

## PANORAMA

In strictest confidence and legally privileged: created for the purpose of legal advice

### *Panorama initial request – areas of questioning:*

- the integrity of the Horizon system and the source of disputed losses
- the disclosure of information regarding Horizon's performance
- The Second Sight reports, the working group and the mediation scheme
- The Post Office's practice of investigating and prosecuting without going through the CPS
- The possibility that miscarriages of justice may have taken place
- The explanations that you (i.e. Paula) and the Post Office have given to Parliament

### *Subsequent Panorama correspondence – more detailed lines of enquiry*

#### **1. The Post Office's prosecutions policy**

- whether the Post Office followed the prosecutors code, in particular the need for sufficient evidence before a charge is brought
- whether the prosecution powers and investigative resources of the Post Office are appropriate
- how far investigators try to determine the cause of financial losses before prosecuting
- whether theft charges have been used to pressure subpostmasters to plead guilty to false accounting

#### **2. Provision of information to independent investigators**

- the provision of emails at the request of Second Sight for their report that related to Post Office staff based at Bracknell in 2008
- the provision of prosecution files to Second Sight at their request
- the disclosure of evidence about the Horizon system to expert witnesses for the defence in legal proceedings

#### **3. The operation of the Horizon computer system**

- the information available to the subpostmaster to determine whether losses for which they are liable have arisen
- the information available to Post Office and Fujitsu to determine where losses for which subpostmasters are liable have arisen

- whether it was in Fujitsu's financial interest to report software and hardware problems to the Post Office
- the amount of software and hardware problems discovered by Fujitsu

#### **4. Remote access to branch terminals**

- the possibility of remote access to branch terminals without the knowledge of the subpostmaster
- the possibility of fraud from remotely accessing the branch terminal
- the account of Michael Rudkin and the response of the Post Office
- Fujitsu's transparency with the Post Office about remote access to branch terminals

#### **5. Disclosure of material that relates to prosecutions and convictions**

- whether the Post Office has met its legal duty to disclose any information that could indicate that a miscarriage of justice has occurred
- whether the Post Office should have disclosed the minutes of a meeting with Fujitsu in August 2010 which discussed a software bug within Horizon

#### **6. Treatment of subpostmasters**

- whether individual subpostmasters were routinely told they were the only ones claiming to have problems with Horizon
- whether the length of the mediation process has pushed some cases beyond the statute of limitations

### **Top key points**

#### **WE HAVE A RESPONSIBILITY FOR PUBLIC MONEY:**

This is about missing public money and we have an absolute duty to protect it.

People are not prosecuted for making mistakes or because Horizon is showing losses in their Post Office. They are only prosecuted in the light of *all* the evidence.

If sub postmasters or their staff have taken money that is theft. If missing money has been covered up that is false accounting. These are serious criminal offences.

**WE DO NOT CONTROL THE LEGAL PROCESS:**

If we have evidence that money has been stolen or that its loss is being covered up, we have a duty to take action - that might involve prosecution.

But if there is a prosecution, it is scrutinised by the defence or ultimately the courts. We've got not no special rights or powers.

**THERE IS NOTHING WRONG WITH THE COMPUTER SYSTEM:**

This is about facts, not theories. We've examined the facts of every case and there is not a single example of Horizon causing losses.

I've gone through these cases, every single one and I have looked at *all* the facts. That means all the facts, not just Horizon records.

Horizon is essentially an electronic till system – it records sales transactions, in the same way you would expect from any large retailer. There is nothing to suggest, in any of the cases, that it hasn't done that properly.

**WE DID NOT GET EVERYTHING RIGHT**

Horizon has worked as it should do but I am not sitting here saying we got everything right.

I've found, in investigating these cases, there were people we could have given more support to – we could have provided more training or other help.

We fully acknowledge that and I'm pleased that we have managed to reach agreement with people through mediation.

**Post Office prosecutions**

*Following the prosecutors' code, in particular the need for sufficient evidence before a charge is brought.*

If we've got evidence that money has been stolen or that its loss is being covered up, we have a duty to take action and that might involve prosecution.

If there is a prosecution, we've got no special powers – and what we do is looked at by the defence or ultimately the courts or juries.

Even so, we've had external lawyers look again at the cases to be absolutely sure and we're confident that we've met the Code for Crown Prosecutors.

***Potential other questioning:***

***How code was applied in particular cases/ "we have seen xxxx" etc***

If there is a prosecution, we've got no special powers – and what we do is looked at by the defence, the courts or juries. We've also had external lawyers look again at the cases to be absolutely sure.

