

In Strictest Confidence

JFSA response issues – paper for BIS

Issues covered in this note;

1. **Suspension and contract termination numbers**
2. **Update on cases referred by BIS**
3. **Follow up items from 4 November meeting between BIS and POL**
4. **JFSA submission to Postal Services Bill Committee and prospective POL response**
5. **Next Steps within POL**

1. Suspension and Contract Termination Numbers

Jesse Norman MP (Hereford and South Herefordshire) (Con): *Is my hon. Friend as concerned as I am about the back-door closure of post offices, which I raised in a debate last week? I am enormously grateful to the Minister for recognising the problem. He may be interested to know that, of the 2,406 audits that were done in 2009, 265 suspensions were held, and there were only two reinstatements after appeal. That very much reinforces the picture that suspensions are being used as a means of closing post offices, which I am sure is something that we would all deprecate.*

It is worthwhile seeing some more background to these figures – which related to the period 1 January to 31 October 2009.

In that period there were 2406 audits and there were 265 suspensions as identified in the Parliamentary quote.

Of those 265 suspensions, 64 were subsequently reinstated following the initial investigations. A further 67 resigned to avoid termination. There were subsequently 131 summary terminations, 1 termination at 3 months notice and 2 reinstated following appeal.

Therefore of the suspensions in the Jan-Oct 2009 period, 25% were reinstated, 25% resigned themselves and 50% had their contracts terminated by POL.

If we consider more up to date figures for January to September 2010, we see 166 suspensions. Of these 29 have been reinstated, 37 have resigned to avoid termination, 30 cases still being considered. There have been 62 terminations of contract, 1 reinstatement following appeal and 7 cases currently at the appeal stage.

Therefore of the suspensions in the Jan-Sept 2010 period, 22% cases are still in progress, 18% have been reinstated, 22% have resigned to avoid termination and 37% have had contracts terminated.

In Strictest Confidence

A final point with respect to Jesse Norman's comments – where there is a termination, it does not necessarily mean that the Post Office will close. Typically we will be seeking to appoint a new subpostmaster to take over the Business – either at that location or very nearby. Termination of contract refers to the subpostmasters individual contract; it does not mean that we are seeking to close the Post Office facilities in that location. Another subpostmaster will be typically sought and be appointed to run services at the location concerned.

2. Update on correspondence referred from BIS

Jonathan Djanogly MP (letter to Ed Davey 22 October 2010)

on behalf of Mrs Jenny O'Dell, ex subpostmaster Great Staughton Post Office

In November 2009 Mrs O'Dell contacted the internal helpline (NBSC) advising that her branch had seen monthly losses of £1000 since May and the figure stood at £7,000. Mrs O'Dell stated that she had carried out checks and had not received any transaction corrections. She believed the Horizon system to be at fault so refused to make good any losses.

Checks undertaken by the contracts team with the Chesterfield accounting team confirmed they were not aware of any issues at the branch; no problems with cheques/cash or ATM and that no losses had been settled centrally. There were no losses within the last three trading periods so this raised the possibility that the cash figure may have been inflated to cover losses.

On 9 December 2009 the contracts team wrote to Mrs O'Dell asked her to supply any evidence to support Horizon was at fault. Mrs O'Dell referred to a shortage of 16 December 2009 of £8,506 and subsequent gains on 17 & 21 December of £5,000 and £7,000 but could not provide any evidence to support Horizon was at fault.

An intervention visit took place on 6 January 2010 to try and ascertain the cause and extent of the losses and whether there was any fault with the system or incorrect accounting. Following an audit Mrs O'Dell was suspended as a number of discrepancies were found. Some examples are; multiple cash declarations added together to hide losses; three cash declarations on the system totalling £21,000 but less than £8,000 actually on hand; no losses in balance over 12 months but one misbalance settled centrally; the branch trading statement of 30 December did not show any Christmas stamps but there were 9,032 on hand. The total shortage at audit was £9,616.66.

In Strictest Confidence

Following her suspension Mrs O'Dell was invited to a meeting on 8 February 2010 to put forward her reasons why her contract should not be terminated. The charge was loss at audit and falsification of accounts. During the interview Mrs O'Dell was accompanied by NFSP representatives. Mrs O'Dell admitted to inflating cash figures in the Post Office accounts. Neither Mrs O'Dell nor the NFSP could provide any evidence to suggest that the losses had been occurring over a period of time.

