

Message

From: Ben Foat [GRO]
on behalf of Ben Foat [GRO]
Sent: 20/02/2020 17:15:29
To: Nick Read [GRO]
CC: Avene Regan [GRO]; Diane Blanchard [GRO]
Subject: FW: GLO - Previous Investigations - Legally Privileged and Highly Confidential - Do Not Forward
Attachments: 151009 Mediation Scheme Timeline - Confidential Subject to Legal Privilege CLEAN.docx

Both

In preparation for our call tomorrow, I thought it might be helpful to recirculate a note I pulled together about the historical management of GLO. I asked for the team to try to ascertain any further information over night but the summary below is hopefully a helpful starter.

Kind regards
 Ben



Ben Foat
 Group General Counsel
 Ground Floor
 20 Finsbury Street
 LONDON
 EC2Y 9AQ

Mobile: [GRO]

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From: Ben Foat
Sent: 24 January 2020 08:22
To: Tim Parker [GRO]
Cc: Nick Read [GRO]; Avene Regan [GRO]; Diane Blanchard [GRO]
Subject: GLO - Previous Investigations - Legally Privileged and Highly Confidential - Do Not Forward

Dear Tim,

As requested:

- please find attached the please find attached a chronology of events, meetings, reports etc from October 2008 until the Letter of Claim was received in August 2016. Ticks indicate where I have the supporting documentation referred to within the table. All supporting documentations (where it is held) is stored on the Legal Drive.
- Below is a summary of the previous milestones / investigations leading up to proceedings being instituted.

Summary of Previous Investigations into the Issues Raised by the Claimants and Others

1. The dispute between Post Office and a number of mainly former postmasters has been ongoing for a number of years, with allegations were first made about the reliability of the Horizon computer system in 2009. What follows is a

summary analysis of the criticisms directed at Post Office, by those who have been involved or followed this dispute, prior to the GLO. A summary of the case involving suicide, which was the focus of an article in Independent on 20 December 2019, is also provided.

2. Post office has either established or been party to three material 'investigations':
 - a. The Complaint Review Mediation Scheme which, broadly speaking, ran from August 2013 – February 2016 and attracted significant political and media attention including:
 - i. Westminster Hall Debate: Post Office Mediation Scheme - 17/12/2014
 - ii. Business, Innovation and Skills Committee Select Committee: The Post Office Mediation Scheme and Horizon IT System - 03/02/2015
 - iii. House of Commons Debate: Post Office Horizon System - 29/06/2015
 - iv. BBC Panorama Programme: Trouble at the Post Office - 17/08/2015
 - b. The Chairman's review into the adequacy of the Scheme and the investigations performed, which ran from September 2015 – June 2016
 - c. The Group Litigation Order, which formalised in April 2016 and settled on 10 December 2019

The Complaint Review & Mediation Scheme

3. Post Office was approached in 2012 by a small number of largely former postmasters and a group of MPs (led by **James Arbuthnot**) concerning allegations which included claims that faults in the Horizon computer system had caused branch losses.
4. In response, Post Office appointed independent forensic accountants **Second Sight** to perform a 'top down' examination of Horizon and in the Autumn of 2013 it established the '**Complaint Review and Mediation scheme**
5. The Scheme was established to consider complaints about Horizon and associated issues and to determine if there were, as initially alleged, faults with the computer system that caused cash to go missing from a small number of Post Office branches - not wider matters about the Post Office's business model, including contracts and its approach to prosecutions. It was set up in consultation with **MPs**, the **Justice for Subpostmasters Alliance** (JFSA) and Second Sight and overseen by a working group, chaired by a former Court of Appeal Judge, **Sir Anthony Hooper**. Mediations were overseen by the Centre of Effective Dispute Resolution (**CEDR**).
6. As the Scheme progressed, the level of criticism directed at Post Office intensified. This was because it became clear to campaigners that the Scheme was not set up to, nor was it able to undo criminal convictions or pay significant amounts in compensation without reference to underlying facts.

James Arbuthnot

7. Then MP, now Lord Arbuthnot has been the most determined champion of those who believe a number of postmasters have wrongly been held responsible and, in some cases, unfairly prosecuted for losses incurred in their branches. He was a pivotal figure during the Scheme and has made clear his intention to continue to play a central part in it from his new position in the House of Lords.
8. As a prominent MP, he called a **Westminster Hall Debate** on 17 December 2014, precipitated a short, stand-alone, inquiry by **the BIS Select Committee** on 3 February 2015, and raised the issue at Prime Ministers' Questions; the cover of Parliamentary Privilege allowing him free-reign to make damaging claims about the Post Office. We are also aware that he, together with a Labour colleague, went to see the Criminal Cases Review Commission (CCRC) in December 2014 to lobby them to investigate the Post Office. His complaints have been wide ranging with assertions including that:

- a. Post Office has spent £ millions covering up miscarriages of justice.
- b. Post Office unfairly narrowed the scope of the Scheme to exclude, for instance, issues relating to the 'fairness' of the postmaster contract or prosecutions practice.
- c. Post Office fails properly to investigate the cause of losses in branch and leaves postmasters with 'no option' but to commit the criminal offence of false accounting.
- d. Post Office has withheld documentation from Second Sight, misrepresented their findings and 'gagged' them.
- e. Post Office has adopted an overly legalistic approach to these issues, senior executives have broken their word, frustrated the process and should resign.

