

STRICTLY CONFIDENTIAL
SUBJECT TO LEGAL PRIVILEGE

BRIEFING NOTE ON THE CURRENT STATUS OF THE CLAIMS INVOLVING
HORIZON

Purpose

The purpose of this briefing note is to provide a summary of the issues which have arisen in connection with former subpostmasters challenging the Horizon system in advance of the meeting scheduled with Mr James Arbuthnot MP.

Executive Summary

Post Office Ltd continues to receive a number of challenges to the integrity of the Horizon system, both formal and informal. In broad terms, the central allegations are that (a) the Horizon system contains an inherent defect resulting in branch transactions being misstated and losses which are not the result of genuine accounting errors and (b) the associated processes are not sufficiently robust to enable subpostmasters to reconcile errors.

There are no reported cases where Horizon has found to be defective.

Post Office Ltd has to date received formal notification of five separate claims from former subpostmasters. Each alleges that their contracts were wrongfully terminated by Post Office Ltd because the losses upon which Post Office Ltd relied as the basis for termination were not genuine accounting errors. Post Office Ltd considers those claims to be entirely without merit.

Post Office Ltd remains fully confident that the Horizon system and its associated processes are both accurate and reliable. The system has been rigorously tested using independently assured processes and has been found to be robust. The Horizon system has been in successful operation for in excess of 10 years across the Post Office® network and during that time in excess of 20,000 subpostmasters have used it to successfully perform millions of financial reconciliations.

The National Federation of Subpostmasters, which represents the views and interests of subpostmasters across the country, has also gone on record on a number of occasions to express its full confidence in the accuracy and robustness of the Horizon system.

Information regarding James Arbuthnot MP's involvement with Post Office Ltd and, in particular, his interest in the Horizon system is set out in the Appendix to this note.

Background

Horizon is the electronic point of sale system used in branch for the purpose of capturing customer transactions and the transmission of transactional data to central systems, including utility payment, external banking and Post Office® finance systems. Horizon has been in use for in excess of 10 years across the Post Office® network

(approximately 11,000 branches) and is used on a daily basis to successfully perform millions of financial reconciliations without issue.

Subpostmasters and other agents are provided with an appropriate level of training in the use of Horizon and its associated processes, typically including classroom training and further time on site under the close supervision and guidance of a Post Office® manager. Subpostmasters and agents are also provided with access to a dedicated helpline to deal with queries.

In the small percentage of cases where the cash in branch and the value of transactions inputted through Horizon cannot be reconciled, Post Office Ltd has in place robust systems to assist in the resolution of discrepancies. These checks and audits resolve virtually all discrepancies satisfactorily.

There will, of course, always be a small number of cases where due to a lack of sufficient competency on the part of the subpostmaster and/or fraud it is necessary for Post Office Ltd to terminate the contract held by the subpostmaster or agent. Post Office® funds are public monies and it is, therefore, vitally important that Post Office Ltd does and is seen to be properly accounting for all funds entrusted to it.

Challenges to the Horizon system

Under the terms of both the Subpostmaster Contract and the Agent (or “Franchise”) Contract, subpostmasters and other agents are responsible for all losses caused through their own negligence, carelessness or error, and also for losses of all kinds caused by their assistants. Any deficiencies due to such losses are required to be made good without delay. There have been a number of instances where subpostmasters have asserted, in response to a request for repayment of losses, that the losses claimed by Post Office Ltd are not genuine losses but are in fact the result of an unspecified error with the Horizon system. To date, there have been no cases where a fault with Horizon has been demonstrated.

These complaints resulted in the formation in 2009 of the Justice For Subpostmasters Alliance (**JFSA**), which was set up to represent the interests of alleged “victims” of the Horizon system. The JFSA’s mission statement is set out at www.jfsa.org.uk. The JFSA is headed by Mr Alan Bates.

The integrity of the Horizon system has also been the subject of considerable media interest over a number of years, including two reports which featured in the BBC’s “Inside Out” programme (aired on 7 and 28 February 2011). Articles criticising the operation of the Horizon system have also appeared in Private Eye and Computer Weekly,

The Horizon system has historically also been the subject of legal challenge. In the case of *Post Office Ltd v. Lee Castleton* [2007] EWHC 5 (QB), Mr Castleton, a former subpostmaster, sought to defend a claim commenced by Post Office Ltd for the recovery of financial losses under the terms of the Subpostmaster Contract on the basis that the alleged shortfalls were illusory and were entirely the result of errors arising from the operation of the Horizon system. This argument was rejected by His Honour Judge Richard Harvey QC, who found that the losses claimed by Post Office

Ltd were real deficiencies and were irrefutable evidence that Mr Castleton had failed to properly manage the branch.

Post Office Ltd has also successfully secured a number of criminal convictions for false accounting and/or theft. This has necessitated that Post Office Ltd place robust evidence before the Court to prove the resilience of the Horizon system in order to discharge the burden of proof (i.e. beyond all reasonable doubt) required in order to secure a criminal conviction.

The Horizon system has also been the subject of a number of requests for information under the Freedom of Information Act.