Mrs O'Dell was advised on 19 February 2010 that her contract was summarily terminated and that she was required to make good the outstanding loss. She took up the right of appeal, which was held on 30 April 2010. Mrs O'Dell was advised in a letter dated 21 May 2010 that the decision to terminate her contract was upheld.

A separate case was also raised by Post Office Security to follow up the audit findings. The registered staff at the branch was Mrs O'Dell and her son Daniel O'Dell. Both were interviewed under caution. Mrs O'Dell admitted to inflating the official cash on hand to cover up shortages in the Post Office account and falsifying branch trading statements. Despite Post Office Ltd being able to prove that more than one cash declaration was being made, Mrs O'Dell maintained the system was at fault. An official caution was administered under Section 1 of the Fraud Act 2006, which Mrs O'Dell refused to accept. The outstanding debt is currently being pursued via our Civil Litigation team.

Neither Mrs O'Dell nor her son provided any evidence of or identified any specific transactions which contributed to the losses. Post Office remains fully satisfied that the Horizon system is robust and fit for purpose.

Jonathan Lord MP – Letter to Edward Davey 25 October re Mrs S Misra – West Byfleet

In the case of Mrs Misra the case has now been before the Courts, and Mrs Misra was found guilty after a full jury trial. She has subsequently been sentenced to 15 months by the Judge taking all due regard to Judicial guidelines.

Background information is provided below

Brief on Mrs Misra is below;

Mrs Misra was the subpostmaster at West Byfleet.

An audit was carried out on 14 January 2008 and Mrs Misra was suspended the same day

Audit was £77,643.87 short, which included a loss settled centrally of £3,034.03

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Audit report: cash & stock left in counter drawers over night which included date stamps and MVL's

Mrs Misra told the audit team that the account would be £50-£60K short and that this had been going on for about a year prior to the audit. She said staff had taken £89k and that she had not informed anyone in the Post Office as she was worried she would lose the branch. She stated she had made good some of the losses and was looking at ways to make the rest good. She admitted she had been adjusting the branch trading to make it balance. There was an amount in the suspense account £27K + £3k; Mrs Misra showed the auditors the grey pouches & rem slips but there was no money in the pouches.

Mrs Misra was charged by Elaine Ridge, contacts manager, on 12 March 2008 of misuse of PO funds & false accounting

Mrs Misra attended interview and more or less repeated the statement she made to the auditors

The decision was taken to terminate her contract for services on 1 April 2008; Mrs Misra sent in her resignation on 7 April

She was interviewed by POID and again admitted the account had been short for a long period and that she had been falsifying her account to cover it up. She blamed it on staff theft.

The case has now been before the Courts, and Mrs Misra was found guilty after a full jury trial. She has subsequently been sentenced to 15 months by the Judge taking all due regard to Judicial guidelines. It is probably inappropriate to comment about the detail of the trial – although it is worth pointing out that the Defence for Mrs Misra did utilise an IT expert with regard comments on the Horizon system and a clear decision was arrived at by the Court.

Jamail Singh, who was the RMG lawyer on the case, explains that the charges were one of theft of £74,000 and five charges of false accounting. There was a 7 day Jury trial at Guildford Crown Court between 11 October and 21 October 2010 where she was found guilty. The sentencing hearing took place at Guildford Crown Court on 11 November 2010.

A hearing is being arranged for a confiscation order to seize Mrs Misra's assets.

Please note that this was a criminal not a civil case. With a criminal case there is higher of proof and beyond reasonable doubt - civil cases are decided on a balance on probabilities. Issy Hogg was her criminal barrister & is closely associated with JFSA. There were also lots of adjournments, whilst Mrs Misra's solicitors kept asking for more & more evidence, which was supplied.

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It is probably inappropriate to comment to the MP about the detail of the trial – although it may be worth pointing out that the Defence for Mrs Misra did utilise an IT expert with regard comments on the Horizon system (the MP's letter suggested that they wished to employ an IT auditor to look at the case but the costs were prohibitive) and a clear decision was arrived at by the Court.