Second Sight

9. At various times during the process, Post Office raised concerns with Second Sight regarding slow delivery, quality/rigour of output, and their repeated commentary on matters outside of the scope of their terms of engagement, the Scheme and their expertise as a firm of forensic accountants. Nonetheless, it is the case that up until the current litigation Second Sight had had the greatest and most in-depth exposure to the issues than anyone outside of the Post Office.
10. Although Second Sight made some key criticisms of Post Office, both in its reports and when commenting publicly. These included assertions that:
 - a. Post Office suffers from "*institutional blindness*" and has failed "*to investigate properly and in detail cases where IT problems occurred*".
 - b. Post office had adopted an overly legalistic approach and obstructed their investigations in a number of areas, withholding documentation - allegedly breaking a commitment to provide whatever information they felt they needed, including privileged material.
 - c. Post Office fails to properly investigate the cause of losses in branch and leaves postmasters with 'no option' but to commit the criminal offence of false accounting.
 - d. Their findings were misrepresented at Parliamentary debates and Post Office had 'gagged' them.
 - e. Post Office unfairly narrowed the scope of their investigations to exclude, for instance, issues relating to the 'fairness' of the SPMR contract and prosecutions practice. Their reports still however included the following statements:
 - i. "*The contract between Post Office and its Subpostmasters lies at the heart of many of the issues that Subpostmasters wish to resolve by way of mediation*".
 - ii. "*The contract allocates several financial and other risks to Subpostmasters who may not have understood or appreciated those risks ...*"
11. A further allegation made by Second Sight was that:
 - Post Office operated one or more "suspense accounts" in which it held unattributed surpluses including those generated from branch accounts;
 - After a period of 3 years, such unattributed surpluses were credited to Post Office's profits; and
 - Post Office therefore stood to benefit and/or did benefit from apparent shortfalls wrongly attributed to the Claimants, which did not represent real losses to Post Office (and were actually taken to POL's suspense accounts).
12. Suspense accounts are accounting tools for temporarily holding differences in payments moving between Post Office and its clients, where the client and Post Office's view of what is payable or receivable differ. Differences are investigated but in some cases neither Post Office, the client, nor the branch are able to determine the identity of the customer who performed the transaction in question or the specifics of the transaction. For example, Post office may not be able to determine the details of the bank account to be credited. In such situations, and following enquiries with branches, unresolved differences are moved to Post office Suspense Accounts. Such discrepancies are held in its suspense accounts to give time for customers and clients to put forward more information to explain what has

happened. If no new information is provided, then after 3 years values held in suspense are released to Post Office's P&L.

13. Second Sight requested details of the credits released from Post Office's suspense accounts to profit for the period 2008 to 2013. As there is a 3 year retention period – no amounts at that time had been released for the years 12/13 and 13/14. The total gross credits released from suspense to profit from 2007/8 onwards was as follows:

Years released to profit	Value
2010/11	£612,000
2011/12	£207,000
2012/13	£234,000
2013/14	£104,000
2014/15 (YTD at the point provided)	£8,000

14. These released amounts should be considered within the overall context of Post Office performing around 2.5 billion transactions per annum, with a combined value in the order of £60bn. The amount of unresolved credits that end up in Post Office's P&L is therefore less than 0.001% of all transactions (by value) undertaken by branches.
15. The Second Sight report cites "unreconciled" balances for the 2014 financial year of c£96 million in respect of Bank of Ireland ATMs and c£66 million in respect of Santander. Second Sight misunderstood the information provided by Post Office. The balances of £96m and £66m were taken from routine trading balances yet to be settled with other organisations at a particular month end. In other words, they represented amounts due to other parties, not amounts that are unreconciled and which may be due to postmasters.

Sir Anthony Hooper

16. Sir Anthony Hooper (SAH), a former Court of Appeal Judge was appointed as the Independent Chair of the Working Group, which oversaw the Scheme. Although he did not necessarily agree with Post Office's view that some specific cases in the Scheme were not suitable for mediation, we are not aware of SAH levelling any criticisms, certainly public criticisms, at Post Office processes, the training and support it offers to Postmasters or the contract in place between Post office and postmasters.
17. The only public criticism that SAH did make, and which was directed at all parties involved in the Scheme was in respect of the length of time it took for cases to progress through the Scheme. This was included in a letter to Jo Swinson MP, the then Parliamentary Under-Secretary (Department for BIS) (Employment Relations, Consumer and Postal Affairs), ahead of the 2014 Westminster Hall Debate. In this letter SAH wrote:

"The progress of cases at every stage of the Scheme has taken longer than the Working Group would have wanted. This includes the submission of case questionnaires by the applicants (or their advisors), Post Office's investigations, Second Sight's reviews and applicant responses to Second Sight draft case reviews ...".