External media responses on Horizon

Post Office Ltd has responded to queries from the media with clear messaging. The following response was given to the BBC by Post Office Ltd in connection with the "Inside Out" programme aired in February 2011 (see above):-

"The Post Office is fully confident that the Horizon computer system in its branches, and all the accounting processes around it, enable subpostmasters to account accurately for the transactions and balances they record.

The system has been operating for over ten years. In that time thousands of subpostmasters will have used it in performing many millions of successful weekly and monthly financial reconciliations between the cash they have in the office and the transactions they have handled. The Horizon system has been rigorously tested and the National Federation of Subpostmasters, which represents subpostmasters throughout the country, has expressed its full confidence in the accuracy and robustness of the system.

All three cases that Inside Out has raised have all had their contracts terminated following the most thorough investigations by the Post Office (in two cases this was three years ago, in the other 18 months ago) and they include a case where there was subsequently a guilty plea in Court to a charge of theft and three cases of false accounting. The Post Office has a duty to the tax payer to ensure that individual branches properly and fully account for the Post Office funds in their possession."

Current (potential and live) litigation involving Horizon

Post Office Ltd has to date received formal notification of five (5) separate claims by former subpostmasters relating to alleged defects in the Horizon system. All five subpostmasters are represented by Access Legal, which is part of Shoosmiths LLP (a law firm based in Basingstoke) (**Shoosmiths**). These claims have all been pursued individually, rather than as part of a class action.

Post Office Ltd has instructed Bond Pearce LLP in connection with these claims. Bond Pearce was also instructed in connection with the Lee Castleton proceedings referenced above. Richard Morgan QC has also been instructed to provide ad hoc advice. Mr Morgan also acted as Counsel in the Lee Castleton proceedings.

Letters before action were received from Shoosmiths in respect of four of the five

claims in August and September 2011. Despite this, Shoosmiths have not taken any substantive steps to progress these four claims. In respect of the fifth claim, court proceedings were commenced in June 2011, albeit that Post Office Ltd was not made aware of the claim until October 2011. This claim is dealt with further below.

The number of potential cases remains unclear. However, the article which appeared in Private Eye suggested that Shoosmiths had consulted on 55 cases, with a further 150 cases pending.

Issues raised by the claimants

All five claims made to date arise out of the termination by Post Office Ltd of the subpostmasters' contracts following the identification at audit of discrepancies between the branch accounts and the actual cash position in branch.

Each of the subpostmasters has made a claim for wrongful termination of contract based on (a) alleged failings in Post Office Ltd's internal processes (both in terms of the mechanisms in place which enable subpostmasters to check discrepancies which may have arisen and a lack of adequate training and support to effectively operate the branches) and (b) inherent defects in the Horizon system. These allegations are also used to support claims for negligence, breach of duty and misfeasance in public office.

Each claims damages in the sum of circa £150,000. Damages are claimed for (a) loss of income arising from the alleged wrongful termination, (b) loss of capital investment, (c) repayment of losses charged to the subpostmaster, (d) legal costs incurred and (e) damage to reputation.

Status of the claims

Four of the five current claims remain at the pre-action stage (i.e. there are currently no live court proceedings). Post Office Ltd has responded robustly to the initial allegations made in each of those cases and liability has been strongly denied.

The approach to date has been to deny liability at a 'high level' rather than seek to respond to the claims on a point-by-point basis. This approach has been adopted for the following reasons. Two of the subpostmasters have already admitted to and been convicted of false accounting and, therefore, can have no claim for wrongful termination of contract in those circumstances. A third has admitted to false accounting (but was not convicted) and liability has been denied on the same basis. The fourth claim has been denied on the basis that it has been made out-of-time and, therefore, the subpostmaster is prevented under the Limitation Act from progressing the claim further. It may be that if one or more of the subpostmasters decides to continue to pursue their claim(s) it will be necessary for Post Office Ltd to respond on a substantive basis.

Shoosmiths have also made substantial requests for pre-action disclosure of documentation and data held by both Post Office Ltd and Fujitsu (who provide the Horizon system). To date, Post Office Ltd has refused to provide disclosure in the absence of Shoosmiths having explained why the documentation and data is required. Shoosmiths have also been requested to provide Post Office Ltd with undertakings as

to costs in order to cover Fujitsu's charges in retrieving the data requested, Shoosmiths are yet to take any further action on this point.

The last correspondence with Shoosmiths regarding these four claims was in December 2011. Since that date, Legal Services are not aware of any further steps having been taken in order to progress the claims.

In relation to the fifth claim, court proceedings were commenced by Shoosmiths in June 2011. Post Office Ltd was only notified of the existence of the claim in October 2011. Post Office Ltd successfully applied in January 2012 to have the claim struck out on the basis of procedural error. The subpostmaster subsequently applied for permission to appeal that decision, which was refused by the Appeal Court on 22 February 2012. Thereafter the subpostmaster had a period of 7 days to request that the Appeal Court's decision be reconsidered at an oral hearing. Post Office Ltd is not aware of any such request having been made and the 7 day period has now expired. If no request has been made or permission to appeal is again refused, that will be the end of the matter and the subpostmaster will not be able to progress the claim further. If a request has been made in time and permission is granted, the matter will go to a full appeal hearing. If that appeal were to be successful, Post Office Ltd would then need to consider whether or not to appeal itself.

