

IRH RJW JA JW telecon Jan 27 2014

IAN HENDERSON: ... explain a bit of background. All of the people that we were dealing with when this all kicked off almost sort of two years ago, pretty well all of them are no longer at Post Office or are no longer, sort of, involved. Post Office have gradually, sort of, brought in a new senior team, including a possibly temporary head of legal and various other, sort of, senior people that we are being asked to deal with.

The disadvantage of that is none of them know in detail the origins of the work that we are doing and the, you know, rather sort of painful birth that gave rise to Second Sight being appointed and -- and so on.

The reason I'm just mentioning all of that, I think it in part explains why a few weeks ago we were asked to sign a new letter of engagement between Post Office and Second Sight. My reaction to that was it was entirely inappropriate and it -- and it failed to recognise the fact that historically we had 27 cases, with -- sought full review by Second Sight, that derived from Members of Parliament and a slightly smaller number directly from the JFSA.

The current Post Office position is that all of that work that resulted in our interim report last July came to a finish at about that time and that Second Sight's, sort of, sole responsibility now is supporting the mediation scheme, which Post Office believe has taken over completely from that original, sort of, batch of work.

When we raised that as a question, it was a complete surprise to them that we might be, sort

of, taking that -- that point of view.

Unfortunately, one of the consequences of the proposed sort of engagement letter is that Second Sight is only allowed, in effect, to communicate with the working group and has to follow its instructions, and at the moment the proposed engagement letter does not allow us to communicate any information, even on the specific cases, the original 26 cases, as far as MPs are concerned. It's almost as if the MPs' sort of stakeholder sort of angle has been erased from history, which frankly came as a great surprise to us.

I have raised this a number of times with Chris Aujard, who is now the head of legal at Post Office. He was meant to loop back and clarify that point with either Alice or Paula. I spoke to him about an hour ago. He has been unable to do that. So the -- the jury is still out on that point. But that is quite clearly a major sort of obstacle potentially to the scope of our work but most certainly it inhibits our ability to communicate freely and independently with MPs and, of course, your office, James.

JAMES ARBUTHNOT: Yes. Well, that is a -- that is a major issue, which obviously I'll discuss with Paula and Alice tomorrow morning.

IAN HENDERSON: Yes.

JAMES ARBUTHNOT: Any other issues?

IAN HENDERSON: One of the perhaps more positive sort of outcomes from the -- the interim report, and we only found out about this a few weeks ago, is that as a result of our interim report, Post Office -- and I assume it was probably Susan Crichton -- commissioned an external review of POL's litigation cases, and in particular the firm appointed was a firm called Cartwright King, and in particular they were asked to review prosecution. I don't know in detail over what period, but principally from the

point of view of was there adequate disclosure particularly in the light of the arguably new information that was brought to POL's attention in the interim report.

We understand that 11 cases have been identified where further disclosure has either now been made by POL or is going to be made by POL as a result of the work done by Second Sight. We don't know what the consequences of that will be. In some cases it may not be particularly significant, in other cases it may be of great significance. But, again, I wanted you to be aware of the fact that we have heard from a rather circuitous route. I mean, it was let slip in a face-to-face meeting rather than us being, sort of, told officially about this, and I assume that you probably also haven't been told about this, which, again, might be surprising, bearing in mind, you know, some of our earlier discussions.

JAMES ARBUTHNOT: Well, I haven't been told about this, and that's of interest and may be important.

IAN HENDERSON: Yes.

RON WARMINGTON: Ian, sorry to interrupt, there were also the four or possibly five cases that were -- that were pulled, as it were, as not being in the public interest, in August of last year, and I'm not sure -- you probably are -- whether that was 4 plus 11 or 4 plus 7.

IAN HENDERSON: No, you're absolutely right, and -- and, James, this is another point which may eventually be quite significant as we get into the mediation process in -- in more detail.

If you, sort of, stand back and look, on a scale of, you know, sort of, one to 10, what cases are going to have the greatest impact on the -- the, sort of, Post Office, either by way of compensation or in some other way, clearly cases where a subpostmaster has been suspended at the beginning of an investigation -- and a typical period of

suspension seems to be anything from maybe six months to 18 months. During that period they probably lose their livelihood, they may well lose their family home, and they will almost certainly lose their -- their business.