I'm not going to discuss specific cases – we assured everyone who came forward with a complaint that we would not do that. But you can't consider these cases with partial or selective information – they have to be looked at in full which we've done.

***You're paying for expensive external lawyers – not independent***

We're also paying for professional advice for everyone who has put forward a complaint. All lawyers have duties they must abide by.

***Cost of legal fees***

I am not going to give a breakdown of figures [need to think what we say about overall cost of scheme – presumably give the figure and justify through seriousness of allegations]

***Whether the prosecution powers and investigative resources of the Post Office are appropriate.***

We've got no special powers of prosecution and we're subject to the same scrutiny as anyone else – what we do is examined by the defence, the courts or juries.

If we have evidence that money has been stolen or that its loss is being covered up, we have a duty to take action and that might involve prosecution.

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.

***[If then asked about investigations themselves:*** If an investigation results in prosecution then it's subject to scrutiny by the defence and the courts, so it must be carried out correctly - if it isn't it won't stand up as evidence, it's as simple as that.]

***How far investigators try to determine the cause of financial losses before prosecuting***

It's important to underline - people are not prosecuted for making mistakes or because Horizon is showing losses in their Post Office. And in the rare cases where we do decide to prosecute the evidence will be looked at very carefully by the defence or courts or juries.

Investigators will try to find missing money and sometimes it's very evident where it's gone. But where people have covered it up and falsified records and accounts, it's obviously a lot more difficult, if not impossible, to find exactly when and how money went missing, especially because the covering up usually goes on for many months or even years.

***Potential other questioning:***

***Post Office told people to falsely account***

This is just not true – we don't tell people to commit a crime .

***Postmasters were terrified they would be made to pay, so falsely accounted***

Covering up missing money is a serious criminal offence.

People are not prosecuted for making mistakes or because Horizon is showing losses in their Post Office.

Covering up missing money by falsifying records usually takes place over many months or even years.

***Whether theft charges been used to pressure subpostmasters into pleading guilty to false accounting***

The Post Office doesn't control the legal process

If there's a prosecution, it's closely looked at by the defence, by courts or juries.

It's not up to the Post Office how someone decides to plead. They can take private and confidential legal advice and consider, with their lawyers, all the available evidence in coming to a decision on the best course of action to take.

[Note: there are examples of cases, among those Panorama is 'examining' where the defence counsel came to us to suggest dropping theft charges in exchange for guilty

plea to false accounting. We declined in two of those cases – one defendant then pleaded guilty to theft, the other was found guilty after evidence was heard by a jury].

#### **Provision of information to independent investigators**

##### ***The provision of emails requested by Second Sight that related to Post Office staff based at Bracknell in 2008***

Actually I'm really [annoyed] by accusations about this. What we are being accused of is corporate fraud. And if the claim had any merit wouldn't you have expected the person now making those claims to have done so at the time. Not waited several years to uncover what if it was true would be extremely serious and criminal.

This all goes back to an allegation we've given a lot of information about - that a Horizon test environment in a basement in Bracknell could have been used covertly to change branch accounts.

That simply didn't happen. There was no covert operational team changing branch accounts or any other sort of malicious tampering. The test equipment was not even connected to the live system and we have provided evidence about that and more for this investigation.

We've provided emails for the key time concerned. The investigations have gone on for three years – we cannot continue forever producing more and more information when we already have substantial facts and evidence about what actually took place in a particular case.

##### ***The provision of prosecution files to Second Sight at their request***

We've been very surprised by accusations about this because we have provided precisely what we agreed with Second Sight we would. And this was with guidance from Sir Tony Hooper, the appeal court judge who chaired our working group. It's confirmed in minutes agreed with Second Sight and the working group in October last year.

We've provided the documents available to the defence lawyers and to the courts.

But it's important to underline that Second Sight is not reviewing prosecutions – we asked external lawyers to do that.

***Potential additional questioning:***

***Why we did not show all the docs to SS***

We haven't generally shared legally privileged material – neither prosecution nor defence normally shares that, even to the courts and Second Sight is not reviewing prosecutions, external lawyers are doing that.

***Why SS said we were not handing over all the docs***

We're not sure why they would say that because we have certainly provided them with everything we agreed with them that we would.

***The disclosure of evidence about the Horizon system to expert witnesses for the defence in legal proceedings***

I'm not going to get into theories/ discuss individual cases/hypotheticals

What I can say is the Post Office takes its legal duties extremely seriously. These cases have been reviewed by external lawyers and of course people can use their legal rights, such as appeal.

I'm not a legal expert but in the re-investigations of these cases there has been nothing to suggest Horizon has not worked properly – I've looked at them all.

