed to it.

7 You agreed, as you said in your letter of 28th November 2014, that you would fund the engagement of "professional advisers to support them in all relevant stages of the process".

8 The outcome we envisaged was that Second Sight would carry out detailed inquiries into each individual case. We expected that there might be some cases where it would seem clear to all that a subpostmaster was trying it on, and that the result should be that Second Sight would recommend to the Working Group that that case should not go into the mediation scheme. The Working Group, not Second Sight, would make the final decision, but such cases of exclusion from mediation would be the exception.

9 It was the Post Office who had chosen Second Sight to be the forensic accountants to give independent advice to you and to Members of Parliament about these issues. As you know, I had some trouble persuading my colleagues in the House of Commons that a firm of accountants selected and paid for by the Post Office could be genuinely independent. But to the great credit of Second Sight, they have been – a point recognised by the Minister in the Statement of July 2013 when she said, "the continuing involvement of Second Sight, which is independent of the process, is crucial as part of that working group".

³ 'I can advise that the name 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' - Second Sight Interim report section 1.6, POL's Information Manager's definition

⁴ Second Sight's Interim Report, paragraph 1.7

⁵ Second Sight's Interim Report, paragraph 7.7

3.

Operation of the Working Group

10 The minutes of the Working Group of 30th January 2014 show that, "it was agreed by the Working Group that it was not the role of the Working Group to offer an opinion on the merits of a particular case." Where a particular case is nonetheless discussed at the Working Group, the Sub Postmaster is not represented by the professional adviser funded by the Post Office.

11 It appears – although I have not been present at a meeting of the Working Group - that the process is that the Post Office may take anything up to six months to conduct its own investigations into a given case and that Second Sight may then take two or three months to investigate and produce their report. In many cases (including that of my constituent Jo Hamilton) the Post Office states that a case cannot move from investigation to mediation until the release of the next Second Sight Report. I gather this may take as long as next April to appear.

12 This drawn out process creates obvious difficulties for those who, for example, are having their house repossessed. It is possible that the delay caused by this process will cause the Statute of Limitations to be a bar to some SPMs suing the Post Office.

Conclusions

13 Despite the fact that Second Sight had identified the issues of investigations and contracts as giving rise to concern (see paragraph 5 above), which meant that MPs were led to believe that they were to be included in the scope of the Mediation Scheme designed to address all areas of concern, the Post Office response of 22 September 2014 stated, among other things, that contracts and Post Office investigations were outside Second Sight's remit.

14 Despite your agreement that the Mediation Scheme was to be available to all SPMRs whose cases had been identified by Second Sight as giving rise to concern (see paragraph 6 above), in recent months the Post Office has been objecting to around 90% of cases going forward to mediation. This is contrary to the envisaged process whereby exclusion from mediation would be the exception (see paragraph 8 above), as well as being contrary to the entire purpose of the Mediation Scheme.

15 Despite your agreement to fund the engagement of professional advisers to support SPMRs "in all relevant stages of the process" (see paragraph 7), the Post Office is attempting, in the absence of representation by those professional advisers of the SPMR under consideration, to have 90% of cases excluded from mediation.

4.

16 Despite your agreement that those who had pleaded guilty would be able to take advantage of the Mediation Scheme (see paragraph 6 above), the Post Office has objected to cases going to mediation on the ground that the SPMR had pleaded guilty.

17 You put forward these arguments in secret, and when MPs asked you in July how the mediation was going, you pleaded, in the interests of "the integrity of the Mediation Scheme", confidentiality. So, for example, despite your knowing that I and other MPs had agreed to the Mediation Scheme only on the basis that it would be available to those who had pleaded guilty (see paragraph 6 above), you did not tell me, nor so far as I am aware any other MP, that the Post Office was arguing that a plea of guilty should debar the SPMR from mediation.

18 Clearly the Post Office is aware of the Limitation Act point set out in paragraph 13 above – it has enough lawyers. The Post Office could allay any suspicion that this was a factor in the way that it has been behaving by agreeing that Post Office Ltd will not take any time barred limitation point in resisting legal claims arising out of the introduction of Horizon and its support arrangements. Will you agree to this? And will you agree not to destroy any data relevant to these cases?

19 Will you agree to MPs meeting Second Sight to discuss our concerns and to hear their take on the matter?

20 I shall not be standing at the next General Election. It is clear that this will not have been resolved by then, and so the group of MPs who met you have agreed that Kevan Jones MP should take over my role in the group of MPs. This has been accepted without demur by the almost 150 other MPs who have constituents in this plight. In any event I could not continue negotiating with you because I have lost faith in the Post Office Board's commitment to a fair resolution of this issue. I shall be pursuing the need for justice for Sub Postmasters in other ways.

21 In view of your agreement that I may release your letter to the media I shall do so, along with this reply.

Yours ever

James Arbuthnot

cc

Mr Speaker
Alan Bates
Adrian Bailey MP, Chair, BIS Select Committee
Alice Perkins, Chairman, Post Office Ltd
Russell Brown MP, Chairman of All Party Post Office Group
Sir Anthony Hooper
Jo Swinson MP
All MPs who have expressed a concern
Second Sight