As Ron alluded to, we were aware some time ago of four cases where no evidence was -- was subsequently, sort of, offered at trial. We heard a few days ago of at least one further case where a subpostmaster had been suspended for a lengthy period without pay and effectively the post office had shut down, and he was notified just a few days ago that the Post Office is offering no evidence or is not pursuing the, sort of, impossible prosecution.

It strikes me that those are cases also that should be on the radar scheme -- screen, rather, if only because of the catastrophic and devastating impact on the individuals concerned.

JAMES ARBUTHNOT: Yes. So do you personally have any insight into how the mediations are going?

IAN HENDERSON: We are part of the working group. The process, very briefly, is a subpostmaster has to make an application. That application can be rejected at that point. To be fair, however, the majority have been accepted.

Once the application is accepted, they are required, either with the help of a professional adviser -- and the Post Office is paying approximately £1,500 or so towards the cost of a professional adviser -- to submit a detailed -- in effect an extended application to the mediation scheme.

Once that has been received, Post Office is invited to prepare a response after Second Sight has, sort of, completed its investigation into the sort of issues raised by the subpostmaster.

At that point the intention is, and there is a right of veto, the working group can decide that the case does not merit, sort of, mediation, but at the moment no cases have got to that point and, frankly, I don't think we're expecting many to get kicked out at that point. But it is only at that point that the cases will go forward to formal mediation.

One of the, we feel, unsatisfactory elements of the way that the mediation scheme has been set up, and this is potentially going to work in Post Office's favour in terms of maybe covering up these issues, there is no facility for reporting the results of mediation to anyone other than the parties involved, in other words the subpostmaster and the Post Office. All the working group will hear at the end of mediation is mediation was successful or the mediation sort of failed to reach a, you know, mutually acceptable sort of outcome.

For a whole range of reasons we think that is unsatisfactory and potentially will enable, sort of, Post Office to hide information from wider scrutiny. So we're uncomfortable with that. We are raising that at the next meeting of the working group.

RON WARMINGTON: Also, James, another aspect of your question, and another answer, is that so far we've had, of the 147 cases -- applications to the scheme, a number of those have gone through to the stage that Ian's described of having a professional adviser appointed and producing a response, you know, a sort of input to the mediation process. We've had 48 of those. But of those 48 only four are responded to as yet by Post Office, and therefore we only have four that have completed the process far enough for us to then prepare our report, which -- which sits atop of those two other components and gives our view on the merits of the case made and the case refuted by the applicant and the -- and by POL. So we haven't had a single case go to mediation yet.

JAMES ARBUTHNOT: The process is that the subpostmaster puts in the application.

RON WARMINGTON: Yes.

JAMES ARBUTHNOT: It could be rejected but most have not been rejected.

RON WARMINGTON: Yes.

JAMES ARBUTHNOT: Then the subpostmaster is required to submit a detailed submission.

RON WARMINGTON: Yep.

JAMES ARBUTHNOT: Post Office is required then to submit a reply.

RON WARMINGTON: Yep.

JAMES ARBUTHNOT: And at that stage you do your investigation. With your investigation and those two submissions that then goes to mediation.

RON WARMINGTON: That's correct. And there are some other flurries of detail, for example, I mean --

IAN HENDERSON: Well -- just excuse me, there's one important point to remember, that --

RON WARMINGTON: The PA.

IAN HENDERSON: -- at that point when Second Sight submit its report, which sits on top of the detailed application and the Post Office report, the working group has the -- the right --

JAMES ARBUTHNOT: To kick it out.

IAN HENDERSON: To kick it out, yes.

JAMES ARBUTHNOT: But you think it's unlikely that that would happen?

IAN HENDERSON: I -- well, I would hope so. I mean, they're all the -- we've got a superb chairman of -- of the working group, a former Lord Justice of Appeal, Sir Anthony Hooper, who, all the signs are, is doing an absolutely, sort of, excellent, excellent job.

RON WARMINGTON: Yes.

IAN HENDERSON: But until we get to that point, you know, we can't predict exactly how it's all going to work.

RON WARMINGTON: And also, just for the sake of precision, James, the incoming -- the first of those reports, the applicant's case, as it were, is either prepared by the applicant him or herself or, if they've opted to go for a professional adviser, with POL's financial input or support, that is a joint effort between the applicant and the professional adviser, and signed by the applicant, and then that triggers -- kicks off the Post Office response to that document.