***Potential additional questioning:***

***Disclosure to expert witnesses/ subsequent dropping of cases***

I can't talk about individual cases but of course we sometimes decide against prosecution or drop a prosecution we've started – this is precisely because we keep them under continual review.

***Information available to the subpostmasters to determine whether losses for which they are liable have arisen***

Horizon is essentially an electronic till system – it records sales transactions, in the same way you would expect from any large retailer. There is nothing to suggest, in any of the cases, that it hasn't done that properly.

Every branch has access to the necessary information to balance the books and thousands of postmasters do this without difficulty. I speak with them and work with



them all the time and we are there to help them if they have a concern. There's a range of available records – including paper records.

The key thing is for every branch to check their cash balances each day. It is then much easier to identify if any mistakes have been made with transactions, something only the postmaster and their staff can recognise – for example accidentally handing the wrong change to a customer or keying in the wrong amount for a deposit.

***The information available to the Post Office and Fujitsu to determine where losses for which subpostmasters are liable have arisen***

Horizon is essentially an electronic till system – it records sales transactions, in the same way you would expect from any large retailer.

Therefore many mistakes are something that only the postmaster or their staff can recognise – for example accidentally handing out the wrong change or keying in the wrong amount for a deposit. Obviously we can't know that has happened. We can recognise other errors when things don't reconcile [example] and our finance centre sends the postmaster a correction – this is then accepted or can be queried by the branch. It is all clearly shown in the records.

***The amount of software and hardware problems discovered by Fujitsu***

All computer systems have glitches or bugs at times that have to be fixed – but the question is whether anything like that caused losses to these people. The facts in each case just don't support that. There's not a single example of Horizon causing losses in any of them.

Horizon is essentially an electronic till system – it records sales transactions, in the same way you would expect from any large retailer. There is nothing to suggest, in any of the cases, that it hasn't done that properly.

It's also a system that is constantly monitored and managed, with numerous checks and independent audits.



***Remote access to branch terminals***

***The possibility of remote access to branch terminals without the knowledge of the subpostmaster***

This is about facts, not theories. I've examined the facts of every case and there is not a single example of Horizon causing losses whether through some form of remote tampering or anything else.

I've gone through these cases, every single one and I have looked at **all** the facts. That means all the facts, not just Horizon records.

Horizon is essentially an electronic till system – it records sales transactions, in the same way you would expect from any large retailer. There is nothing to suggest, in any of the cases, that it hasn't done that properly.

[If pushed: One would have to ask why anyone would want to maliciously access an electronic till system – but transactions recorded by Post Offices cannot be edited or deleted remotely. ]

This is a system that is constantly monitored and managed, with numerous checks and independent audits.

***The possibility of fraud from someone remotely accessing the branch terminal***

This is about facts, not theories. There's not a single example of Horizon causing losses whether through some form of remote tampering or anything else.

Horizon is essentially an electronic till system – it records sales transactions, in the same way you would expect from any large retailer. There is nothing to suggest, in any of the cases, that it hasn't done that properly.

[If pushed: One would have to ask why anyone would want to maliciously access the accounts of some Post Office – Horizon doesn't hold bank accounts or anything like that, it simply holds a record of transactions made. But these can't be edited or deleted remotely once they've been recorded by a branch. ]

This is a system that is constantly monitored and managed, with numerous checks and independent audits.

***The account of Michael Rudkin and the response of the Post Office***

I can't discuss individual cases. We asked people to come forward in confidence if they had concerns or complaints – we gave them the assurance that we would not break that confidence.

***Fujitsu's transparency with the Post Office about remote access to terminals been acceptable***

We've examined the facts of every case and there is not a single example of Horizon causing losses whether through some form of remote tampering or anything else.

I've gone through these cases, every single one and I have looked at ***all*** the facts. That means all the facts, not just Horizon records.

We have computer experts in the Post Office who work with Fujitsu, the system is independently audited and we are absolutely satisfied about it – it works as it should.

***Potential additional questioning***

***"We have a video/ evidence/ computer expert etc"***

I know the facts of every case and there is not a single example of Horizon causing losses whether through some form of remote tampering or anything else.

***Post Office lied – there is remote access***

We have been very clear about what is and is not possible with the system. But ultimately there's nothing in any of the cases that supports any suggestion of remote tampering going on with accounts.

**Disclosure of material that relates to prosecutions and convictions**

***Whether the Post Office met its legal duty to disclose any information that could indicate that a miscarriage of justice has occurred***

We have and we will continue to do so - it's a continuing serious duty.

No information has emerged through our reinvestigation to suggest that any conviction is unsafe and there have been no appeals.

