

**DRAFT**

**Briefing for Minister meeting with James Arbuthnot**

**Key points**

- The Post Office remains grateful for Mr Arbuthnot's contribution regarding this issue. Following his raising of the issue, the Post Office has undertaken more than three years of investigation and reviews and, as a result, introduced a number of measures to make further improvements in areas such as training and the way in which postmasters are supported more generally. The Post Office is a better business as a result.
- The concerns that Mr Arbuthnot has continued to raise have been addressed. The key concern (his belief that there have been miscarriages of justice and that convictions should be overturned) has been addressed throughout by the Post Office with the involvement of specialist external lawyers. Further, the Criminal Cases Review Commission (CCRC) is now reviewing 20 criminal cases and the Post Office welcomes this and will abide by its conclusions.
- His concerns that the mediation scheme has been a 'sham' and that the Post Office has set out to somehow 'cover up' failings of its system and/ or miscarriages of justice are misplaced, as set out below in this document.
- Mr Arbuthnot's call for public/judicial inquiry: Although a number of calls for some form of 'public inquiry' have been made, no detail has been given as to the nature of such inquiry, who should sponsor it, who should be appointed to conduct it, or who should pay for it. The Criminal Cases Review Commission, with its extensive powers, is already reviewing 20 criminal cases and the remainder of cases in the mediation scheme are essentially contractual disputes between the Post Office and former postmasters, the majority of which now have dates agreed for mediation, overseen by the reputable and entirely independent Centre for Effective Dispute Resolution (CEDR).

**1. Criminal cases - the Post Office accepted criminal cases, including those involving guilty pleas, into the scheme, but will not mediate them (even when Second Sight have recommended that they do so).**

- Every case has been considered on its merits but the scheme documentation made very clear that not every case would progress to mediation
- The scheme documentation also made clear that only the criminal courts have the power to reverse or overturn a criminal conviction, this cannot be achieved through mediation.
- The JFSA also recognised the limitations of the scheme regarding cases already ruled upon by the courts and advised on their website: *“Did you have a court finding against you? – If yes, and although this Scheme will consider that to some degree (READ THE PACK) [sic], we, JFSA also recommend that you should enter a parallel scheme with a firm of criminal lawyers who will look into your case with a view to consider using the appeals court to overturn the findings against you. ”*
- Nevertheless, the Post Office undertook the re-investigation of cases with an entirely open mind.
- At the conclusion of its investigations into each case, no evidence had been found to suggest that any convictions are unsafe and therefore the Post Office made the decision that the presumption would be against mediation for such cases, whilst all others would be put forward.
- It is also important to note that mediation is an entirely voluntary process and that neither party can be forced to mediate; whilst Second Sight’s recommendations regarding mediation have been carefully considered, along with other factors, it has always been, ultimately, a decision for the Post Office, as a party to mediation, whether or not to take part in the process. In attempting to resolve, through mediation, every case that has not already been ruled upon by the courts (including cases where Second Sight has not recommended mediation or has considered them ‘weak’) the Post Office has, in fact, now gone beyond what was originally envisaged.

**2. The Post Office increasingly narrowed the scope of the scheme – this is not just about computer system failure, it’s about the onerous contracts and the failure of the Post Office to properly investigate losses when postmasters have a liability for them.**

- The inquiry and the scheme were established to address the original allegations and claims being made – that Horizon and ‘associated issues’ (such as training and support) had caused detriment to some postmasters.
- The fact that no evidence of system-wide flaws with Horizon emerged does not provide grounds for extending the scope of the scheme retrospectively to cover, as has been suggested during some debates, contracts and investigation and prosecution processes.

**Contracts:**

- The core principles of the Subpostmasters' contract are broadly similar to those used in franchising arrangements by other organisations across the UK and reflect well established legal principles. This is the basis on which Post Office and thousands of Subpostmasters have successfully conducted business for decades.
- Subpostmasters are independent business people, with a similar position to franchisees in other sectors. They may therefore obtain legal advice as they see fit on any aspect of running their business, including in respect of the decision to enter into a contractual relationship with Post Office itself, and the specific terms of that relationship.

***Investigations and Prosecutions:***

- The scheme is not and never has been a criminal case review, but rather an investigation into whether Horizon operated as it should in a small number of cases. Second Sight is a firm of accountants, not experts in criminal law and procedure and they expressly acknowledged this in their letter of engagement for the scheme (and have also done so in many of their case reviews). The Post Office has worked with specialists in criminal law regarding the cases that require this.