Of the responses we've had so far, the four, there's a big disparity in the quality of the incoming professional adviser report, some of which are extremely good, extremely well articulated, and with as much evidence as they can muster, whereas at the moment the responses from Post Office are pretty weak.

I wouldn't like you to necessarily share that yet with -- with Post Office, but they are -- they are tending to respond along the lines of saying: Yeah, we acknowledge that there were circumstantial issues, you know, there were power cuts, there were telecoms failures, this person did have a lot of problems with scratchcards or ATMs, but we -- not least because we don't have any evidence now, we're not prepared to associate the losses that were suffered by this person with those, if you like, circumstantial issues, and therefore we are refusing the claim.

That is typically -- well, that's how they've responded in all four cases so far.

JAMES ARBUTHNOT: Well, that then will go in front of the mediator.

RON WARMINGTON: Yes.

JAMES ARBUTHNOT: But presumably --

RON WARMINGTON: Well, what POL -- what Post Office don't yet know, but I think they suspect, is that our report will not be terribly sympathetic to the fact that the burden of proof is still expected by POL to remain on the shoulders of the applicants, in spite of the fact that POL itself had and destroyed the necessary evidence.

JAMES ARBUTHNOT: What is -- what, in your view -- sorry, I'm just trying to formulate this question.

IAN HENDERSON: Can I just say one other point in relation to mediation?

JAMES ARBUTHNOT: By all means.

IAN HENDERSON: POL is only allocating either a half day or a whole day to the mediation process. And of course this is mediation rather than arbitration, it is not binding on either party. It's down to the skill of the mediator to the extent to which some form of agreement may be reached. Our feeling is that there is a huge gap in very many cases between the position of the SPMR on the one hand and Post Office on the other.

As part of the application process, we have asked SPMRs to quantify the financial impact of the issues that they -- they are raising and many of those are quite substantial. I mean, typically six figures in some cases. I think we have seen one or two that are in the order of £3 million or £4 million.

I am not anticipating that POL is going to, you know, offer those sorts of sums by way of compensation, so I can't help feeling that there is a huge expectation gap between what SPMRs are looking for and what POL is going to offer. But of course we won't formally find out about that until we get to mediation.

JAMES ARBUTHNOT: We have thought that when (unclear) mediation is not binding -- we have thought that if the subpostmasters didn't like the outcome they would sue, but they didn't. But it strikes me, in view of what you're saying -- let's suppose the mediation finds in favour of the subpostmaster, it's not binding presumably on the Post Office either.

IAN HENDERSON: Well, I'm not sure it's even correct to say that mediation will find in favour or one side or the other. My understanding of, sort of, mediation is -- you know, the objective is to find, sort of, common ground and try and find an outcome that is acceptable to -- to both parties. I mean, the mediator may well, you know, use quite strong language to indicate to Post Office that, you know, he thinks that they should contribute, you know, in possibly quite a substantial sort of sum, but by the very nature of mediation, Post Office is perfectly entitled to make up its own mind on the matter. And I'm afraid all the signs are -- that we're saying is that they, you know, are not of a mind to make a substantial contribution in these circumstances.

JAMES ARBUTHNOT: Well, it seems to me that that's a question I need to ask tomorrow.

IAN HENDERSON: Yes. I think it's -- I mean, we have asked that question and have been, sort of, somewhat, sort of, stonewalled: "You know, we will have to see, it will depend on the circumstances" --

JAMES ARBUTHNOT: That's what they will say to me, but nevertheless --

IAN HENDERSON: Yes. No, you will have more clout than

we have had, and hopefully will have more luck.

The other point just to, sort of, tuck away is I raised the question the other day, bearing in mind the fact that this has been going on for a couple of years, what contingent liabilities is going to be disclosed in the Post Office's annual accounts and reports for the mediation process or, indeed, for the potential, sort of, litigation? We know that we have got Shoosmiths waiting in the wings. Cases that fail mediation will have the advantage of being able to use at least some of the information that has come to light as part of the mediation process, and I think it is clear as night follows day that there are a large number of potential, sort of, litigants who will not hesitate in moving this forward if mediation fails.

JAMES ARBUTHNOT: Yes.