Recommended strategy for the meeting (to be discussed in the pre-meeting)

Our thoughts as regards overall strategy are as follows:-

- Comments on Post Office Ltd's view on individual cases should be avoided. If pressed to comment, a fair response would be to say that it would be inappropriate for Post Office Ltd to comment on individuals cases which are currently the subject of legal dispute, but Post Office Ltd does not believe that the claims notified to it have any merit and that both Post Office Ltd and the Federation of Subpostmasters believe the Horizon system to be robust.
- We do not consider there to be any risk in confirming the current status of the claims in general terms (i.e. Shoosmiths have to date taken no substantive action to progress the claims notified to Post Office Ltd), but our recommendation would be not to discuss Post Office Ltd's strategy.

**Prepared by Legal Services
9 March 2012**

APPENDIX ONE

Involvement of James Arbuthnot MP – Conservative MP for North East Hampshire

The logo consists of the letters 'GRO' in a bold, black, sans-serif font, centered within a square frame defined by a dashed border.

James Arbuthnot was Opposition Chief Whip throughout the 1997 Parliament, who made a comeback as a Shadow Minister for two years, and finally opted for the more rarefied life of the committee corridor in 2005.

In June 2011, he became the first member of the current Parliament to announce that he would stand down at the next election.

Post Office related information

His constituency contains 19 Post Offices® including 1 Post Office Local – Bramley.

October 2007 – campaigned against Post Office® closures in Hampshire. There were 2 Post Office® closures in 2008 under the Network Change programme. There were also 2 Post Office® closures in 2005 under Urban Reinvention.

April 2009 - backed a report by the National Federation of Sub Postmasters (**NSFP**) calling for "*bold and decisive*" action to reverse the continued decline of the UK's post office network.

December 2009 – attended a meeting with senior Post Office Ltd officials to discuss the Horizon system following claims by subpostmasters in his constituency that losses were due to the system (Odiham and South Wamborough Post Office® branches). The functionality of the system was explained at a high level and Post Office Ltd was robust in its position on the integrity of the system.

A representative from the NFSP also attended and was also very supportive in terms of the integrity and robustness of Horizon.

Although the Post Office Ltd and the NFSP representatives were quite clear in terms of the system and processes, the general sense was that Mr Arbuthnot remained sceptical on this issue.

October 2011 - From James Arbuthnot's website;-

"James fights for local postmistress

James has been involved in a long-running campaign for fair treatment of Post Office staff following allegations of fraud. Private Eye No. 1298 reports the case of Jo Hamilton from South Wamborough, whose conviction for false accounting James continues to oppose.

The magazine reports, 'James Arbuthnot, expresses a widely-held view when he says: "I find it very difficult to believe that all these sub-postmasters and sub-postmistresses are suddenly found to be dishonest, if the alternative is that it may be a public sector computer system which has gone wrong. We've heard of that before."

January 2012 – wrote to the Minister and Moya Greene on concerns over the closure of Odiham Post Office due to ‘irregularities’ and questioned the Horizon system.

The response (from Paula Vennells) explained that a temporary subpostmaster had been put in place at Odiham and that the branch had only been closed for a few days. She apologised for the inconvenience. She explained that Post Office Ltd could not go into the specifics of individual contractual cases and highlighted the huge volumes of transactions managed by the Horizon system and that Post Office Ltd had no reason to doubt the integrity of the system. This correspondence is included at the end of this brief.

27 February 2012 - we understand that Mr Arbuthnot chaired a meeting at Portcullis House to discuss the Horizon system, and presumably wider JFSA claims. Norman Lamb was invited, but BIS declined the invitation.

Post Office Ltd has not had any feedback from this meeting.

Historically, Post Office Ltd is aware of two cases in Mr Arbuthnot's constituency where there has been an allegation against the Horizon system – outlined below;

- South Warnborough. Josephine Hamilton's contract as a subpostmistress with the Post Office was terminated in 2006 after a loss of £36,644.89 was discovered during an audit at her branch in South Warnborough. She agreed to repay the money. She pleaded guilty to 14 charges of false accounting at her trial at Winchester Crown Court in February 2008. She was sentenced to 12 months community service and received a supervision order
- Odiham – Raised the case of Mr David Bristow, Subpostmaster at Odiham, who was claiming that the Horizon system was responsible for losses at the branch. The case of Odiham involved significant losses (£42K). Errors at the branch were fully investigated and there was nothing to indicate system problems. The termination of the Subpostmasters contract was progressed in January 2009 at which point he tendered his resignation and a temporary agent was put in place (Note: The most recent correspondence on Odiham – Jan 2012 – included at the appendix deals with a separate recent case against the temporary subpostmaster at Odiham Mr Paul Kemp.)

The most recent general development of which Post Office Ltd is aware is that JFSA has asked for a meeting with Norman Lamb – as the new Minister – to express their concerns