*Whether the Post Office should have disclosed the minutes of a meeting with Fujitsu in August 2010 which discussed a software bug with Horizon (MC – assumes this means re convictions)*

**Comment [AV1]:** Need a more robust answer

No software bugs have been found to have caused losses in these cases – Horizon has worked as it should.

Every case involving convictions has been re-examined by external lawyers.

#### **Treatment of subpostmasters**

*Individual subpostmasters were routinely told that they were the only ones claiming to have problems with Horizon*

I've gone through these cases, every single one – and all their call records to the helpline - there's nothing that supports this.

The cases are all different – but there is not a single example of losses being caused by Horizon.

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

We're of course going to be fair about this - if a case has run out of time purely because of its progress through the mediation scheme, we're not going to rely on the statute of limitations.

[If pushed: what about cases out of time before the scheme? I can't get into decisions that might be made in the future about any cases but the mediation scheme has not been a bar to people taking legal actions or starting a claim. It's not affected people's legal rights, including the right to appeal]

[Rod's words for reference:

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.

Many of the complaints brought to the mediation scheme were sufficiently old that the typical 6 year limitation period expired well before the Scheme was first established.

But the Post Office would not seek to rely on limitations purely due to the progress of the cases through the mediation scheme. ]

### **Relationship with Second Sight**

[Background note – from SS Part Two Report In expressing our disappointment in finding ourselves unable to complete our independent investigation in the way that we considered necessary, we wish to place on record our appreciation for the hard work and professionalism of Post Office's in-house team of investigators, working for Angela Van Den Bogerd, Post Office's Head of Partnerships.

Our work would have been much harder and taken much longer without the high quality work carried out by this team. We have also received excellent support from the administrative team set up by Post Office to support the Working Group.

### ***Not accepting the findings of an independent investigator***

Their report says that the majority of losses were down to human error and that is what we know from our own investigations and their report also says that the investigation work was high quality.

But we can't accept some of the other statements made in the report without anything to back them up, without evidence.....and we can't accept things in the report that are simply wrong about how our Post Office branches run in practice. We can't go into mediation with people without making that clear, it would be unfair. That's all we have done – told people our position on parts of the report - and it's a perfectly reasonable thing to do. This is about, and only about, the cases in the scheme and everything we are doing to resolve those – some of the issues the report raises concern fewer than 15 people raising them, some concern only one person.

### ***You've determined what information SS get, not allowed them to decide***

That's nonsense. We have had people on this full-time for three years now – retrieving thousands of pages of documents and Second Sight themselves have said the investigation work was high quality. We've left no stone unturned. But we cannot go on and on providing information for undetermined reasons. This is about 100 cases and what actually happened in those cases.

*You're saying Second Sight have lied (re legal files – can be adapted for any number of other matters)*

I am saying what we agreed with them, what is in minutes they agreed and what I know was agreed because I was there [check AVDB was there at October 2014 WG]]. Therefore I don't understand why they took the position they did about it – but it is worth remembering that it is not Second Sight who are reviewing prosecutions, it is external lawyers doing that and that's always been the case.

*You've gagged Second Sight so they cannot come on the programme and defend themselves*

Second Sight's contract includes confidentiality, of course it does – we have similar clauses in any contract; any responsible business ensures its commercial information and information about people is secure.

**Legally privileged security file**

*In Jo Hamilton's case you handed over a document to Second Sight in which your own investigator says there is no evidence of false accounting or theft*

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Comment [AV2]: Need to see this document as there was clear and systematic false accounting in this case. Did Jo Hamilton plead guilty?

I can't talk about individual cases but what I can say is that there are, literally, thousands of pages of documents about these cases and you have to look at all the facts of a case, not selective or partial documentation; that means all the facts – such as what a person said happened, what their staff said, witness statements, what the helpline and training records show, financial records and so on.

And if we bring a prosecution we don't control the legal process – evidence is looked at by the defence or the courts or juries.

**Dishonesty**

*You are saying that these people are criminals/ dishonest*

I am not here to talk about individual cases but in some cases there was, I'm afraid, dishonesty, yes. Whether they pleaded guilty or were found guilty by the courts, false accounting, fraud and theft are acts of dishonesty.

*These people have fought for years – no reason to do that if they are guilty*

Comment [AV3]: This needs a stronger answer

Whilst I can't talk about individual cases and it is not for me to speak about what motivates people; let's remember that these cases have gone through the legal system, have had the benefit of legal advice and defence counsel to represent them and state

| their case in court. I can only tell you what we have found in our investigations and the simply fact of the matter that it is not the computer system that has caused losses.