Wendy Buffrey – Up Hatherly

Background to this case as follows;

- Chesterfield noticed a pattern of unusual cash rises on Tues, Weds & Thursdays
- Following an audit of the branch on 11/12/08 an initial shortage of £27,776.63 was identified. £1,500 was later found, reducing the loss to 26,256.63.
- Mrs Buffrey told the lead auditor the main stock would be £20k short
- At her RTU interview on 21/01/09 Mrs Buffrey admitted that she had started to inflate her cash to cover losses from May 2008 but that she had not taken any money for her own use.
- During the period the losses occurred her GRO GRO and GRO had ill health
- Mrs Buffrey raised no issues around her accounting difficulties with either POL or the NFSP
- It appears Mrs Buffrey went to appeal and the decision to terminate her Contract for Services was upheld in March 2009 for falsifying accounts
- Post Office security took forward a prosecution and went to court in April 2010. A trial date was given for September 2010.
- A week before the trial date, we were advised that Mrs Buffrey would be changing her plead to guilty and produced a cheque for £26,256.63 - which was the amount of the outstanding debt.
- On 18 October 2010, Mrs Buffrey admitted to one count of fraud was sentenced to a 12 month community order of 150 hours unpaid work.

Note: Although Mrs Buffrey stated she had not taken any money, she admitted to falsifying accounts. No claims were made to challenge Horizon integrity. However, security advised that Horizon was mentioned prior to her court date but after Mrs Buffrey's forensic accountants had gone through the

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reports her plea was changed to guilty. No evidence has been provided to support that Horizon was at fault.

3. Follow up points from POL meeting with Mike Whitehead on 4 November (subsequent to the JFSA meeting with Edward Davey).

Points discussed at the meeting

- *Whether the contract has changed since 1994 to reflect Horizon* – The Contract has had a series of amendments and associated operational instructions which mean that it remains a proper legal and commercial document with respect to the operation of a Post Office. There has been no legal challenge to the appropriate nature of POL's agency contracts
- *Lack of audit trail for subpostmasters* – subpostmasters can pull off a transaction log every day and declare their cash at the end of the day. The facilities are there for subpostmasters to track their own transactions should they wish
- *POL can access the system remotely and make changes to it* –. The system is based on a user log in, and all actions have to be endorsed by the user. POL cannot remotely control a branches system. Any technical changes by Fujitsu that impact the system have to go through clearance processes which would prevent any amendment to existing data. All system activity, down to the individual key stroke, is also recorded into a separate vaulted transaction file with every record encrypted and written to the log and with each record having a unique incrementing sequence number. This log is retained on a separate server independent of Horizon, is retained for at least seven years, cannot be altered in any way and all access to it is securely controlled. This approach is consistent with that of banking systems.
- *Frequency of software updates* – these are normal operational updates such as those that occur in any system. They do not indicate in any way any faults or unreliability in the system
- *Equipment moved from one branch to another*. If any equipment is moved from one branch to another there is no potential for past transactions in any way to impact the system. Transactions are not held on or tagged to the equipment in the branch – they are recorded

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against the branch code. As previously advised – every transaction undertaken on the system is also recorded and maintained in a separate tamper proof file and retained on a separate server independent of Horizon. There is always therefore the capability to track back transactions related to the branch independent of the equipment on which it was undertaken.

- *No regular audit systems* – our audit systems are based on random choice and on risk factors. Audits from the central team are not needed for the subpostmaster to operate the system or to know where they are with their own account. Subpostmasters can obtain a full transaction log, make daily cash declarations and can regularly balance their account. They have access to phone help and personal visit in any cases of difficulty.
- *Subpostmasters having to agree to a loss or can't open the office the next day* – this is not the case. If there is a discrepancy in an account when it is balanced, the subpostmaster has the option for 'settle centrally.' – this means that they can roll the system over whilst the issue is being looked into. It is a standard process which does not imply acceptance or otherwise of the discrepancy by the subpostmaster. It is a standard part of the process.
- *Processes for suspension and afterwards* – The Post Office processes cover the situation whereby the subpostmaster is made clear of the situation, has the opportunity for interview, can be accompanied at that interview – and there are clear rights of appeal once the decision is made. In cases where the Post Office Investigation Branch is involved, the procedures followed within their investigation and interviews are fully compliant with the relevant UK legislation.