RON WARMINGTON: Yes. And Ian, I mean, I -- bearing in mind what you said right at the beginning of this conversation, about the turnover in staff -- and, in fact, about the only person of any seniority and competence that has been around from the outset but is not much involved now, seemingly, is Angela, Angela van den Bogerd. I think she's probably got other fish to fry at the moment. The -- I don't know anybody other than her who could represent -- who could realistically represent Post Office in any mediation meeting, let alone all of them, who would have the decision-making authority to make a decent offer.

IAN HENDERSON: Well, of course, it's not so much the individual, Ron, it's what they're authorised to do and what they've been briefed by the board. I'm afraid that all the signs are that the board of the Post Office just want to wave a magic wand at no cost and make this whole mess go away, which I think is a very unrealistic way of viewing the whole thing. But that seems to be the way that the board is approaching this at the moment.

JAMES ARBUTHNOT: The question of whether there is at the mediations a person with sufficient decision-making authority --

RON WARMINGTON: Exactly.

JAMES ARBUTHNOT: -- to agree that a particular decision can be made is, again, an important one, which I can ask Paula and Alice tomorrow.

IAN HENDERSON: Yes. And also, sort of, what constraints, if any, will apply to that person. You know, are they allowed to negotiate offers up to, say, £5,000 or something like that? In other words, will the board be imposing a limit on their authority?

RON WARMINGTON: It's completely -- also, it's completely foreign given that -- I can imagine the person would think it's massively above their pay grade, in the sense of, you know, "Here am I trying to make a decision whether or not my company pays out £3 million."

IAN HENDERSON: If that's case, there's no point in going in to the mediation --

RON WARMINGTON: No, I couldn't agree more, Ian.

IAN HENDERSON: -- if you're not able to mediate on a proper basis.

RON WARMINGTON: Yes.

JAMES ARBUTHNOT: Okay. I have remembered what it was that I wanted to ask before. What is the consequence or what would be the consequence if you failed to sign this new letter?

IAN HENDERSON: Well, firstly, POL have been trying to impose this on us. At one point there was a clause in the letter that said something like "If you don't sign this letter we will regard you as being bound by its terms if you continue to act", which to my mind sounds

rather like holding a gun to our heads.

RON WARMINGTON: Specifically -- and I found this -- I told them I found this offensive and bullying:

"If we do not receive a signed copy of this letter but you continue to carry out any of the services, you are deemed to have accepted the terms of this letter."

That's what it said.

IAN HENDERSON: Yes. Which was pretty unattractive and I made that point to their general counsel, who has -- you know, at the moment he's agreed to remove that, but at the same time we're no further forward in terms of -- of reaching an acceptable sort of outcome or even a sort of a compromise that we feel protects Second Sight's position, and in particular our ability to report -- well, both to investigate and report without the -- the -- you know, the sort of -- the scope of that report being controlled by the Post Office. All the working group.

I mean, their latest tactic seems to be to -- to tie us to the working group and -- and to hide behind the working group as, sort of, controlling what we do and what we say. Which we have said very firmly is in breach of the undertakings given both to, sort of, Second Sight and -- and probably, sort of, MPs and yourself, bearing in mind the emphasis on the independent nature of the work that Second Sight has been doing.

RON WARMINGTON: I might add, James and Janet, Ian, as ever, is being very calm and collected and rational about this. I was incandescent when I first had bowled at me the engagement letter, which included such gems as the following being outside our scope:

"For the avoidance of doubt, the services do not include ..."

And one of the items it did not include was

rendering a report or opinion on the general suitability or integrity of the Horizon System. And for that matter, definitely not opining on any settlement that has been or could have been reached between Post Office and a subpostmaster or anything related to the contract or anything relating to the efficacy or safety of any criminal investigation, prosecution or conviction of a subpostmaster.

So all those were outside scope on the original version of this, which Ian was much more calmer -- must more calm in handling than I was.

JAMES ARBUTHNOT: My next question is, do they still owe you any money?

RON WARMINGTON: No, actually. They lost three of our invoices but -- but are pretty well up to date. And -- as I say, Ian has been making very solid progress in trying to get that.

But getting back to your original question, I had made it clear to Ian, who was the calm face of Second Sight in dealing with this, that I was prepared to down tools and was simply not going to sign a document like the first version.