Westminster Hall Debate: Post Office Mediation Scheme - 17/12/2014

A number of statements, allegations and questions of a more general nature were also raised in the debate including:

- i. The Scheme's scope and Post Office's approach to it. The Scheme was described as a "sham" and Post Office was accused of bad faith and of undermining its own Scheme.
- ii. That Post Office's approach to the Working Group, and to the mediations itself, was secretive in nature and that Post Office was seeking to undermine the Scheme it created.
- iii. Post Office was using the Scheme and the Working Group to exclude some 90% of cases from mediation.
- iv. The accusation that Post Office was seeking to exclude all cases involving criminal convictions.
- v. That postmasters' accounts can be amended remotely, in Horizon, without their or their staff's knowledge.
- vi. that the training, help and support provided to postmasters was inadequate.

BIS Select Committee: The Post Office Mediation Scheme and Horizon IT System - 03/02/2015 & BBC Panorama Programme: Trouble at the Post Office - 17/08/2015

18. Similar Complaints and assertions have been made at subsequent parliamentary debates and, notably on a BBC Panorama broadcast 2015, during which it was alleged by contributors such as Ian Henderson of Second Sight and Richard Roll (a former Fujitsu employee), both of whom are witnesses at the Horizon Issues Trial, that
- a. There may have been miscarriages of justice as Post Office abuses its power as prosecutor and brings charges of theft against postmasters as a ruse to secure guilty pleas for false accounting.
 - b. Account discrepancies could be caused by faults in the Horizon system.
 - c. Post Office and or Fujitsu have the ability to access branch accounts remotely, without the Postmaster's knowledge or approval.
 - d. Post Office is a 'bullying organisation' and that it has put pressure on defendants to plead guilty to criminal offences.
 - e. There are deficiencies in the support available to postmasters enabling them to investigate the cause of errors at the time of the error occurring.
 - f. The terms of the Postmaster contract are unfair. On Panorama Ian Henderson stated that it *"needs a fundamental overhaul to reflect far better an appropriate relationship. It strikes us that it is written very much in words reflecting a master/servant relationship that perhaps was appropriate 70 years ago but should not be part of a modern contract"*.

House of Commons Debate: Post Office Horizon System - 29/06/2015

19. Subsequent to a debate in the House of Commons in on 29 June 2015, Paula Vennells was invited by the then Minister of State (Department for BEIS) Baroness Neville Rolfe to attend a meeting with MPs to discuss the concerns that had been expressed by MPs such as Andrew Bridgen and Kevan Jones. These included that:
- a. Post Office failed to demonstrate any appetite to deal with issues arising from the Horizon system in a fair and transparent way.
 - b. Criminal charges had been pressed against postmasters unjustly when the fault lay with Post Office.
 - c. Post Office had excluded from the scope of Second Sight's work the Postmaster contract and the apparent absence or the ignorance on the part of the sub-postmaster of the contract they were under.
 - d. That the audits were not fit for purpose and postmasters accounts could be altered remotely.
 - e. Post Office has abused its privileged position and sought to cover up its failings by way of a wholly non-transparent approach to the mediation process.
 - f. The cases with the biggest claims had been excluded from mediation.

The Chairman's Review

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20. Subsequent to a meeting between MPs and Post Office, which was requested by BNR on the back of the Panorama programme and HoC Debate, BNR wrote to the Chairman, Tim Parker, asking that *"on assuming your role as Chair, you give this matter your earliest attention and, if you determine that any further action is necessary, will take steps to ensure that happens"*.
21. Aided by Jonathan Swift QC and Christopher Knight, both of 11 Kings Bench Walk Chambers, the Chairman agreed :
- "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", focusing on:*

- a. Criminal prosecutions
- b. The Horizon system (the software)
- c. The support provided to Sub-postmasters through training and helplines; and
- d. The investigations in circumstances of specific cases where a complaint had been raised

Having been given unrestricted access to documentation and personnel, the principal findings as at March 2016, before the Review came to a premature end in June 2016, owing to the litigation having commenced, were that:

- a. Criminal prosecutions were a matter for the Court of Appeal or CCRC, though Post Office had adopted a proper approach to disclosure, such that it satisfies its duty of disclosure as prosecutor, and was co-operating fully with the CCRC.
- b. No evidence had emerged to suggest a technical fault in Horizon resulted in a postmaster wrongly being held responsible for a loss.
- c. In terms of the allegation that that 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 and a lack of available training records made it difficult to determine the merits of these complaints, with the review concluding that these issues had been addressed as comprehensively as is reasonably possible by both Post Office and Second Sight through their investigations as part of the Scheme.
- d. The investigations were detailed and thorough and left no more than very limited gaps which might now reasonably be filled by further work.

22. Though the review effectively ended upon receipt of the letter of claim, further work was taken forward as part of the litigation.

I have asked the team to work through any minutes or previous board resolutions to ascertain any further management decisions during this time.

We have a central repository of documents so if you require any specific document then please do let me know and I can arrange for it to be provided to you.

Happy to discuss any of the above.

Kind regards
Ben



Ben Foat
Group General Counsel
Ground Floor
20 Finsbury Street
LONDON
EC2Y 9AQ

Mobile : **GRO**