**3. The Post Office did not provide Second Sight with the information they needed to conduct a full investigation and then sacked them and told them to destroy all their papers.**

- The Post office has never sought to frustrate the work of Second Sight through inappropriate control of information.
- As part of its investigation, the Post Office provided all the information held relevant to the case and worked with Second Sight to provide additional information required as part of their investigations and in line with the requirements agreed by the Working Group.
- It was not part of Second Sight's role to review Post Office prosecutions and legally privileged material was not therefore routinely made available to them (as agreed by the Working Group in October 2014).
- No documents relating to the Scheme are being destroyed. The Post Office has repeatedly said it will not destroy information relating to the Scheme and material returned by Second Sight following the end of its contract is being held at a firm of solicitors.
- Second Sight were given notice after investigations of nearly three years and in the context of the completion of independent reviews for each case in the scheme and the production of their Part Two report i.e. the Post Office met the commitments it made to applicants at the outset.

**4. Second Sight's Part Two report is 'packed full of evidence' but the Post Office is misrepresenting the findings (and so is the Government). Second Sight have been 'gagged' and not allowed to meet with Ministers or MPs.**

- The Post Office recognises that some applicants, when faced with problems they appear to have been unable to explain, came into the scheme believing Horizon was or is flawed.
- Second Sight's reports have not identified any link between Horizon and the losses to the postmasters in the cases they reviewed, nor has it identified any transaction caused by a technical fault in Horizon which has resulted in a postmaster wrongly being held responsible for a loss. There is no evidence that the Horizon system does not work as it should.
- There is, in fact, overwhelming evidence that the losses complained of were caused by user actions, including in some cases, deliberate dishonest conduct.
- The Post Office gave a commitment of confidentiality to people who put forward complaints and mediation itself is a confidential process. Confidentiality was something that all parties – JFSA, Second Sight and Post Office – agreed when the scheme was established. But there has been as much transparency as possible (whilst protecting individual privacy) – the documentation of the scheme has been published, the overall findings of the Post Office investigations have been published and the reviews of the independent mediator, CEDR, have been published, amongst much else. Second Sight's Part Two document is confidential and has not been published by the Post Office, but it has always been available to MPs (along with the Post Office Response).

**5. The Post Office has spent millions of pounds to 'cover up' miscarriages of justice when there is clearly something wrong – 150 cases and possibly many more is not a 'small problem'.**

- The Post Office has gone to great lengths to ensure that it got to the bottom of claims being made. The integrity of a system relied upon by thousands of postmasters and staff and millions of customers was questioned and it was hugely important that thorough investigations were undertaken so that there could be confidence in the system – if anything was wrong, the Post Office was determined to find it.
- The Post Office not only undertook an independent inquiry but, when that did not find anything wrong with the computer system, went further and established a scheme to investigate and review individual complaints, providing financial support to people who put forward grievances.
- Whilst the number of cases of complaint put forward is a very tiny percentage (0.03%) of the 500,000 users of Horizon since the system was introduced, the Post Office fully recognises the importance of each case to the applicants involved and, of course, the extremely serious nature of the allegations being made.
- The Post Office takes any allegation of miscarriages of justice extremely seriously. It has seen no evidence to support this allegation. Notwithstanding this, the Post Office has welcomed the involvement of the CCRC, whose specific role is to consider whether any of these cases could have been the subject of a miscarriage of justice.

**6. There was an increasingly legalistic approach to the scheme – it was obvious that the Post Office had taken legal advice as Second Sight increasingly found evidence of faults - the whole nature of the scheme changed.**

- The Post Office's General Counsel was its representative on the scheme's Working Group as was appropriate given that the cases are contractual disputes between the business and (mainly) former postmasters.
- It is not unreasonable to request that those making allegations should substantiate them; there must be some evidence to support claims for redress.
- Where the facts indicate genuine grievances, for example that the support provided in a particular instance fell short of the desired standards, those issues are being discussed with Applicants and a number of complaints have been resolved.
- But in many cases the allegations made, following investigation, have not been supported by evidence – or have been contradicted by the evidence. It is only the facts of a particular case that can decide its rightful outcome.
- The independent mediator, CEDR, has noted in its most recent review: [applicants have] sometimes attended [mediation] with the expectation that they are going into a compensation process rather than a facilitated dialogue with the Post Office in which claims made by either party do require some prior notification, explanation and evidential validation. It would appear that some applicants and/or their representatives consider the approval for mediation has indicated an acceptance of liability by the Post Office, but this is not the case.