4. JFSA submission to Postal Services Bill Committee

Memorandum submitted by Justice For Subpostmasters Alliance (JFSA) (PS 14)

The submission comprises of:-

o Introduction – who we are and why we came into existence

o Aim – the objectives of the Alliance

o Background Examples – offers a brief insight into subpostmaster problems relating to:-

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o The Subpostmaster Contract

o Audits

o Suspensions

o Recommendations

Introduction

Justice For Subpostmasters Alliance (JFSA) was established during November 2009. It is an entirely voluntary self-help group comprising of mainly ex-subpostmasters, a smaller group of serving subpostmasters and a number of professionals who are able to assist with their expertise. Since the introduction of Post Office Ltd.'s (POL) Horizon system during the late 1990's, many individual subpostmasters in isolation have endeavoured to stand up to POL. Inevitably they have been crushed under the weight of their power and their endless funds underwritten by a Labour Government that allowed them to act with such impunity. This, when combined with the flat refusal to confront POL over the failures of its Horizon system by the so called representative body for subpostmasters, the National Federation of Subpostmasters (NFSP), is the reason why JFSA has been formed. We are still a small group with over a hundred active cases and roughly twice that number of serving subpostmasters who are following our developments. Yet our numbers continue to grow weekly as people discover JFSA and many more subpostmasters fall victim to the vindictive and punitive actions of POL. There is little doubt that when the true extent of the antics of POL are finally exposed the victims will number in the thousands.

Aim

Our aim is to bring to the attention of those in power the abusive and destructive manner in which POL have, and are still treating subpostmasters, and to seek to redress the many injustices that we have been subjected to by POL. We intend to highlight the miscarriages of justice that have been inflicted on subpostmasters by an organization that abuses its licensing power to criminally prosecute without providing evidence in cases of a civil matter.

The systemic faults of POL and its Horizon system are too numerous and too complicated to deal with in this brief submission. Though in order to offer some insight into the points and recommendations that appear at the end of this document, a brief outline of the background to some of these issues has been included.

Background Examples

The Subpostmaster Contract

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The Performance and Innovation Unit report of 2000, "Counter Revolution: Modernising The Post Office Network" identified "The majority of sub-postmasters still work under a contract which can be traced back a hundred years". POL uses this contract, emanating from the Victorian era, to pursue subpostmasters through the courts in order to recover POL's losses from their flawed Horizon system. Even with the introduction of the latest technology POL still rely on clauses such as "a Subpostmaster is responsible for all losses", originating from a contract from a time when the lighting was by oil lamp and the ledger was completed by quill and ink. They use such clauses to extract money from a subpostmaster, either from their salary or through the courts, should their flawed Horizon system decides it is owed. System errors are never considered (POL states it handles 2.4 billion transactions a year and this is without a single error), only the contract is used to recover any shortage. Yet the IT part of that system can be accessed and manipulated over a network without a subpostmasters' knowledge or agreement, but it is only the subpostmaster who is made financially liable.

The few hundred Crown Post Offices left that are directly run by POL, they also use this Horizon system and during the financial year 2007/8 these offices lost £2.2m using this system, and whilst their staff are not treated as guilty until proven innocent, a subpostmaster is.

Audits

POL refers to it as an audit when they descend upon a subpostoffice, but the reality is, it is little more than a stock take. The POL staff that carry out these 'audits' can be anybody though we have yet to find a member of Institute of Internal Auditors or any other professionally recognized body in attendance. What makes them qualified to carry out an 'audit' of a subpostoffice? After all they hold a subpostmasters' future in their hands and the least you should expect is a suitably qualified professional person to be involved, but they are not, and a subpostmaster is not allowed to bring in his own professional auditor to check the findings.

Then there is the matter of POL and their total failure to undertake routine 'audits' of subpostoffices. There are subpostmasters who have never had an 'audit' in eight years and post offices which turn over £5m every year that have never had an 'audit' for over 5 years, and they have to use Horizon, a system they are unable to gain full access to in order to check all the information they have entered into the system. Yet they are being held responsible for the accuracy of everything during this period.

A question often asked is why does POL not 'audit' all subpostoffices on a regular basis? Many people believe that they are well aware of all the faults in Horizon and the more post offices they 'audit' the more these faults will become apparent. After all, from the POL standpoint

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they don't have to undertake 'audits' as they can rely on using the contract to pursue subpostmasters through the courts or deduct money from their wage packets to recover any shortfall due to whatever reason.

Suspension

Should a subpostmaster begin to have problems and then find themselves suspended, they soon discover they have nowhere to turn to for support. Their salary is stopped instantly and they are treated as being guilty from the outset by POL. There is no independent adjudicator you can apply to, POL act as judge, jury and executioner in all matters. The National Federation of Subpostmasters, the so called representative of the subpostmaster have taken the decision that Horizon faults do not exist as POL has decided it has to be that way. When POL requests the subpostmaster to attend an informal interview they are not even permitted to take a solicitor, partner or anyone with them other than a Federation representative who is then not allowed to say anything.