We're getting close now -- by the way, I had made the point that I was -- I felt it was underhanded to put that in front of us without being prepared to put it in front of the working group. We've now got to a situation where they will be prepared to put the new version in front of the working group but it's been a pretty hard fought battle to get to something like that.

IAN HENDERSON: Ron, I think the point to make there is that I certainly am very, sort of, concerned about the way that they are moving this forward.

If I can just sort of step back slightly, the way that I see our role, we were originally appointed to conduct a completely independent investigation as a result of very serious matters

that were brought to the attention of a number of Members of Parliament. Following our interim report in June/July last year, Post Office came up with a proposal for mediation and for the last few months that's what we've been primarily, sort of, working on. My view is that mediation is in addition to --

RON WARMINGTON: Yes.

IAN HENDERSON: -- the original scope of our work. We have only issued an interim report.

I think the intention of MPs was: well, let's, you know, see how Post Office, sort of, moves this forward. We'll give them the benefit of the doubt. By all means if they want to, sort of, you know, carry through with mediation, that seems a perfectly reasonable sort of way forward.

But I see that as in no way replacing the original sort of work that we did, which of course is only, sort of, partially complete.

As far as the Post Office is concerned, our interim report was the last report that the public or MPs is ever going to hear from Second Sight, and they are in effect trying to emasculate us and close us down through the mechanism of the -- the mediation scheme.

JAMES ARBUTHNOT: Okay, yeah.

That's all extremely helpful. From my point of view it gives me a pretty clear idea of where we are. I will have a word with Alan Bates this afternoon and then with Paula and Alice tomorrow morning.

IAN HENDERSON: Yeah.

RON WARMINGTON: Ian, is it premature to --

IAN HENDERSON: For your information, we have a face-to-face meeting with the working group on

Thursday, and I imagine that one of the matters to be raised, possibly under "any other business" may well be the -- the proposed, sort of, engagement letter. So it would be useful to at least have some feedback from your meeting, James, at some point maybe, you know, late tomorrow.

JAMES ARBUTHNOT: Yeah, okay. Well, we'll do our best.

I see that -- there may be things that they try to tell us in confidence. I will try to avoid that because -- I think I need to say at the beginning that we need this process to be as open as possible.

IAN HENDERSON: Yes.

JAMES ARBUTHNOT: Because anything less, the Members of Parliament would find unsatisfactory and unacceptable. It's all been before Parliament already.

IAN HENDERSON: Yes. Just one last point, and I perhaps should have mentioned this earlier, Alan Bates was kind enough to disclose to us a copy of a letter from the Minister of BEIS to him, I think it was -- was it September last year, Ron?

RON WARMINGTON: Yeah, yeah, I've got it here.

IAN HENDERSON: Where it was pretty clear how BEIS and, therefore, presumably, sort of, Parliament saw the relationship with Second Sight. I don't know whether Post Office was aware of that letter at the time. It's certainly something that I mentioned a few weeks ago and they are now aware of it, but it does strike me that everything that they are doing at the moment is completely contrary certainly to the spirit if not the letter of that communication between the minister and Alan Bates.

RON WARMINGTON: Yes, it was 22nd September from -- to Alan from Jo Swinson, and it included the line:

"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."

Right. Now, the problem is she doesn't go on to say who Second Sight is employed by and, of course, POL's position is that they are paying the piper.

JAMES ARBUTHNOT: Janet tells me that we have a copy of that.

RON WARMINGTON: Yes.

JAMES ARBUTHNOT: So we can try to (inaudible).

IAN HENDERSON: Super.

RON WARMINGTON: The only other thing, Ian --

IAN HENDERSON: Anything else we can help you with before tomorrow, James?

JAMES ARBUTHNOT: I don't think so, thank you, that's extremely helpful already.

RON WARMINGTON: Ian, one last thing, generic report or is it too early to --

IAN HENDERSON: No, I think we'll leave that for the moment, Ron.

RON WARMINGTON: Okay.

IAN HENDERSON: I think we need to keep this at a fairly sort of high level.

RON WARMINGTON: Yes.

JAMES ARBUTHNOT: Okay.

IAN HENDERSON: Super. Thanks. Okay, many thanks, everyone.

RON WARMINGTON: Bye.

(Call ended)

(Recording ends)