**7. People have been bullied into paying back money by the threats of prosecution because they were compelled to falsely account.**

- It is completely untrue to suggest that the Post Office has pressured people to commit criminal offences. Postmasters can always seek help from the Post Office with any difficulties they have. As well as the Post Office's helplines, support is provided by visits to branches if necessary. The Post Office cannot know about branch problems unless these are raised with us.
- The Post Office has made clear that a prosecution is brought to determine whether there was criminal conduct in a branch, not for the Post Office's own financial considerations. Its prosecutions are scrutinised by defence lawyers before they advise their clients and, if a defendant denies an allegation, the court must be sure of his or her guilt before it can convict.
- The Post Office is a custodian of public money and people working in its network have a responsibility to protect that money.

**8. Paula Vennells broke her agreement with MPs and should resign/ be sacked.**



- The Post Office Chief Executive initiated the independent inquiry and committed to a series of actions, including providing funding to help people obtain independent professional advice to bring forward complaints against the company.
- It is hard to imagine any other company going to such lengths to get to the bottom of allegations being made by such a small group of people.
- When the mediation scheme was established, it was clearly stated in the documentation that changes might be necessary over time (given that there could be no pre-determined outcome; the Post Office could not know what the investigations might find). But in fact, the scheme operated as it was designed to do at the outset until the conclusion of the Post Office's investigations in March this year. At that point, with no evidence found to suggest that any conviction was unsafe and with shared concerns by all involved that the progress of cases through the scheme was taking longer than planned, a decision was made to put forward all remaining cases for mediation, with the exception of those already ruled upon by the courts.

**9. The Post Office should have its investigations and prosecutions powers removed – these should be carried out via the police and the CPS.**

- The Post Office has the same rights as any other individual or organisation in England, Wales and Northern Ireland and is not unique in prosecuting its own cases. Many organisations conduct prosecutions within their own sphere of interest, including for example the Driver and Vehicle Standards Agency, Transport for London, the Environment Agency, and many local authorities.
- The Post Office prosecutors are all experienced criminal lawyers, many of whom have wide experience of prosecuting both for the Post Office and the CPS. These lawyers advise the Post Office in full, including by reference to the Code for Crown Prosecutors and its application in the Courts, before a prosecution is commenced and continued.

**10. The length of the mediation process pushed some cases beyond the statute of limitations?**

- The mediation scheme was not a bar to legal actions or to start a claim. It has not affected postmasters' legal rights, including the right to appeal.
- The Post Office is attempting to resolve cases that are capable of being mediated through that process, which is entirely voluntary and for which Post Office is bearing the full cost. Only six of those cases have not yet set a date for mediation with the independent mediator. Post Office has advised that it will not use as a defence in any subsequent court proceedings the fact that the 6 year time limit available in all contractual disputes has expired, where that time limit has expired while a case has been in the scheme.

**11. False Accounting is not a crime**

- The evidential requirements for proving the offences of theft or false accounting are a matter of law.

- The suggestion that the offence of false accounting is a less serious offence to that of theft has appeared in a number of contexts, most commonly where it is alleged that an Applicant has pleaded guilty to the former offence so as to avoid “the more serious” charge of theft, or has pleaded guilty to “the lesser offence” of false accounting.
- Both are offences of dishonesty and both carry the same maximum sentence (7 years imprisonment).
- Also, Post Office does not advise a defendant on their response to a criminal charge. Every person charged with a criminal offence is entitled to independent legal advice and representation. Further, Legal Aid may be available to any defendant where the offence carries a risk of imprisonment (as do the charges levelled by the Post Office):
  - The decision to plead guilty is always one for the defendant only, having taken advice from their own lawyers.
  - When deciding to plead guilty, the defendant will have been advised by his or her own lawyer that a guilty plea represents a complete admission to having committed the offence (which the defendant can qualify by a written ‘basis of plea’) and, where the offence is one of dishonesty (theft, false accounting, fraud), to that dishonest act. This is advice a defence lawyer is duty bound to give.
  - The Code for Crown Prosecutors requires prosecutors to consider in any individual case whether there is sufficient evidence and if so, whether a prosecution is in the public interest. In cases where an audit discloses a loss in circumstances where there is evidence of false accounting, the fact of the loss together with the false entries will often be regarded as sufficient evidence on which to base a charge of theft.
  - The initial suggestion that a defendant pleads guilty will come from the defendant’s lawyers, usually motivated by the defendant’s instructions that they are guilty of that offence.
  - Finally, it is the duty of the defence lawyers to identify to the Court where there is insufficient evidence to sustain a charge, or to seek further information from the Post Office which might assist the defendant’s case. If the Court agrees, then the Judge must dismiss that charge. Thus a charge upon which there is no evidence will inevitably fail.