The few examples given above really only scratch the surface of the problems facing subpostmasters trying to offer a service to their community. Through JFSA we will continue to raise these and many other points.

Recommendations

Regardless of the direction which lays ahead for the Post Office, there are, at the very minimum, a number of issues which should be addressed and included in any way forward.

- o A full and complete independent IT audit of POL systems and support should be undertaken with its findings made public.*
- o An external independent adjudicator should be appointed to review cases and issues between POL and subpostmasters. The adjudicator should have the authority to demand documents from both POL and the subpostmaster and should be assisted by a team of skilled technical staff who are able to gain access and check any system or document that they deem necessary.*
- o A new subpostmaster contract should be produced to replace the Victorian template still in use today. Above all, it should reflect the introduction of new technology and address in detail where responsibilities, liabilities and boundaries lay. It should ensure that there is full and easy access to the records of transactions that a subpostmaster is being held liable for during the full term of that liability.*
- o There must be a legal or a contractual requirement for POL to*

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undertake a full audit of all subpostoffices at least annually and by qualified staff.

o The licence to prosecute should be removed as a tool from POL and any prosecutions should be referred to the Crown Prosecution Service.

o Any external access to a subpostmasters Horizon terminals over the network should be accompanied by an automatically generated system log entry recording the details of the event which is then made available to that subpostmaster.

November 2010

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POL Internal Initial Comments on the JFSA Memorandum to the Bill Committee

Post Office Ltd does not accept the unsubstantiated allegations that are being made by JFSA – a small self appointed group which, by its own admission, consists mainly of ex-subpostmasters. The Horizon system has brought major benefits to subpostmasters and customers and carries the full confidence of the NFSP who represent serving subpostmasters that use the system throughout the Business. It should be noted that all subpostmasters are able to obtain their own transaction log from the system and conduct a daily cash declaration – thereby being in a position to fully understand their own accounts within the system. In addition the system also creates a separate independent audit file of every transaction on the system.

The commercial contractual position between subpostmasters and Post Office Ltd is well established and both its content, and the way it is applied, is compliant with, and subject to, all relevant UK legislation. The contract is fully recognised by the National Federation of Subpostmasters (NFSP) and any amendments or changes to the contract will typically be discussed with that representative organisation. Should a situation arise whereby Post Office Ltd seeks to end a subpostmasters contract, processes are in place whereby the subpostmaster involved can put forward their case, can be assisted in doing so by the NFSP or by a friend, and the subpostmaster also has a subsequent right to appeal any decision made to a separate appeals authority within the company which will look at the case afresh. Of course, as independent business people, all subpostmasters also have access to the UK legal system should they believe that Post Office Ltd are acting inappropriately. The results of individual cases that have come before the Courts do not indicate that Post Office Ltd's systems or processes are inappropriate.

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The future development of contracts and associated processes affecting subpostmasters is a matter that would be discussed between Post Office Ltd and the National Federation of Subpostmasters to help ensure that the interests of subpostmasters are represented.

5. Conclusions

The Horizon system and accompanying contractual processes remain fully robust. Their integrity and sound basis have been demonstrated over many years, and they have underpinned the provision of effective and sustainable service to Post Office customers. POL refutes the unsubstantiated allegations made by the JFSA.

POL maintains a legal contractual relationship with subpostmasters which is based on values of trust and mutual respect. In cases where there are reasons why this relationship cannot continue, there are full processes of internal appeals and the parties can have full subsequent recourse to the UK legal system. As a matter of course, and on an ongoing basis, POL works with the National Federation of Subpostmasters (a recognised representative body for subpostmasters) on the development of contractual and associated process matters.

Looking forward, as part of its future strategy consistent with the Policy Statement outlined by Government in November 2010, Post Office Ltd will be seeking to further review its contracts and accompanying processes to meet the changing needs of its customers. This approach will continue to ensure that the contractual basis and associated procedures between Post Office Ltd and individual subpostmasters remains sound, fair, commercial and equitable.

It is this combination of;

- the current robustness and integrity of Horizon,
- clear internal processes with appeal systems with the ultimate backstop of the UK legal system (should cases be referred to it),
- ongoing liaison with the NFSP as the recognised group representing subpostmasters and
- a forward looking approach to the further development of contracts and associated policies in line with developing strategy and Government policy

that provides assurance to BIS that the approach taken by Post Office Ltd continues to be fair and equitable.

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2 December 2010